

Q4 2019 GLOBAL
Private Equity
UPDATE

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Weil's Quarterly Private Equity Update: Going Private Transactions in the U.S., the U.K. and Hong Kong

Private equity sponsors and other financial investors continue to look at going private transactions. In this update, we summarize key similarities and differences of going private transactions in three financial centers with global reach: the U.S., the U.K., and Hong Kong.

In general, the U.S. is the most different of the three jurisdictions since the U.K. and Hong Kong share many similarities. However, regardless of the location of the listing, going private transactions are also subject to the laws of the jurisdiction of the target's formation (its "home jurisdiction"). One distinction that sets Hong Kong apart from the U.K. and the U.S. is the relatively large proportion of listed companies that are formed outside of Hong Kong, and thus considerations with respect to deal structure will be affected by the laws of the target's home jurisdiction.

A significant difference among the three jurisdictions is the hurdle to acquire 100% of a listed company. In Delaware (the most commonly used U.S. jurisdiction), minority shareholders can be squeezed out with a simple majority. In the U.K. and Hong Kong, the threshold for a squeeze-out following an offer is 90%. A scheme of arrangement (in some respects similar to a merger in the U.S.) requires "only" 75% of the shares, but also requires court approval (Hong Kong additionally requires that not more than 10% vote against the transaction). In addition, shareholders who are given "special deals" (e.g., management rollover) are not counted for the purposes of the 90% squeeze out threshold and interested parties are disqualified from voting in a scheme. In the U.S., shares held by interested parties are not automatically excluded, though sometimes parties do so in an attempt to mitigate conflicts of interest.

Another significant difference is that the U.K. and Hong Kong are more target-friendly with respect to certain deal protections. Break fees payable by the target are universal in the U.S., principally in the exercise of a "fiduciary out" by the target board. However, in the U.K., such break fees are only permitted in limited circumstances and, while Hong Kong is not as restrictive as the U.K. with respect to the circumstances such fees are payable, the amount of any such fees must be *de minimis*.

It is typical, at signing, for buyers in the U.S. to deliver to the target equity and debt commitment letters to provide evidence of financial capability to consummate the transaction. In the U.K. and Hong Kong, buyers typically provide a definitive credit agreement alongside the equity commitment (in each case, on a "certain

funds” basis with buyers’ financial advisors confirming certainty of funds). This cash confirmation process adds a significant additional component to transactions in the U.K. and Hong Kong.

The matters described above and other key similarities and differences among the three jurisdictions are summarized in the following chart.¹

	United States (Delaware)	United Kingdom²	Hong Kong
Mechanics			
Available means of acquisition	<p>A. <u>Tender Offer</u>: Offer to all holders to buy their shares.</p> <p>B. <u>Merger</u>: A statutory procedure, whereby one entity merges into the other and all of its assets and liabilities become the assets and liabilities of the other entity.</p>	<p>A. <u>Takeover Offer</u>: Offer to all holders to buy their shares.</p> <ul style="list-style-type: none"> • <u>Mandatory Offer (“MO”)</u>: Triggered if 30% or more of voting rights acquired. • <u>Voluntary Offer (“VO”)</u> <p>B. <u>Scheme of Arrangement</u>: A statutory procedure approved by (i) the requisite threshold and (ii) the court. May only be used for non-hostile deals.</p>	<p>A. <u>Takeover Offer</u>: Offer to all holders to buy their shares.</p> <ul style="list-style-type: none"> • <u>MO</u>: Triggered if 30% or more of voting rights acquired. • <u>VO</u> <p>B. <u>Scheme of Arrangement</u>: A statutory procedure approved by (i) the requisite threshold and (ii) the court. May only be used for non-hostile deals.</p>
Tender/Takeover Offers			
Required level of acceptance	No legally mandated amount, but typically set at a majority of voting shares.	<p><u>MO</u>: Must be set at a majority of the voting rights (“<u>Minimum Acceptance Condition</u>”).</p> <p><u>VO</u>: Can be a higher level (often 90% to allow a squeeze-out).</p>	<p><u>MO</u>: Must be set at the Minimum Acceptance Condition.</p> <p><u>VO</u>: Can be a higher level (often 90% to allow a squeeze-out).</p>
Squeeze out Percentage	A majority of the voting shares (to effect a back-end merger, subject to appraisal rights).	90% of the shares other than those owned by the buyer or its associates.	90% of the shares other than those owned by the buyer or its concert parties (i.e. “disinterested” shares).

¹ For the U.S., we have focused on Delaware corporations. Other U.S. states may have differing rules affecting corporations formed in those states.

² The information below applies to public companies incorporated in the U.K. which have their sole listing on the main market or the AIM market of the London Stock Exchange. Otherwise different rules may apply.

	United States (Delaware)	United Kingdom²	Hong Kong
Time before closing	A tender offer must be open for at least 20 business days. Tender offers are often closed within 6 weeks.	A takeover offer must be open for at least 21 days and, subject to regulatory approvals, usually closes within 60 days (in each case, from the date of the formal offer document (which is typically issued within 28 days after announcement of the offer)).	A takeover offer must be open for at least 21 days and usually closes within 60 days (in each case, from the date of the formal offer document (which is typically issued within a month after announcement of the offer)).
Effect of insider on the required majority	Required majority is unaffected. However, acquisitions by a controlling stockholder are subject to heightened scrutiny, which potentially can be mitigated by use of substantive and procedural safeguards (e.g., special committee, fairness opinion and approval by a majority of the minority).	Shares held by a shareholder given a “special deal” (e.g., management rollover) (i) require consent of the Takeover Panel and (ii) typically do not count for the 90% squeeze-out threshold, but will usually count towards the acceptance condition of the offer.	Shares held by a shareholder given a “special deal” (e.g., management rollover) (i) require consent of the Securities and Futures Commission (“SFC”) and (ii) typically do not count for the 90% squeeze-out threshold, but will usually count towards the acceptance condition of the offer.
Mergers / Schemes of Arrangement			
Required level of approval	Typically requires a majority of the target’s voting shares (but a higher threshold may be imposed by organizational documents or by the merger agreement).	At least 75% of voting rights of disinterested shares cast, and simple majority of the number of shareholders who vote, at the court-convened shareholder meeting(s).	At least 75% of voting rights of disinterested shares cast at general meeting with no more than 10% of all disinterested shares voting against. ³
Time before closing	Assuming no extended regulatory review, mergers usually close in approximately 3 - 4 months after signing.	Posting of offer document normally occurs within 28 days of announcement, and (assuming no extended regulatory review) closing usually	Posting of offer document normally occurs within one month of announcement, and (assuming no extended regulatory review and subject to availability of

³ The legal requirements of the home jurisdiction also apply.

	United States (Delaware)	United Kingdom²	Hong Kong
		occurs 2-3 months after posting.	the courts) closing usually occurs 2-3 months after posting.
Appraisal rights	Dissenters have appraisal rights.	There are no appraisal rights.	None under HK Takeovers Code, but target's home jurisdiction may provide appraisal rights.
Effect of insider on the required majority	Required majority is unaffected. However, acquisitions by a controlling stockholder are subject to heightened scrutiny, which potentially can be mitigated by use of substantive and procedural safeguards (e.g., special committee, fairness opinion and approval by a majority of the minority).	Interested parties are disqualified from voting.	Interested parties are disqualified from voting.

	United States (Delaware)	United Kingdom ²	Hong Kong
Deal Terms and Process			
Typical closing conditions	<p><u>General</u>: Regulatory approvals, absence of material adverse change (“MAC”) and no court orders/injunctions.</p> <p><u>Mergers</u>: Approval of shareholders (if necessary).</p> <p><u>Tender Offers</u>: Tendering of a number of shares (determined by the buyer).</p>	<p><u>MO</u>: May only be subject to the Minimum Acceptance Condition.</p> <p><u>VO (including Scheme)</u>: Typically contain additional conditions (including, for VOs, greater than 50% acceptance, regulatory conditions and MAC).</p> <p>Consent of the Takeover Panel (rarely given) is generally required to invoke a condition.</p> <p>Offers cannot include subjective conditions.</p>	<p><u>MO</u>: May only be subject to the Minimum Acceptance Condition.</p> <p><u>VO (including Scheme)</u>: May contain additional conditions, (including, for VOs, greater than 50% acceptance, regulatory conditions and MAC).</p> <p>Consent of the SFC (rarely given) is generally required to invoke a condition.</p> <p>Offers cannot include subjective conditions.</p>
Break Fees	<p><u>General</u>: Break fees are typically payable. See below for triggers.</p> <p><u>Target Fee Triggers</u>: Fiduciary duty termination by the target (e.g., superior proposal, recommendation change and intervening event) and completion of a similar transaction during a tail period.</p> <p><u>Buyer Fee Triggers</u>: Buyer’s failure to close when required or breach of agreement in certain cases.</p>	<p><u>General</u>: Break fees payable by the target are permitted only in very limited circumstances. Break fees payable by buyer are relatively uncommon.</p> <p><u>Target Break Fee Trigger</u>: (Where permitted) typically completion of a successful competing offer.</p> <p><u>Buyer Break Fee Trigger</u>: Failure of certain conditions (e.g., regulatory/shareholder approval).</p>	<p><u>General</u>: Break fees payable by the target must be <i>de minimis</i> (see below), but the SFC must be consulted in advance and retains wide discretion. Break fees payable by buyer are relatively uncommon.</p> <p><u>Target Break Fee Trigger</u>: Circumstances under which target may pay break fees are not as restrictive as in the U.K.</p> <p><u>Buyer Break Fee Trigger</u>: As mentioned above, this is not common.</p>

	United States (Delaware)	United Kingdom²	Hong Kong
	<u>Amount</u> : No hard cap, but target break fee size cannot deter rivals (often 2-4% of EV (often reduced during any go-shop period) and buyer break fees are often 4-8% of EV.	<u>Amount</u> : In the very limited circumstances in which they are permitted, a target break fee is capped at 1% of the offer value.	<u>Amount</u> : A break fee payable by target must be <i>de minimis</i> (usually no more than 1% of the offer value).
Fiduciary out	Prior to a stockholder vote, the target can enter into a superior proposal or withdraw its recommendation to its stockholders.	Not applicable since obligations on the target are generally prohibited. Target boards are generally free to consider and/or recommend competing proposals.	Not applicable since obligations on the target are generally prohibited. Target boards are generally free to consider and/or recommend competing proposals.
Minimum offer price	None.	<u>MO</u> : Highest price paid by the buyer during the prior 12 months. <u>VO</u> : Highest price paid by the buyer during the prior three months (including the offer period), subject to rules applicable to certain share purchases for cash.	<u>MO</u> : Highest price paid by the buyer during the offer period and within 6 months prior to its commencement. <u>VO</u> : Highest price paid by the buyer during the offer period and within 3 months prior to its commencement.
Financing			
Documents provided at signing	Equity commitment letter and limited guarantee from the sponsors. Debt commitment letters from the lenders.	Equity commitment letter from the sponsors and definitive credit agreement from the lenders, both on a “certain funds” basis. Buyer’s financial advisor must confirm certainty of funds, and will request confirmations and undertakings to support the “certain funds” obligations.	Equity commitment letter from the sponsors and definitive credit agreement from the lenders, both on a “certain funds” basis. Buyer’s financial advisor must confirm certainty of funds, and will request confirmations and undertakings to support the “certain funds” obligations.
Financial assistance;	Financial assistance is permitted.	Financial assistance is not allowed for public companies.	Financial assistance is governed by the target’s home jurisdiction.

	United States (Delaware)	United Kingdom²	Hong Kong
whitewash procedures	There are no whitewash procedures in the U.S.	However, if 75% of voting rights are acquired, then the target may become a private company and give financial assistance in refinancing acquisition debt.	Financial assistance is restricted or difficult to execute in certain jurisdictions (e.g. Hong Kong and PRC). Other jurisdictions (e.g., Cayman and BVI) may be more flexible.

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REPRESENTATIVE 2019 TRANSACTIONS

<p>Advent International Acquisition of DEFINITIVE HEALTHCARE</p> <p>Undisclosed June 2019</p>	<p>Advent International Stake acquisition</p> <p>BIODURO</p> <p>Undisclosed January 2019</p>	<p>Advent International TSG's stake acquisition</p> <p>MARIANA TEK.</p> <p>Undisclosed November 2019</p>	<p>Advent International Culligan's acquisition of</p> <p>OASIS</p> <p>Undisclosed Pending</p>	<p>Advent International Acquisition of</p> <p>TSG</p> <p>Undisclosed Pending</p>	<p>Advent International Culligan's acquisition of</p> <p>AQUAVENTURE HOLDINGS</p> <p>\$1,100,000,000 Pending</p>	<p>Apax Partners Series E funding for classpass</p> <p>\$285,000,000 December 2019</p>
<p>Apax Partners Stake acquisition</p> <p>SIGNAVIO</p> <p>\$177,000,000 Pending</p>	<p>Aterian Investment Partners Acquisition of</p> <p>HEAN PURE PROTEIN</p> <p>Undisclosed June 2019</p>	<p>Aterian Investment Partners Vander-Bend's acquisition of</p> <p>IHL</p> <p>Undisclosed January 2019</p>	<p>Bain Capital Stake acquisition</p> <p>KANTAR</p> <p>\$4,000,000,000 Pending</p>	<p>Berkshire Partners Acquisition of</p> <p>TERACO</p> <p>Undisclosed March 2019</p>	<p>Berkshire Partners Recapitalization of</p> <p>CPP</p> <p>Undisclosed Pending</p>	<p>Berkshire Partners Parts Town's acquisition of</p> <p>Heritage</p> <p>Undisclosed October 2019</p>
<p>CPPIB Minority Investment in</p> <p>VEEAM</p> <p>Undisclosed January 2019</p>	<p>CPPIB Consortium's acquisition of</p> <p>WAYSTAR</p> <p>\$2,700,000,000 Pending</p>	<p>CPPIB Consortium's sale of</p> <p>REFINITIV</p> <p>\$27,000,000,000 Pending</p>	<p>CPPIB Consortium's take-private of</p> <p>Ultimate SOFTWARE</p> <p>\$11,000,000,000 May 2019</p>	<p>Centerbridge Partners Sale of</p> <p>PF. CHANG'S</p> <p>Undisclosed March 2019</p>	<p>Centerbridge Partners Sale of</p> <p>PEI WEI</p> <p>Undisclosed June 2019</p>	<p>Cornell Capital KDC/ONE's acquisition of</p> <p>BENCHMARK</p> <p>Undisclosed November 2019</p>
<p>Cornell Capital KDC/ONE's acquisition of</p> <p>ALKOS GROUP</p> <p>Undisclosed July 2019</p>	<p>Cornell Capital KDC/ONE's acquisition of</p> <p>swallowfield</p> <p>Undisclosed Pending</p>	<p>CVC Capital Partners Sale of</p> <p>PAREX</p> <p>\$2,500,000,000 May 2019</p>	<p>Fiera Infrastructure Investment in</p> <p>CONTERRA</p> <p>Undisclosed April 2019</p>	<p>Genstar Capital Acquisition of</p> <p>OTC</p> <p>Undisclosed April 2019</p>	<p>Genstar Capital Acquisition of</p> <p>TruckLife</p> <p>Undisclosed December 2019</p>	<p>Goldman Sachs Stake sale</p> <p>ProQuest</p> <p>Undisclosed Pending</p>
<p>GS Infrastructure Partners Investor Group's stake sale</p> <p>verticalbridge</p> <p>Undisclosed Pending</p>	<p>Infravia Capital Partners Acquisition of</p> <p>CELESTE</p> <p>Undisclosed March 2019</p>	<p>J.C. Flowers Acquisition of</p> <p>Vericity</p> <p>Undisclosed February 2019</p>	<p>Mithril Capital Management Stake acquisition</p> <p>glance</p> <p>Undisclosed September 2019</p>	<p>Novalpina Capital Acquisition of</p> <p>NSO GROUP</p> <p>Undisclosed February 2019</p>	<p>Oak Hill Capital EPIC's acquisition of</p> <p>Prime</p> <p>Undisclosed Pending</p>	<p>Oaktree Capital Management Sale of</p> <p>VERESCENCE</p> <p>Undisclosed February 2019</p>
<p>OTPP Stake sale</p> <p>Cole-Parmer</p> <p>\$2,100,000,000 Pending</p>	<p>OTPP Formation of</p> <p>TRIVIUM PACKAGING</p> <p>Undisclosed October 2019</p>	<p>OTPP Series L funding round for</p> <p>SPACE X</p> <p>Undisclosed June 2019</p>	<p>OTPP Investment in</p> <p>SIP</p> <p>Undisclosed August 2019</p>	<p>OTPP Take-private bid</p> <p>inmarsat</p> <p>\$3,300,000,000 Pending</p>	<p>Providence Equity Partners Acquisition of</p> <p>TimeClock Plus</p> <p>Undisclosed August 2019</p>	
<p>Providence Equity Partners Acquisition of</p> <p>GLOBALTRANZ</p> <p>Undisclosed May 2019</p>	<p>Providence Equity Partners Investment in</p> <p>TAIT</p> <p>Undisclosed February 2019</p>	<p>Providence Equity Partners Stake acquisition</p> <p>CHIME</p> <p>Undisclosed June 2019</p>	<p>PSP Investments Investment in</p> <p>Alliant</p> <p>Undisclosed January 2019</p>	<p>PSP Investments Acquisition of</p> <p>convex</p> <p>Undisclosed Pending</p>	<p>PSP Investments Investment in</p> <p>convex</p> <p>\$1,800,000,000 April 2019</p>	
<p>PSP Investments Sale of</p> <p>Advisor Group</p> <p>Undisclosed May 2019</p>	<p>Silver Lake Sumeru Sale of</p> <p>ForeFlight</p> <p>Undisclosed March 2019</p>	<p>SoftBank Vision Fund Investment in</p> <p>C2FO</p> <p>\$200,000,000 August 2019</p>	<p>SoftBank Vision Fund Investment in</p> <p>SET YOUR GUIDE</p> <p>Undisclosed May 2019</p>	<p>SoftBank Vision Fund Investment in</p> <p>Uber</p> <p>\$1,000,000,000 July 2019</p>	<p>Snow Phipps Group Ideal Tridon's acquisition of</p> <p>STC</p> <p>Undisclosed January 2019</p>	
<p>TCV Investment in</p> <p>Clio</p> <p>\$250,000,000 August 2019</p>	<p>TCV Series F financing</p> <p>FLIX Mobility GmbH</p> <p>Undisclosed July 2019</p>	<p>TCV Investment in</p> <p>PELOTON</p> <p>\$100,000,000 September 2019</p>	<p>TCV Partial sale</p> <p>HireVue</p> <p>Undisclosed Pending</p>	<p>TCV Series E financing</p> <p>toast</p> <p>Undisclosed March 2019</p>	<p>The Blackstone Group Investment in</p> <p>sema4</p> <p>Undisclosed August 2019</p>	
<p>Tower Three Partners Sale of</p> <p>NTS COMMUNICATIONS</p> <p>Undisclosed Pending</p>	<p>TowerBrook Capital Partners Sale of</p> <p>GSE</p> <p>\$142,277,777 May 2019</p>	<p>TPG Global Stock acquisition</p> <p>ACCEL ENTERTAINMENT</p> <p>\$884,000,000 November 2019</p>	<p>PG Sale of</p> <p>和陸家医療</p> <p>\$1,440,000,000 Pending</p>	<p>TPG Tech Adjacencies Minority investment</p> <p>ABC TECHNOLOGIES</p> <p>Undisclosed July 2019</p>	<p>Trive Capital Sale of</p> <p>STC</p> <p>Undisclosed May 2019</p>	
					<p>TPG Capital Asia, TPG Growth and OTPP Stake acquisition</p> <p>DREAM CRUISES</p> <p>\$3,700,000,000 Pending</p>	

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