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Managing and resolving hedge fund and private equity fund disputes

Managing and resolving hedge fund and private equity disputes continues to be a key area of focus, according to *Corporate Disputes*. Harneys' Partner Marc Kish shared insights with *Corporate Disputes* from the offshore perspective in a roundtable featuring Davis Polk & Wardwell LLP, FTI Consulting, Schulte Roth & Zabel LLP and Skadden, Arps, Slate, Meagher & Flom LLP, [click here to see the full roundtable](#).

A summary of Marc's comments can be found below:

Hedge fund and private equity fund industries over the past 12 months

Market leaders continue to be able to attract large and rapid allocations from institutional and non-institutional money, which demonstrates that the alternative investment industry has not lost its appeal. However, with increased regulatory and compliance burdens, it remains a tough environment for start-up and emerging managers.

Fund-related disputes in the current market

Often, the reason a manager loses his investor's trust has nothing to do with the underlying losses but whether he appears to be acting in investors' best interests.

Recent, high-profile fund disputes

Rhone Holdings was a well-received decision about 18 months ago, when the Cayman Court confirmed that non-petition language contained in a limited partnership agreement was enforceable and not contrary to public policy in the Cayman Islands.

Common types of fund disputes

We still see a lot of disputes revolving around the use of side letters, in particular questions arising as to enforceability, inconsistencies between side letters and offering constitutional documents, and the use of nominees to enter into side letters on the investor's behalf. For investors, a lack of access to information can be a frustrating factor and so engaging in an effective way is important.

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Fund managers and the dispute process

Understandably, most businesses shy away from taking external legal advice unless they absolutely have to, but invariably it costs more in the long run because it is always more work dealing with an emergency.

Evaluating all the available options if a dispute arises

Alternative dispute resolution often sounds like a good idea but investors should be careful that they do not commit themselves to a process that leaves them unable to act quickly or unable to seek appropriate relief, potentially without notice to the fund.

Expert witnesses

Increasingly, particularly in valuation cases, we are seeing the use of two experts in different roles. First, the main 'clean' expert who will give testimony in court and who must remain independent at all times. Second, the so-called 'dirty' expert, who works closely with the party to the litigation to provide insight into the different possible methodologies for calculating loss and assisting the party in developing its case and stress-testing the arguments in a way which would be impossible with an independent expert.

Final advice to fund managers on resolving their disputes

It might be a cliché, but prevention is always better than cure and it is almost always the case that speaking to your lawyers early on – both onshore and offshore where relevant – will save you time and money.

For more information and key contacts please visit www.harneys.com/Cayman.

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