



Global Legal and Management Solutions

Corporate Governance & Structuring Issues for Offshore Funds

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Overview

- Effective corporate governance vs. Spin
- Managing conflicts
- Structuring offshore funds

Effective Corporate Governance

- Framework of rules and practices
- Relationship between management, board, shareholders and other stakeholders
- Accountability, fairness and transparency

- NOT a policy in a drawer
- NOT a marketing sound bite
- NOT a trophy board member

Manager Conflicts

- Identify, prevent, manage & monitor
- Transactions with service providers
- Managing multiple funds
- Allocation of costs between fund and manager
- Employees / family deals
- Remuneration misaligned with business strategy / investment objectives
- No internal segregation of risk functions
- IM role in valuation - disclosure must be “adequate”

Mitigating Conflicts

- Striking the balance between participation and control
- Delegation
 - Not in the front door and out the back
 - Payment instructions countersigned by administrator
- Independent directors
 - Not manager controlling board (e.g. Weaving)
- Independent trustee
 - Not manager acting as trustee or enforcer
- Conflicts Policy, Conflicts Committee

Structuring Offshore Funds

- Fund / GP intended to be resident offshore for tax purposes
- Third party service providers
- Offshoring Mind and Management
 - composition of board
 - location of board meetings
 - execution of agreements
- Shareholder control
 - all voting structure
 - voting / non-voting structure
 - shares in trust

What are the benefits of the trust structure?

- Non-consolidation / control issues
- Charitable trust / nominee arrangement / STAR trust
- Who can be the trustee?
- Who can be the enforcer?
- Drafting the Business Plan
- Independent decision making – real or illusory?

Lessons

- Policies & Procedures – more than just paper
- Compliance reviews / conflicts committee referrals
- Manager as investment adviser / consultant to board / GP
- Special considerations for offshore funds

And Finally.....

Claims against managers and funds – where are we now?



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