FREQUENTLY ASKED QUESTIONS
COVID-19 IMPLICATIONS ON PRIVATE EQUITY JUNE 2020

1. What has been the impact of COVID-19 on existing fund structures?

- There are certainly increased opportunities in the market for fund managers to make new investments. In relation to existing portfolio companies, however, we have found that many funds require additional capital, either to manage short-term instability and/or to take-up well-priced follow-on opportunities. Where a fund does not have sufficient undrawn commitments to deploy in those portfolio companies, fund managers may approach investors for additional capital and/or may request additional recycling powers to free up reserved capital.

- If this is not practical, fund managers may consider establishing "*annex funds*" or "*top-up*" funds as variations of existing fund structures to make such investments.

- The other option is to establish co-investment vehicles for selected investors to co-invest with funds in one or more identified opportunities.

2. Should managers be reviewing existing provisions in their fund documentation and, if so, which ones?

- Given the delay in finalising deals, some fund managers may find it difficult to close deals before the end of their commitment periods. Fund managers should ensure that their fund documents allow them to complete deals that are in-process after the end of their commitment periods. Depending where they are in the cycle, they should consider requesting an extension.

- Funds nearing the end of their term should consider seeking extensions to provide portfolio investments with ample time to recover from short-term depreciation in value and to prepare these investments for exits.

- Many fund managers are revisiting their investment guidelines to enable them to focus on opportunities in particular sectors or geographies or consider sectors that are not as hard hit by the pandemic and to ensure that all portfolio company funding and other interventions are permissible.

- It is important to revise the conflict of interest policy to deal with the potential conflict that invariably arises as managers recommend various unprecedented and unforeseen actions.

- Amendments to the fund documents and/or investor consents may be required for the fund to incur additional indebtedness (or longer-term indebtedness).

- Considering the liquidity pressure some investors will experience, it may be worth reviewing the provisions related to transfer of investor interests, to ensure that transfers can be effected quickly and economically.

- Review reporting obligations to investors and deadlines for compliance to assess whether the manager needs to engage with investors about any delays or the inability to provide a report on certain matters following, for instance, delayed provision of information by a portfolio company.

- Generally managers should ensure that contingency plans are in place if investors are unable to meet obligations. In certain cases, it may be necessary to defer distributions.

3. To what extent do managers need to amend their marketing material and disclosures in light of COVID-19?

- Managers should review their disclosure materials and ensure that they include additional disclosures and risk factors to address COVID-19 and any other communicable diseases. These revisions should include enhanced disclosure about past performance figures.

4. What fundraising challenges have fund managers experienced?

- Investors have delayed or reduced commitments, as they try to assess the impact of the economic fallout on their own balance sheets.

- Fund managers will not be able to meet with prospective investors in person for the next few months or use networking at conferences to find new sources of capital.

5. How can these fundraising challenges be tackled?

- Use this time to discuss insights and forecasts with prospective investors, to keep in contact with them and make preparations to capitalise on opportunities as soon as the restrictions lift.

- Offer investors benefits such as "*early bird discounts*" on management fees and preferred co-investment rights.

- Include greater flexibility in the fund documents around the fundraising period.

6. What strategies are being adopted by managers in the middle of transactions to ensure these are effectively concluded?

- Managers who are currently deploying capital and negotiating legal agreements may find it difficult to consummate transactions in jurisdictions where regulators and deeds offices are closed or working shorter office hours. This difficulty should be properly catered for in the conditions precedent to the transaction.

- Where possible, managers can make documents and information available in virtual data rooms and through video facilities, so that commitments can be advanced subject only to completion of the in-person due diligence. Managers also need to make sure that they have good in-country contacts to assist with physical due diligence and inspect operational facilities.

7. What challenges are portfolio companies experiencing?

- COVID-19 has had and will continue to have a severe impact on many portfolio companies as a result of, inter alia, suspended operations in countries under lockdown, an absent workforce, liquidity pressures on listed companies in light of covenant breaches and similar factors. The extent of the impact will obviously vary, depending on the sector in which the portfolio company operates. While the travel and tourism sectors have been decimated, the environment has posed new opportunities and revenue sources for the telecommunications, digital,delivery/courier, pharmaceutical and healthcare sectors.

8. What logistical support can fund managers and investors provide to portfolio companies?

- Fund managers should aim to provide portfolio companies with access to a condensed bank of relevant government and legal information. This will help portfolio companies to respond quickly to any government relief efforts and other interventions they can apply for and ensure they are complying with all relevant regulations when resuming operations.
- Fund managers should assist portfolio companies with managing leases and other material contracts and negotiating with counterparties on, for example, triggering force majeure clauses.
- A template playbook with scenario stress testing for each portfolio company will assist in daily monitoring and implementing responses. This will assess business continuity, operations, revenues, the supply chain and cash flows. All previous downturnplanning will be reviewed beyond previous worst-case scenarios.

9. How can financial support be provided to the portfolio companies?

- Funds may inject capital into portfolio companies through making follow-on investments in the form of shareholders' loans and/or equity subscriptions.
- Alternatively, managers may consider taking advantage of current low interest rates by arranging funding directly for the portfolio companies through banks and providing whatever security is required.

10. How are managers dealing with valuations in this environment?

- Historic valuations of portfolio companies may need to be revisited, given current market volatility. If fair value is not accurately determined, risk assessments will be misinformed, potentially having a significant impact on investment decisions. Recent transaction prices, especially those predating the COVID-19 outbreak, will not have as much weight in determining fair value.
- The International Private Equity and Venture Capital Valuation has released special valuation guidance for fund managers and investors when calculating and reporting 31 March 2020 valuations. These include general guidelines as well as particular factors to be considered for equity and debt investments and limited partnership interests.

11. What interventions have industry bodies and/or regulators put in place to assist fund managers during this time?

- The Southern African Venture Capital and Private Equity Association (SAVCA) has launched a small-, medium- and micro-enterprise (SMME) support platform in collaboration with its membership network. The platform will provide SMMEs with access to industry professionals for free advice on managing the challenges they face in the wake of COVID-19.
- In Mauritius, the regulatory bodies and the government have taken various measures and amended existing laws (through COVID-19 (Miscellaneous Provisions) Act 2020) to assist companies during the lockdown/confinement period. **These measures include:**
  - during the confinement period (and any additional prescribed period), the duty of a director to declare a company insolvent and place it into liquidation when he/she believes that the company is unable to pay its debts as they fall due is waived;
  - extended timelines for calling annual meetings and filing accounts with the Registrar of Companies.
- The Mauritian Financial Services Commission, which is the regulator for the non-bank and financial services industry, has informed licensees that a flexible approach will be adopted when monitoring compliance and no administrative penalties will be charged for late filing of financial statements and/or annual reports due in April, May and June 2020, provided filing is effected within the extended deadline.
- Since Mauritius was included on the Financial Action Task Force (the **FATF**) list of jurisdictions under increased monitoring in February 2020 due to strategic deficiencies in five specific areas, the country has made a high-level political commitment to fix these deficiencies. It has already sent a first progress report to the FATF. Unfortunately, due to the global COVID-19 situation, the FATF has temporarily postponed all mutual evaluations and follow-up deadlines and the progress report could not be assessed. This is likely to cause some delays in the proposed regulatory changes.

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