



Alternative
Insight

MANAGING PRIVATE FUND DISPUTES

**Essential strategies for preventing and resolving litigation
and regulatory risks**

Edited by
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About the editor

Hilton Mervis is a partner in the litigation and dispute resolution group at King & Wood Mallesons LLP.

Hilton has extensive expertise in large-scale international commercial litigation, complex fraud, shareholder/joint venture disputes, banking litigation, professional negligence, corporate reputation and regulatory investigations and is an established leader in the field. He is recognised as a leading specialist for contentious issues arising in the funds sector and coordinates the King & Wood Mallesons' London Corporate and Partnership Dispute Resolution group. Hilton has built up extensive experience in bringing cases to a successful resolution prior to trial.

Hilton is a solicitor advocate with higher rights of audience and also an ADR Group Accredited Mediator. He acts regularly for institutional clients and in high-profile reported cases. He is a founder member of the Commercial Litigators Forum (www.commerciallitigatorsforum.com), which includes representatives of all the major London litigation practices and has groups in Moscow and New York.

Hilton is recognised in the leading independent directories, *Chambers UK*, *Chambers Global*, *Chambers Europe*, *Legal 500* and *The Who's Who Legal 2014 Litigation* edition, as a leader in his field for both commercial litigation and partnership disputes. In *Chambers*, he is praised for being a "brilliant lateral thinker", "good strategist with a creative mind who takes innovative points" and as a "fierce advocate for his clients".

Hilton is married to Vivienne and has three children, Rachel, Daniel and Julia. He graduated with a law degree from University College London (LLB Hons) where he enjoyed, among other activities, mooting (mock legal arguments) and won the Moots Cup. Hilton has "no notable hobbies but enjoys the occasional building project and retaining a sense of humour". □

Editor's introduction

Managing Private Fund Disputes is designed to provide invaluable advice for recognising, avoiding and ultimately winning disputes and reducing the regulatory risks that arise throughout the lifecycle of a fund and serves as an essential companion for those seeking a deeper understanding of such issues.

In particular, the book offers expert insight and practical guidance to the following groups:

- a) *Owners of private funds and those involved in fundraising.* The new landscape links the raising of funds to the reduction of risk and the culture of compliance. Some liabilities can find their way to the house (which will not be covered by insurance or under the indemnity from the investors in the fund) and this is of critical importance to the owners of the businesses.
- b) *In-house lawyers in the funds.* It gives in-depth insight to the different risk areas and some of the key pitfalls for managing disputes in this sector, choosing the best dispute resolution forum and ensuring that privilege is retained over documents generated.
- c) *In-house compliance function.* The new regulatory environment provides a challenging background and the book provides innovative potential solutions to meet the demands of investors, regulators and the owners of private funds as well as providing an insight into the areas of risk.
- d) *Dispute resolution and compliance lawyers at law firms (whether specialist in fund disputes or not).* The book provides specialist input on the pitfalls and aspects of winning and losing disputes in a fund setting, including advice from leading practitioners in their field on specific contentious and regulatory issues.
- e) *Fund formation and corporate lawyers.* Several chapters tackle many of the key LPA terms that need to be carefully drafted to ensure that the true intention of parties cannot be misinterpreted by courts in the event of a dispute arising, and highlight the risk areas that may prove traps for the unwary.
- f) *Deal teams and those involved in doing business either in their capacity as members of the fund or as directors of the portfolio companies.* The book provides an understanding of the regulatory and other risks they face and that ultimately can lead to disputes.

With regards to the regulatory risk aspect of the book that apply to funds, I have sought to identify the key risk areas that are of importance to investors and have, in practice, caused losses to funds: the focus is on bribery, competition law risk and sanctions.

A multi-jurisdictional approach is taken where appropriate to regulatory and litigation risk. The possibility of fund disputes being litigated in different jurisdictions means some

Editor’s introduction

chapters have been devoted to an understanding of dealing with disputes in key jurisdictions (England, Delaware, Jersey, Cayman Islands and the British Virgin Islands) as well as looking at risk arising from some of the strictest and most proactive regulators (including in the US, UK and China).

This book has only been possible with the help of the contributing authors, all of them pre-eminent experts in their field. In their chapters, they address the questions most commonly asked by those involved in fund-related disputes: from losing limited liability by participating in management (and the consequence of this) to the ability to enforce terms against defaulting investors. It covers potential solutions to the most common dilemmas faced by private funds; for example, how to ensure compliance in their portfolio companies without themselves assuming a greater degree of risk. In addition, I have written forewords to each chapter to provide a different perspective or simply to reinforce the thrust of the chapters.

Managing Private Fund Disputes is unique in combining chapters that provide an essential guide to those working in funds wishing to have at their disposal the armoury for managing disputes and risk reduction. Professional advisors in law firms (who may be involved in litigation in the funds sector) may value the in-depth analysis of the key legal issues. This may seem an ambitiously wide audience, but a breadth of topics is needed in order to be in the best position to give and receive advice on both contentious and non-contentious areas. □

Hilton Mervis
King & Wood Mallesons LLP

About King & Wood Mallesons LLP

As the first and only global law firm to be headquartered in Asia, King & Wood Mallesons (KWM) is connecting Asia to the world, and the world to Asia. With unparalleled depth of inbound capability, KWM is uniquely placed to support regional clients as they internationalise and international clients as they look to invest or expand into Asia. Strategically positioned in the world's growth markets, the firm is powered by 2,700 lawyers across more than 30 international offices spanning Asia, Australia, Europe, the Middle East and North America. As a top 10 global firm by lawyer numbers and the only firm in the world able to practise PRC, Hong Kong, Australian and English law, KWM is providing clients with deep legal and commercial expertise, business acumen and real cultural understanding on the ground where they need it most.

King & Wood Mallesons has a truly international dispute resolution practice. The firm has a well-established practice in the area of financial markets disputes and contentious regulatory matters, regularly working with investment and commercial banks, hedge funds, private equity funds, brokers, asset managers, other financial institutions and high-net-worth individuals. King & Wood Mallesons has been involved in all aspects of fund disputes and in particular disputes with asset managers, from the perspective of investors, funds, liquidators and asset managers. King & Wood Mallesons' litigation and dispute resolution lawyers specialise in solving complex business disputes as swiftly and effectively as possible, while providing solutions that ensure the most favorable outcome for clients that correspond to their business needs. The firm is consistently ranked among the top firms for dispute resolution in legal directories. The areas of expertise, in addition to corporate, partnership and fund-related disputes, include financial institutions and banking litigation, international arbitration, fraud.

King & Wood Mallesons is a market leader in structuring and closing private equity funds. In the last 36 months (as at November 12, 2014) the firm has closed more international private equity funds than any other law firm, excluding US domestic funds. We have one of the largest private equity teams of any law firm in the world and work with private equity firms of all sizes from the largest international buyout funds to smaller first-time funds. We understand the dynamics of the industry, its central players, their organisational structures, needs and unique challenges. Our lawyers have strong relationships with private equity sponsors across the market, as well as investment banks and other institutional investors, which we leverage for the benefit of our clients. The firm has been at the forefront of the private funds industry for over 30 years designing innovative solutions in all jurisdictions and shaping the regulatory environment. The firm's position as a leading firm for private equity is widely acknowledged and recognised throughout the industry. The team offers the complete range of corporate finance services, which extends to all aspects of domestic and cross-border transactions including private acquisitions and disposals, management buyouts,

public takeovers, corporate reorganisations, offshore tax-driven structuring and joint ventures, across a number of sectors.

Recent awards include: Most Innovative Law Firm: Asia Pacific (Financial Times Asia Innovative Lawyer Awards 2014), Best Litigation Department (World Finance Legal Awards) and Best Law Firm: Fund Structuring (Unquote British Private Equity Awards 2013), Law Firm of the Year: Fund Structuring (Unquote British Private Equity Awards 2014 (4th year running)), Law Firm of the Year in Europe: Fund Formation (Private Equity International Awards, 2013 (13th year running)) and Legal Advisor of the Year: Funds (Private Equity Africa Awards 2014) and named one of the top 30 international arbitration firms in the world by Global Arbitration Review. □

About PEI

PEI is the only financial information group focused exclusively on alternative asset finance and investment. We specialise in covering the private equity, private debt, real estate and infrastructure industries globally and are increasingly active in other, emerging alternative investment fields and practices too. We are an independent company with over 120 staff based in three offices – London, New York and Hong Kong – and are wholly owned by our management and employees.

We started in London in November 2001 when a team of managers at financial media group Euromoney Institutional Investor PLC, with the backing of US-based investors, bought out a group of assets that centred on *www.PrivateEquityInternational.com*. In 2001 we launched our first magazine: *Private Equity International*. A year later, we opened our New York office and launched two more titles: *Private Funds Management* and *PERE*. In 2009 we launched *Infrastructure Investor* and in 2013, *Private Debt Investor*. In 2014 we acquired *Real Estate Capital* and launched the *Specialist Investment Networks*.

PEI specialises in connecting practitioners active in our chosen asset classes with value-added market information and analysis via our print and digital publications and with each other via marquee industry events. We help to define and convene these industries. We now publish six magazines, host eight news websites, manage a very extensive set of databases dedicated to alternative assets, run in excess of 40 annual conferences globally and publish a library of more than 40 books.

The world’s largest investors in, and fund managers of, alternative assets are among our many thousands of clients and we have customers based in nearly 100 different countries.

Since we started our aim has been to deliver timely and relevant products and services to alternative asset professionals wherever they are based in the world. Our full-service regional offices in Hong Kong, London and New York mean that our connections with local markets are both broad and deep. The rapid growth in, and geographic diversity of, our customers was acknowledged in 2009 when PEI was awarded the Queen’s Award for Export in the International Trade category. □