

Fund Finance Friday



Four Areas of Focus for New Fund Finance Lawyers

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Like many professionals of all stripes, I am always thinking about how best to access and store and curate the knowledge that underpins the work we all do, so that we less and less feel like we are doing things for the first time.

And I must confess, like many advisors in different roles, I occasionally get emails from my own regulator reminding me to be a “reflective” professional. So, I thought hard about the four things a fund finance lawyer most needs to know. Well, other than where they store the office coffee capsules out of hours.

Here are the top four things any new fund finance lawyer should focus on learning about.

1. What Funds Really Do

Sounds simple, of course. But there is a lifetime of knowledge-building in understanding the different types of fund, not so much in legal form but function, and what they all do. Learning the taxonomy of different fund types and how they function and invest is the key to navigating fund finance, a field characterised by rapid growth and seemingly endless diversification.

Learning why a closed-ended fund is different from an evergreen, and why their needs to pay redemptions and their ability to carry term debt vary so widely, or why the financing structure that a buyout fund needs might be so different from that of a credit fund... well that's the beginning. And none of us should be complacent about how far we have so far run from the start line, because there is so much life and complexity in the funds ecosystem that if it's your thing, it's a career-long project.

2. Documentation

Early in our careers, we lawyers learn the very basics of how to assemble documentation and above all, what is standard and is not broken and does not need fixing, as opposed to what we need to build from scratch on each deal. And, just as surely as we must learn the art of drafting from a blank page, so we must also learn the art of curating the documents we have made before; and what knowledge and solutions are embedded within them, and how to access that, again and again and again. What's in the LMA is in the LMA (or, if you prefer, the LSTA), but what's yours is yours.

Back in the day, we used to print documents out on smart paper with a slight sheen, and put them on a table for people in person to personally sign. The sense of delivering a physical, tangible product, with a weight and a meaning and an emotional quality, all set out in authoritative black on crisp white, was real for those of us who were there in the closing room. Physical delivery.

I once thought to get a draft document of mine, dog-eared and flecked with post-it notes, scribbled on in rollerball and run across with the Stabilo Boss, pressed and framed under glass like an ancient manuscript. Times have changed, but documents are still a craft, and drafting documents is still a matter of industrial design, a realm in which function is paramount but elegance is one of the keys to function. Hone that craft, and please, care about the documents.

3. Regulation

Consult your specialist colleagues, of course, but don't leave all the knowledge to them. A fund finance lawyer needs to be fully savvy as to the regulatory issues affecting the particular funds sectors in which they work. As in other areas of financing, fund finance documentation has been evolved standard ways of addressing common regulatory issues that arise with funds of various types.

A fund finance lawyer should aim to acquire, from the earliest stage of their career, not only a knowledge of what these clauses are and where to find them, but why they are necessary and, moreover when (and when not). The higher-level skill is not only to identify when regulatory compliance is a risk point to address with undertakings in a document, but where regulation may be a problem solving tool. If a fund is of X or Y regulatory nature, we may know what assets it can and cannot hold, what rights its investors must have, how much it can borrow and on what conditions. We may not have to worry about this risk or that risk, or a simple undertaking to comply with regulation may save a page of complex language. So regulatory knowledge can provide the dream combo of path-of-least-resistance problem-solving that produces robust and fail-safe results. As we learn and grow in fund finance, we use these heuristics daily.

4. The Market

This is last, but it's not least. It's most. Know the market, your market. Know how it describes itself and segments itself and which bits of it are growing and why they are growing and what that means for you and everyone you work with. But above all; know the people in your market, and the organisations you serve, not forgetting that organisations are above all groups of individuals. Know what role they play, and how they are playing it, and what they need and want to achieve. What are their goals? What are their strategies to achieve them? What are their needs and their challenges? How can you help them achieve those? And how did it go for them this week, this month, this year, and why might that change? This last bit is what unites all of us who work in fund finance, isn't it, whether we're lawyers or financiers or fund professionals.

This is not just about connecting with people who might be out client or our lawyer or our funder or our customer, but knowing and collaborating with and understanding and befriending others who work in pursuit of goals that are fragmented but ultimately shared. And I hope that some of what I have said here is of use to those beyond, as well as within; the world of law.

Why only four things, then? Well, four fit the word count quite well, but if I had to name a fifth... well, perhaps the key for the reflective professional is humility. So I should have declared earlier that I'm no better qualified to tell you what to know than anyone else is. But perhaps we should all admit, and know, what we don't know. Or, more pragmatically, how much more we might learn each day.