Proskauer

Top Ten Litigation and Regulatory Risks for Private Funds in 2025

The Capital Commitment on **May 1, 2025**

Confession: writing this in May 2025, we cannot predict with confidence what the rest of 2025 will bring. The year has already seen four months of change and upheaval – political, regulatory, and economic. The new US administration has touted a business-friendly regulatory environment, with actual and promised tax cuts and deregulation. However, geopolitical tensions, tariff trade wars and political instability have introduced new risks and created a climate of extreme unpredictability. We should expect 2025 to hold several surprises still, whether that is a breakout of peace or new political themes obtaining prominence in one or more jurisdictions.

Against this backdrop, it can be tempting to adopt the view of legendary film writer William Goldman declaring that "nobody knows anything" and that publishing our annual "Top Ten Litigation and Regulatory Risks for Private Funds" is simply a fool's errand. We have, after all, already rewritten this introduction multiple times before new developments make it out of date again. However, whatever happens, sponsors with strong foundations and nimble mindsets will be best placed to take advantage of any new opportunities that arise and be able to pivot as needed in new, more promising directions.

We have therefore focused on two sub-themes to support those strong foundations:

- Topics to ensure "your house is in order" to give those strong foundations (e.g., how to navigate ESG in 2025, the use of insurance products by sponsors, best practice with MNPI, dealing with whistleblowers and global anti-corruption compliance)
- Risks arising now from the trends of 2024 (e.g., risks from the growth of the private credit market, the rise in earn out disputes in portfolio companies and navigation of end-of-life funds)

To complete our list of ten, we will engage in some tentative crystal ball gazing, including the role of the SEC in a non-regulatory environment and outward investment restrictions and tariffs, but will, like our clients and readers, seek to remain "nimble" to ensure we remain relevant.

With this backdrop, we are pleased to present the Top Ten Regulatory and Litigation Risks for Private Funds in 2025.

1. ESG in 2025: Finding the Sweet Spot in a Complex World
2. Regulatory Scrutiny on Potential MNPI in the Credit Markets
3. SEC Regulation in a Non-Regulatory Environment
4. Global Trade in 2025: Outbound Investment Restrictions
5. Three Risks to Monitor in Private Credit
6. End Of (Fund) Life Issues
7. Navigating Earn-Out Disputes: Key Considerations for Private Funds
8. Why the DOJ's New Whistleblower Program Remains Relevant
9. Protecting Sponsors from Emerging Portfolio Company Risks through Insurance
10. FCPA & Anti-Corruption Enforcement: Shifting Global Dynamics in Light of New US Regime

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