

Three Key Areas for Investors in Private Equity Funds

Kilpatrick Townsend's [Kate McCurry](#) and [Thomas Cain](#) recently attended the [Institutional Limited Partners Association's Legal Conference](#). The conference provided an opportunity to discuss trending legal topics in the private equity industry from the investor's perspective. While attendees reported many different areas of focus in their legal due diligence of prospective private equity fund investments, matters falling into three categories were common points of emphasis: ensuring alignment of interests between GPs and LPs, provision for appropriate governance practices, and reinforcement of the fiduciary duty owed by the GP. Some key due diligence questions prospective investors should consider asking in these areas are highlighted below:

1

Ensuring Alignment of Interests – Do you know who (GP itself, affiliates of GP, principals of GP, etc.) is making the GP commitment? What are the terms of the sponsor-level commitment (e.g., will it be paid in cash or via waived management fee)? Does the GP have a unilateral right to terminate the investment period?

Governance – What are the conditions under which the LPs can vote to remove the GP? Is there provision for no-fault removal of the GP? Does the occurrence of a key person event lead to the automatic suspension of the investment period? To the extent the GP can act in its sole discretion, does the GP confirm that it cannot put its own interests ahead of the Fund or the LPs?

2

3

Fiduciary Duty – Do the Fund documents explicitly acknowledge the standard of care owed by the GP to the Fund? Do the carve-outs from the indemnification obligation/exculpation provision include breach of the LPA? Does the GP seek broad prospective waivers of conflicts of interest (including those conflicts related to continuation vehicles)?

For more information, please contact:

Kate McCurry, kmccurry@kilpatricktownsend.com

Thomas Cain, tcain@kilpatricktownsend.com