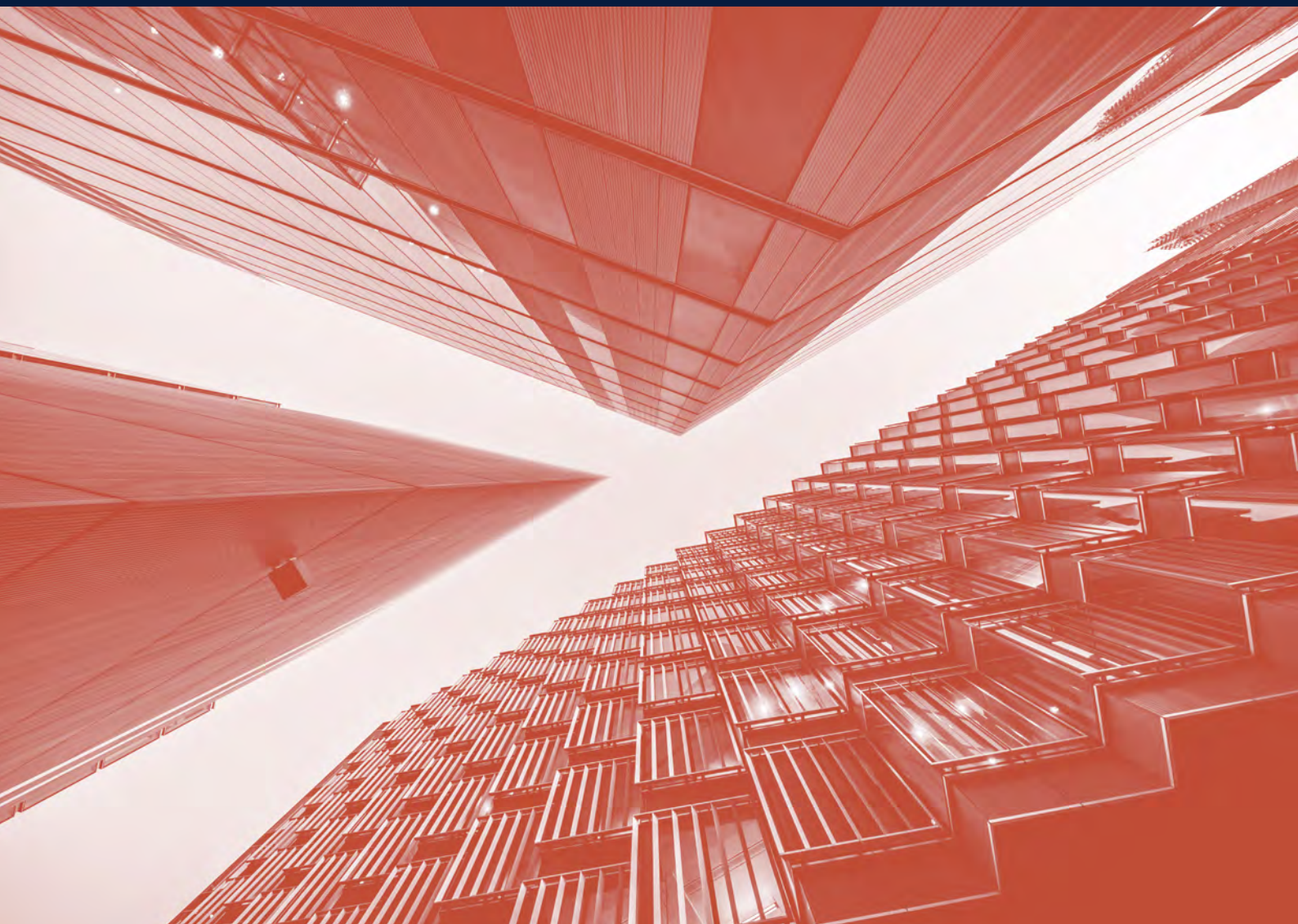


## An Introduction to our Private Funds Practice



Our Private Funds team works with fund managers and investors into funds to deliver competitively-priced advice covering all aspects of Private Funds work. More information can be found on our [Financial Services webpage](#).

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# Section 1: Our Offering to Fund Managers – Fund Establishment

Our Private Funds Practice encompasses a broad range of clients, including:

- small to mid-market asset managers in the private equity, venture capital, real estate and private credit spaces,
- family offices, further education establishments and other large charitable organisations who are looking to establish and manage their own internal funds, and
- private, family office and institutional investors subscribing to a wide range of fund vehicles both in the UK and in established funds jurisdictions, and across all asset classes.

As a firm, a key part of our approach is to developing a strong relationship with our clients, which enables us to fully understand their needs.

Farrer & Co is regularly mentioned in this area in the leading legal directories, with Andy Peterkin being named as a leading individual in Investment Fund Formation and Management by Legal 500 2021-2023.

## How we help asset managers

### Fund formation and management structures

- We advise our clients on the optimum jurisdiction in which to establish their funds and management entities, taking into account investor preferences and tax and regulatory efficiency.
- We regularly work on fund formation in all the established fund jurisdictions including Jersey, Guernsey, Luxembourg, the Cayman Islands and the British Virgin Islands, involving trusted local counsel in those jurisdictions as appropriate.
- We advise onshore UK fund managers on their UK regulatory status and corporate structure, including compliance with the UK Alternative Investment Fund Managers Directive (UK AIFMD) regime, FCA authorisation and appointed representative solutions.

### Our recent work highlights include:

- acting as fund counsel to an international fund management firm investing in breakthrough and growth technology companies via a series of Jersey fund structures,
- establishing a UK-based internally managed alternative investment fund investing in commercial property, whose investors include a syndicate of high net-worth individuals based in the Far East, and
- advising an ultra-high net-worth Middle Eastern family on the establishment and maintenance of a series of closed-ended fund structures in the Cayman Islands, including advising on and negotiating significant leverage within the structure provided by a bulge-bracket investment bank.

### Negotiating and drafting fund documents

- We assist our fund management clients from the beginning to the end of each fund's lifecycle, from advising marketing teams on the content of roadshow presentations and negotiating term sheets with cornerstone investors through to launch and post-launch, drafting limited partnership agreements, trust deeds, articles of association and other constitutional documents, subscription agreements, and side letters.
- In connection with the formation of a fund manager's initial fund, as well as the principal fund documents, we draft the relevant management agreements, investment advisory agreements, and negotiate ancillary agreements between the fund manager and third-party entities such as depositaries, custodians, onshore and offshore administrators, and placement agents.
- We provide ongoing support to our fund management clients, helping them to draft terms of reference for their investment committees, advisory committees and risk committees, reviewing their internal policies and staff handbooks, and assisting with investor communications (for example, investor consents for varying investment terms).

## How we help fund managers

### Regulatory matters

- **FCA authorisation:** We advise new fund managers on all aspects of obtaining FCA authorisation, including providing internal training as to the implications of authorisation and advising on appointed representative (AR) and hosted structures where direct FCA authorisation may not (at least initially) be appropriate.
- **AIFMD:** We have a wealth of experience advising on all aspects of the alternative investment fund managers directive (AIFMD) as it is implemented in the UK. This includes the application of rules that are determined by the quantum of assets under management of the fund manager, including reporting obligations and disclosure that managers are required to provide to their investors under the regime.
- **Marketing:** We provide regulatory advice to our clients on the UK's financial promotions regime, including applicable exemptions for certain investor types. Further, we provide advice on marketing and pre-marketing under the AIFMD regime, including the national private placement regimes in non-UK jurisdictions, using our network of friendly firms to do so. We also advise on the application of the FCA's non-mainstream pooled investments (NMPI) marketing regime and advise firms on the FCA's financial promotions' regime vis-à-vis high-risk investments.
- **Personnel and individual regulation:** We provide advice in relation to the FCA's Senior Managers and Certification Regime (SMCR), including advising on the scope of senior management functions and the preparation of statements of responsibility and management responsibilities maps. Our Employment team regularly advises both financial institutions and senior individuals within the financial services industry on employment contracts.
- **Outsourcings and service agreements:** We advise in relation to the appointment of prime brokers, depositaries, custodians, administrators, valuation agents, placement agents, IT providers, general back-office service providers, business continuity providers and other services required by fund managers. Where these are material outsourcings for the purposes of the FCA Rules, we are able to advise on the FCA's contractual requirements that govern such key relationships.

### Tax

- Our Tax team provides tax advice on all aspects of domestic and cross-border investment funds, guiding clients through each stage of the fund life cycle. This includes formation, management incentives and remuneration, investment structures and exit planning. They use the firm's network of trusted foreign tax advisers where required.
- Members of our Tax team are available to explain and advise on the tax implications of any investment. They can help to determine how an "onshore" or "offshore" investment vehicle will suit the tax profile of the investor, taking into account their particular circumstances such as residence, domicile and taxable status. In consultation with appropriate foreign lawyers, they can also provide advice to non-UK clients on their local tax position.

## Section 2: Our Offering to Fund Managers – Transactional

### Corporate

Our Corporate team advise clients throughout the investment lifecycle, working closely with our specialists across the firm to provide a seamless, full-service offering. Our corporate transactional teams work hand-in-glove with our fund formation lawyers, bringing our wide-ranging private capital experience to bear across investments structures and within portfolios.

We act on downstream investments for a range of Private Funds clients, including family office, private equity and venture capital clients. We are experienced in advising sponsors on acquisitions, disposals, follow-on investments and exits. We use the breadth and depth of our offering to help clients acquire, develop and support, and ultimately exit their fund portfolios. In addition to our work on primary buy-outs, we regularly advise on secondaries transactions, including a number of portfolio acquisitions for Private Funds clients in recent years.

We are a prominent adviser to management teams and are used to balancing the ongoing interests of portfolio companies against the right incentivisation package for key individuals, and balancing downside risk for both in certain key scenarios.

### Commercial Property

We have long-standing real estate fund clients with large and varied portfolios.

One of our key fund clients owns and manages over 100 real estate assets – across a variety of sectors – with a combined value in excess of £1 billion. The fund is an open-ended common investment fund which was set up to enable unitholders, of which there are now over 1,500, to invest in commercial property. It is a substantial and important investor in the UK property market, with a focus on investment and development within a committed ESG framework.

Given our breadth of expertise, we are well-placed to advise this client, and others, on the full lifespan of a commercial real estate asset. Typically, this will involve a strategic acquisition with existing occupational tenants and an established stream of rental income. We advise and report on the initial acquisition and then assist with the ongoing landlord and tenant management matters during the investor client's period of ownership, so that our client can realise its investment strategy. This may

include:

- The grant of new leases;
- The surrender and regearing of existing leases;
- Rent reviews and rent concessions;
- Dealing with tenant applications for consents to alter, assign or underlet;
- Wayleaves and agreements for telecoms and data apparatus with tenants and telecoms operators; and
- Upgrades to the asset's sustainability – such as PV cells, rain harvesting systems and EV charging points/power supplies.

As part of this ongoing management work, we have dedicated property disputes litigators and insolvency lawyers who can provide advice on:

- Tenant insolvency and rental/service charge arrears disputes;
- Company Voluntary Arrangements introduced by tenants and the effect on arrears enforcement;
- The validity of break notices and the operation of break clauses;
- Rights of light disputes;
- Trespass;
- Landlord and Tenant Act 1954 renewal proceedings;
- Dilapidations and reinstatement on lease expiry;
- Alternative dispute resolution between landlords, tenants and third parties; and
- Contentious planning, environmental and telecoms matters.

We often advise our investor clients on capital investment and development projects at their assets and have specialist planning, environmental and construction lawyers who can provide advice on:

- Planning and environmental consents and appeals;
- Statutory and environmental compliance;
- The procurement of construction services for development and refurbishment (building contracts and warranty packages); and
- Construction delays and disputes over breach of contract/warranty.

Having managed their assets with our help, we will then assist our investor clients with the disposal of their assets in a clean and institutional way, either by way of an asset or (if appropriate) corporate sale.

Our tax lawyers regularly advise on real estate tax matters affecting acquisitions and disposals – most commonly Stamp Duty Land Tax, VAT and Capital Allowances.

For larger real estate portfolios, we would be open to putting in place scaled fee arrangements with fixed fees by reference to the value and volume of transactional real estate work.

### Debt Finance/Private Credit

Our Banking team are experienced in advising debt and private credit funds on all aspects of downstream direct lending.

Their expertise spans across a variety of financing structures and asset classes including, but not limited to, real estate finance (relating to residential and commercial property for both investment and development purposes), acquisition finance, general commercial lending, Lombard lending secured against securities and investment portfolios, financings for luxury assets such as fine art, aircraft and yachts and receivables financings for income producing assets.

Their work includes advising on the structuring of transactions and initial terms through to drafting and negotiating facility agreements, security documents, guarantees and intercreditor arrangements. Alongside this, they will oversee and manage the transaction generally along with the satisfaction of conditions precedent, co-ordinate workstreams with trusted legal counsel in established fund jurisdictions and assist with drawdown mechanics and redemption processes.

### Fund Finance

Our Fund Finance team sits within our wider Banking practice and advises a variety of lender and borrower clients, including financial institutions, debt funds, general partners / sponsors (GPs), fund managers and limited partners (LPs) on a range of lending options used by investors and funds to support their liquidity needs at different stages of the fund's lifecycle. Working closely with colleagues in our respective Funds and Tax teams as part of our multi-disciplinary offering, we provide clients with the full range of transaction support, including:

- advising on transaction structuring;
- performing due diligence on fund structures and documentation (including limited partnership agreements, subscription agreements, side letters and other related fund documents);
- drafting, negotiating and agreeing debt documentation (including security, guarantee and subordination documentation, where relevant, and the full suite of related ancillary documentation);
- coordinating workstreams with our network of trusted firms in overseas jurisdictions; and
- managing and coordinating signing and completion processes.

## Section 3: Our Offering to Investors

We work with a range of clients including wealth managers, asset managers, high net-worth individuals, charitable organisations and endowment funds looking to invest in Private Funds.

From an investor's viewpoint, there are a number of advantages to collective investments. Principally, it gives an investor a chance to benefit from investment diversification, the expertise of investment managers and their research teams, and to benefit from economies of scale that could not be achieved alone.

Knowing our clients and their priorities is key to our approach. For example:

- our charity clients will have very specific needs regarding what they can and cannot invest in, and
- our wealth management clients' focus might be on the granularity of the reports they receive and engagement they have with the underlying fund managers.

### How we help investors

#### Reviewing and negotiating investment terms

Before our clients decide to invest in a fund, we assist them in reviewing the terms of their proposed investment as set out across various documents such as fund prospectuses, private placement memoranda, limited partnership agreements, and subscription agreements.

Our reviews cover funds that are established in a range of jurisdictions including the UK, Jersey, Guernsey, Luxembourg, the Cayman Islands and the British Virgin Islands. Where appropriate we can involve trusted local counsel.

Taking into account the specific needs of our clients, we seek to negotiate the terms of our clients' investment, whether directly into the fund's constitutional documents or via side letter arrangements.

Involving our Tax team as appropriate, we can advise on the tax implications of any investment. For example, whether to invest "onshore" or "offshore" and what tax ramifications certain investments might have depending on the type of client we deal with ie whether they are tax exempt or not.

### Advising investors during the course of their investment

We offer our investor clients assistance throughout the life of their investment. For example:

- Advising our clients on changes that may be made to their investment terms, including our views on investor consents sought by managers, and whether changes may need to be made to side letter arrangements.
- Some fund managers may offer co-investment opportunities to investors, alongside the investment that the fund makes. We can help investors review the terms of such co-investment opportunities.
- The needs of investor clients may change during the life of a particular investment, for example, there may be additional regulatory obligations that mean they require different reports or treatment by a fund manager. We work with investor clients to find solutions to these issues.
- Where investor clients restructure or want to sell out of closed-ended investment opportunities, this is often restricted in the fund documentation. Again, we work with clients to find solutions to meet their needs at any particular time.

## Section 4: Our Team



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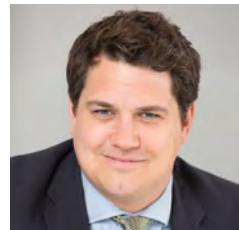
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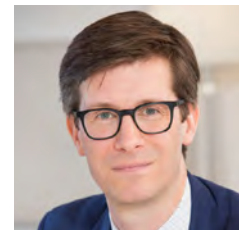
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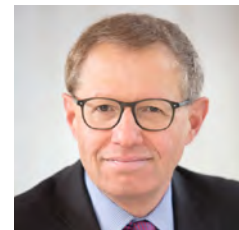
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