

# The Importance of Fund Due Diligence by Limited Partners

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At Ogier, we have seen a rise in investors requesting fund due diligence, including where it is sought in order to comply with regulatory obligations that may attach to certain categories of institutional investors and where investors' internal protocols require independent due diligence reports and advice to be commissioned.

This is part of a trend for limited partners to appoint independent external fund counsel to scrutinise funds' regulatory treatment and compliance with local governance requirements and to negotiate key fund terms such as advisory committee representation and lengthy side letters. This supports the work carried out by limited partners' internal teams in reviewing fund terms, in particular the calculation of management fees, fund versus manager expenses, borrowing limitations and hurdles for carried interest.

From a risk perspective, some institutional investors are increasingly likely to seek reliance on a legal opinion from their own appointed counsel, rather relying on an opinion provided by fund counsel.

Fund due diligence can be a minefield. As part of the investment and fund due diligence exercise, an instructed legal counsel is normally required to issue a legal opinion or memorandum of advice containing information in relation to the principal terms and the validity and enforceability of the documents relating to the investment, including the fund's constitutive documents such as a limited partnership agreement, offering document, articles of incorporation, management agreement and investment advisory agreement and the investor's subscription agreement and side letter. The voting rights, rights to distributions, default provisions and clawback mechanisms are all important for investors to understand.

Ogier has extensive expertise and experience, and offers a global service, in this area. Our investment funds teams in Jersey, Guernsey, Luxembourg and the Cayman Islands have recently been instructed to complete this type of due diligence work in relation to an increasing number

of investment vehicles and funds located in these jurisdictions and assisted clients located in a variety of jurisdictions worldwide in meeting applicable regulatory or internal requirements.

As global markets have destabilised due to the COVID-19 pandemic and global economies have become more uncertain, institutional investors worldwide continue to demand enhanced due diligence to mitigate the associated risks. We are expecting to see further demand for assistance in this area.

## About Ogier

Ogier is a professional services firm with the knowledge and expertise to handle the most demanding and complex transactions and provide expert, efficient and cost-effective services to all our clients. We regularly win awards for the quality of our client service, our work and our people.

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