Private Equity Law Report
An Acuris company
pelawreport.com

October 20, 2020

PEOPLE MOVES

# Fund Formation Lawyer Bruce W. MacLennan Joins White and Williams LLP

By Helen Kim, *Private Equity Law Report*

White and Williams LLP has expanded its private funds practice in its New York office with the addition of Bruce W. MacLennan as counsel. His practice consists of advising on private fund formation, as well as PE and venture capital (VC) investments.

MacLennan began his legal career in Tokyo, representing investors in Japanese IT companies. His fluency in Japanese led him to a position acting as outside counsel to a global Japanese IT company, for which he continues to provide and coordinate legal advice on a wide range of issues. The balance of his practice focuses on fund formation and PE and VC investments.

MacLennan primarily represents middle market managers in Asia, the U.K. and the U.S., advising on the formation of multi-jurisdictional funds. He also advises PE and VC investors on negotiating fund documents and transactions. “Knowing what the issues are on both sides is an advantage,” he noted. “When I represent an investor, I have a good idea of what the managers are trying to do in the documents, and when I represent a manager, I have a good idea of what investors might and might not accept.”

See “The Effect of the Coronavirus Pandemic on the Asian PE Industry, and Emerging Trends in Its Recovery” (Aug. 25, 2020).

Traditionally, VC has focused on minority positions in startup companies and supporting the founders and PE on more mature, established companies. The demarcation between the two spaces has become increasingly blurry, however, as fund managers branch out beyond traditional investment strategies. “There is a lot of crossover these days between VC and PE,” MacLennan observed. “Fund managers are not necessarily focused on one or the other. A PE sponsor may invest in a company pre-IPO. A VC investor may invest in later stage companies or companies that are already listed.”

PE funds often look for a control interest in the portfolio company and a seat on the board, as well as input into the company’s strategy and management, MacLennan observed. Conversely, his VC clients see themselves as supporting the founder of the company, with a board seat or a board observer seat. “They usually take a more hands-off approach to how the company is run,” he commented. “They act more as advisors helping management grow the company and prepare for an IPO or sale.”

See our three-part series on sponsor-appointed directors on portfolio company boards: “Conflicted Transactions, MNPI and Other Risk Areas” (Aug. 4, 2020); “Best Practices to Mitigate Risk in Multiple Scenarios” (Aug. 11, 2020); and

©2020 Private Equity Law Report. All rights reserved.

"Common Risk Scenarios Triggering Conflicts and Fiduciary Breaches" (Aug. 25, 2020).

Because his clients have been "largely industry-agnostic," MacLennan's experience spans the financial; biotech and biopharmaceutical; agricultural technology; IT; and aircraft lease financing industries. One of his clients is focused on health care, but others have implemented strategies incorporating environmental, social and governance (ESG) considerations. "One public private fund we set up worked with the government of Indonesia to address power distribution issues in the country by establishing micro power installations."

See our two-part series on PE investments in renewable energy projects: "Unique Trends, Advantages and Considerations" (Nov. 12, 2019); and "Maximizing Available Tax Credits Using Innovative Structures" (Nov. 19, 2019).

The widespread adoption of ESG considerations in investment decisions is inevitable, MacLennan predicted. "Once investors and managers realize there are ESG factors that affect their results – often tangentially but significantly – it becomes increasingly difficult to ignore those factors in their valuation models," he commented. "Awareness is increasing as the public becomes educated on those issues, and eventually, I expect it will become an integral part of the investment gestalt."

Adopting ESG considerations in investing requires a shift in perspective. "Business' view of its role in the global economy has largely followed the Milton Friedman dictum that shareholder value is the sole determinant of a company's purpose," MacLennan explained. "The SEC and many others share that more traditional view of investing. They tie value strictly to dollar generation for the shareholder or investor," he said. "They don't wrap in other values that are starting to be understood as necessary for the overall health and sustainability of the organization, which, in turn, have beneficial effects on the returns generated to the shareholder or investor over the longer term and to the broader community as well."

See "SEC Officials Clarify the Commission's Stance on ESG Investing and the Role of Disclosure" (Aug. 11, 2020); and our two-part series on the SEC's approach to ESG oversight: "OCIE's Targeting of ESG Investing Practices in Recent Examinations and What It Means Going Forward" (Jan. 21, 2020); and "How Fund Managers Can Identify and Mitigate Risks From the SEC's Increased Focus on ESG Investing" (Jan. 28, 2020).

Evidence of the increasing influence of those ideas is seen in the Business Roundtable's 2019 statement about the purpose of a corporation, which includes a commitment by signatories – all CEOs of major U.S. companies – to deliver value to all stakeholders, not just shareholders. "The Business Roundtable is the most influential group in the U.S. for setting the compass course for business," MacLennan said. "For that group to state that generating returns for shareholders is not the sole objective and purpose of a company is prescient and influential."

The key challenge with ESG investing is valuation. "A typical PE fund determines the value of the asset according to certain performance metrics and comparable public company stock values," MacLennan said. "ESG investments require different yardsticks that consider the broader value."

See "Preparing for the E.U.'s New Regulations for Disclosing Sustainability Risks and Negative Impacts From ESG Investing" (Jun. 9, 2020).

©2020 Private Equity Law Report. All rights reserved.

The rise of ESG investing may have been slowed by the coronavirus pandemic, but issues raised by the pandemic correlate with ESG issues, MacLennan suggested. “Some people have said that the pandemic has stolen the spotlight from ESG because of uncertainty as to how the pandemic will affect investment strategies. ESG issues are syncretic with issues raised by the pandemic, however, and will necessarily be part of the analysis – whether identified as ESG or not.”

©2020 Private Equity Law Report. All rights reserved.