INSTITUTIONAL LIMITED PARTNERS ASSOCIATION

ILPA Principles 3.0:

Fostering Transparency, Governance and Alignment of Interests for General and Limited Partners

2019

Contents

About the ILPA

The Institutional Limited Partners Association (ILPA) engages, empowers and connects limited partners (LPs) to maximize their performance on an individual, institutional and collective basis. Serving more than 515 member institutions representing over $2 trillion USD of private equity assets under management (AUM), ILPA is the only global organization dedicated exclusively to advancing the interests of LPs and their beneficiaries through best-in-class education, content, advocacy and networking.

ILPA takes seriously its role in facilitating the growth and sustainability of this industry. It is imperative to the health of the private equity ecosystem that market actors adhere to the highest ethical and professional standards, deal fairly and honestly, invest responsibly and act with integrity and transparency. This guidance is intended to engender and sustain trust and a sense of long-term partnership in the industry.

Overview

Background

The Institutional Limited Partners Association ("ILPA") produces industry best practices aimed at improving the private equity industry for the long-term benefit of all industry participants and beneficiaries. The ILPA Principles (the "Principles") were first published in September 2009 to encourage discussion between Limited Partners ("LPs") and General Partners ("GPs") regarding the alignment of interests in private equity fund partnerships. In the year following the Principles' initial release, ILPA solicited additional feedback from the LP and GP communities and subsequently released an updated version in 2011 to address certain issues requiring additional focus, clarification or consideration of practical implications. This third edition of the Principles builds on prior versions by addressing an expanded array of issues, taking into consideration evolving industry and policy dynamics impacting private equity fund partnerships.

As in prior editions, this version incorporates ideas and suggestions accumulated via extensive dialogue with a range of constituencies across the private equity industry.

ILPA continues to assert that three guiding principles form the essence of an effective private equity partnership: alignment of interest, governance and transparency.

With these guiding principles in mind, this third edition of the ILPA Principles includes expanded, clarifying guidance on:

- Fund Economics
- Key Person Provisions
- LPAC Responsibilities
- Fiduciary Duty

The third edition also addresses new and emerging issues including:

- Fee and Expense Reporting
- LPA Compliance and Assurance
- Subscription Lines of Credit
- Co-Investments
- Non-Financial Disclosures: Incident Reporting, Regulatory Compliance
- ESG Integration
- GP Ownership and Succession Issues
- GP-led Secondaries Transactions
- Conflicts of Interest Arising from Parallel Vehicles and Cross-Fund Investments

Intended Scope and Application

The preferred private equity terms and best practices herein serve to inform discussions between each GP and its current and prospective LPs in the development of partnership agreements and in the management of funds.

ILPA does not seek the commitment of any LP or GP to any specific terms, nor should the Principles be applied as a checklist, as each partnership should be considered separately and holistically. A single set of preferred terms and practices cannot provide for the broad variability of products, strategies and investor preferences across the market at any given time, nor account for every individual circumstance.

This guidance is put forth as a road map for GPs and LPs to develop the same set of expectations when entering into any partnership, and to frame a more precise and specific dialogue between the GP and the partnership's existing and prospective investors during the fundraising process and over the life of the partnership. We put forth that careful consideration of each of these preferred private equity terms and best practices will result in better investment returns and a healthier private equity industry.

ILPA encourages all stakeholders—LPs, GPs and their advisers—to be transparent in their consideration and intended application of these Principles and the level of accountability. LPs are advised to clearly communicate the extent to which adherence to particular ideas contained in this guidance are factored into their investment approvals process and/or their institution's investment policies. While ILPA is not seeking endorsements for this third edition of the Principles, expressions of support by GPs for the ideas herein are welcomed, and GPs are encouraged to notify their LPs of their progress in adopting elements of Principles 3.0. It is incumbent upon all partners to seek shared and mutual understanding of expectations related to adherence to this guidance and any assurances required by either party.

For the avoidance of doubt, while this guidance was crafted primarily for the use of practitioners in private equity, ILPA encourages stakeholders in other private markets to consider the adoption of relevant sections of Principles 3.0.

Underlying Themes

STEWARDSHIP: Private equity firms invest capital entrusted to them by fiduciaries, who in turn have delegated to GPs the solemn responsibility to manage the savings and capital of individuals and organizations that rely on the returns generated by those assets. Accordingly, this edition of the Principles reflects a synthesized view of exemplary and adoptable practices, rather than behaviors dictated by the market conditions of any particular point in time.

EVOLUTION OF THE PRIVATE EQUITY INDUSTRY: The volume of both institutions and capital flowing into private equity has swelled significantly over the last decade, as has the range of means by which investors allocate that capital. The industry has diversified meaningfully beyond blind closed-end pools, to encompass co-investment, direct investment, separately managed accounts and other bespoke and semi-bespoke vehicles, often with different risk-return profiles, adding complexity to legal structures as well as fund governance and disclosures.

MARKET CONTEXT: Against a backdrop of historic levels of fundraising, record distributions to LPs and rising competition for allocation, alignment between GPs and LPs, and among LPs, is exceedingly challenged at present, even as the industry more openly embraces ethical behavior and responsible investment. Since the last edition of the Principles, the industry has become regulated for the first time in both the US and Europe, ushering in an era of unprecedented expectations around transparency.

SHARED RESPONSIBILITY: Private equity is unique in that it is rooted in a sense of long-term partnership. The recommendations herein are intended to address both LP and GP behaviors that will promote stronger alignment both among business partners, as well as across different entities investing alongside one another in a common market.

The guidance in this third edition reflect considerable input from market leaders in the LP and GP community as well as industry bodies and the service provider community, led by contributions from ILPA's Principles working group, ILPA's Industry Affairs and Standards Committee, and the ILPA Board of Directors. We are grateful for the thoughtful contributions received.

Several elements within Principles 3.0 are addressed through previously published ILPA standards and guidance available online at ilpa.org. These include:

Quarterly Reporting Standards	2011
Capital Call & Distribution Notice Template	2011
Reporting Template for Fees, Expenses and Carried Interest	2016
Model Subscription Agreement	2017
Guidance on Subscription Lines of Credit	2017
Due Diligence Questionnaire	2018
Industry Code of Conduct Guidelines on Harassment, Discrimination and Workplace Violence	2018
Portfolio Company Metrics Template	2019
Guidance on GP-led Secondary Fund Restructurings	2019
Model Limited Partnership Agreement	Forthcoming

Suggestions for topics worthy of future inclusion in ILPA Principles, or to be addressed through ILPA's educational and best practices platforms, can be submitted to ILPA via email to principles@ilpa.org.

Principles in Summary

Alignment of Interest

- Alignment of interest is best achieved when the GP's wealth creation is primarily derived from a percentage of the profits generated from the GP's substantial equity commitment to the partnership, after LP return requirements have been met.
- Decisions made by the GP, including management of conflicts of interest, should take into account the benefit to the partnership as a whole rather than to the sole or disproportionate benefit of the GP, affiliates or a subset of investors in the partnership.
- GPs should establish and disclose written policies and procedures to identify, monitor and appropriately mitigate conflicts of interest.
- The source and value of any material benefit accruing to the GP as a consequence of being the investment manager to the partnership should be disclosed at least on an annual basis.

Transparency

- LPs should have timely access to and notifications on relevant information pertaining to the GP and management of the partnership's investments, including changes in GP ownership; material decisions and actions involving affiliates and related parties; arrangements between the GP and underlying portfolio companies; non-routine interactions with the regulator of record; material ESG matters pertaining to the portfolio; and policy violations.
- All disclosures provided to investors, including those on costs and charges, should be clear, complete, fair and not misleading.
- Fees and expenses charged to individual LPs and the partnership as a whole as well as carried interest calculations should be regularly and consistently disclosed and subject to periodic review by the Limited Partner Advisory Committee (LPAC) and certification by an independent auditor.
- Fees should be reasonable and based on the normal operating costs of the fund; the partnership should not incur expenses that could rationally be expected to be covered by the management fee as a cost of operating the fund.

Governance

- GPs should neither undertake nor seek to "pre-clear" actions through overly broad disclosures that constitute or could potentially constitute a conflict of interest between the fund, a portfolio investment, and/or a portfolio manager on one hand and the GP, key persons, affiliates, etc. on the other without the approval of the LPAC.
- GPs should make an affirmative statement of the standard of care owed to the fund and should avoid language allowing for the disclaiming of fiduciary duty to the fullest extent of the law.
- LPACs should be thoughtfully constructed, mandated and managed as an important adviser to the fund, particularly around conflicts of interest, without obligating LPAC members to serve as fiduciaries of the fund themselves.
- LPAC members should be held to minimum participation standards.
- LPAC meetings should be followed by an *in camera* session organized by the GP.

GP and Fund Economics

Waterfall Structure

A standard all-contributions-plus-preferred-return-back-first, i.e., whole of fund, model is best practice.

For models other than whole of fund distribution of profits:

- Distributions should be based on return of all realized cost for a given investment with continuous makeup of partial unrealized impairments and write-offs, and return of all fees and expenses to date (as opposed to solely the pro rata fees and expenses related to any single realization).
- For the purposes of a deal-by-deal waterfall, all unrealized investments should be valued at the lower of cost or market.
- Accrued carried interest should be held in escrow accounts with significant reserves (e.g., 30% of carry distributions or more) and require additional reserves to cover potential clawback liabilities.

Calculation of Carried Interest

With respect to the treatment of carried interest in a private equity fund, the following guidelines should be considered:

- Carried interest should be calculated based on net profits (not gross profits), factoring in the impact of fund-level expenses.
- Carried interest should be calculated on an after-tax basis, i.e., foreign or other taxes imposed on the fund should not be treated as distributions to the partners.
- No carry should be taken on current income distributions.
- Amendments in the calculation of carried interest linked to changes in tax policy personally impacting members of a GP should be limited, reasonable and not triggered automatically; such amendments should be subject to LPAC consideration and approval.
- Carried interest should only be paid on recapitalizations once the full amount of invested capital is realized on each investment that was recapitalized.
- The preferred return should be calculated from the date capital is called from LPs to the point of distribution; in cases where capital is drawn from a bridging or other short-term financing facility collateralized by uncalled LP capital commitments, the preferred return should be calculated from the date capital is at risk, i.e., the date on which the facility is drawn, rather than the date at which the capital is ultimately called from LPs.
- Subscription lines of credit should be used primarily for the benefit of the partnership as a whole, i.e., administrative ease or serving as bridge financing, rather than chiefly for the purpose of enhancing reported IRR in order to accelerate the accrual and distribution of carried interest. Such lines should be of short duration, e.g., outstanding for no more than 180 days, and limited to a maximum percentage of fund commitments, e.g., 20%. The line should not be used to fund early distributions.
- Calculation of preferred return should be made on the basis of the partnership's cumulative investment history starting at the point an investor's capital is put at risk via the partnership's initial investment, i.e., when the investor's liability to contribute capital to the initial deal is recorded, until such time that the amount representing the preferred return for the partnership's last exited investment is fully distributed to the investor. Whatever accrual method is used to calculate the preferred return and carried interest, that methodology should be fully transparent and consistent over the life of the fund.
- To mitigate investor risks, the carried interest calculation should ideally utilize a "hard hurdle" whereby the GP's carried interest is based only on the portion of profits that exceed the LPs' preferred return. A GP may consider using a hard hurdle to foster a greater alignment of interest.

- Provisions related to the functioning of the waterfall should be drafted in terms that are readily comprehensible to a non-legal professional. Preferably, investors are provided with a model for how fees, expenses and carried interest will be calculated over the life of the fund.

Recycling of Distributions

The amount of total distributions that are subject to recycling provisions should have either a mutually agreed cap, or a monitoring threshold such that LPs can more accurately project their cash requirements. The amount of the cap or monitoring threshold should be established based on factors such as the GP's track record and the strategy of the fund. Furthermore, recycling provisions, including the classification of any unused, recallable distributions, should expire at the end of the fund's investment period.

Clawback

Carry clawback situations present one of the more challenging circumstances for the GP/LP relationship and, as such, should be avoided whenever possible. The best approach to minimize clawback liabilities is an "all capital back" waterfall structure. However, in the event of a clawback situation, the following guidance should be considered:

- Actual and potential clawback liabilities should be determined and clearly disclosed to the LPs as of the end of every reporting period. At minimum, annual audited financial statements should include such disclosures along with a plan by the GP to resolve the clawback.
- All clawback amounts should be gross of taxes paid and paid back no later than two years following recognition of the liability.
- Where it is excessively burdensome or impractical to require clawback gross of tax, the hypothetical marginal tax rates applied should reflect the actual marginal rate that would apply to the individual members of the GP impacted and account for:
    - Loss carryforwards and carrybacks;
    - The character of the fund income and deductions attributable to state tax payments;
    - Any ordinary deduction or loss as a result of any clawback contribution or related capital account shift.
- Where the clawback formula is calculated net of tax, the tax amount should not be simply subtracted from the amount owed and should take the preferred return into account.
- Repayment obligations should directly track carry distributions impacted by the clawback.
- The clawback period must extend beyond the term of the fund, including liquidation and any provision for LP giveback of distributions.
- ILPA strongly encourages joint and several liability of individual GP members as a best practice. In cases where joint and several liability is not provided, a potential substitution would be a creditworthy guarantee of the entire clawback repayment by a substantial parent company, an individual GP member, or a subset of GP members. Where practicable, the clawback should be guaranteed by the parent company's balance sheet.
- The conditions triggering interim clawbacks should be well defined in fund documents, e.g., at defined intervals and upon specific events such as key person, removal notice date or insufficient NAV coverage.
- The NAV coverage test should be established to ensure a sufficient margin of error on valuations, e.g., at last 125% of NAV. Note that an escrow account of at least 30% may provide a sufficient mechanism for the clawback guarantee.
- LPs should have robust enforcement powers, including the ability to directly enforce the clawback against individual GPs.
- The cost of enforcing clawback guarantees should be a GP, not a partnership, expense.

Management Fees

The management fee should be based on reasonable expenses related to the normal operating costs of the fund. The rationale for the management fee should be apparent to LPs, as excessive fees create a misalignment of interests.

During the formation of a new fund, GPs should provide LPs considering an investment in the fund with a fee model to guide how management fees will be calculated over the life of the fund. Management fees paid or payable to the fund should be disclosed together with the basis of the calculation. In some cases, such as with first time funds or funds with a higher than average management fee, the GP should provide a budget that lays out the rationale for the management fee proposed.

Overhead costs, salaries of the GP's employees and any relevant advisers or affiliates, travel and other costs related to the investment activities of manager on behalf of the partnership should be borne by the manager under the management fee, rather than allocated to the fund. Examples include:

- Industry conferences, cost of research and information services, computer software and subscriptions, travel, entertainment, lodging/accommodations, investment consultants;
- Costs and expenses associated with maintenance of required books and records, expenses incurred in fulfilling regulatory compliance requirements, e.g., registration or maintenance of registration;
- Costs and expenses associated with any remedial actions required as the result of a regulatory exam (e.g.; SEC audit);
- Office space, furniture, computers, telephones, facilities, utilities, and communications.

For multiple-product firms, carried interest and fees generated by the GP of a fund should be directed predominantly to the professional staff and expenses related to the success of that fund.

Management fees should take into account the lower levels of expenses incidental to the formation of a follow-on fund, at the end of the investment period, or if a fund's term is extended. Management fees should step down significantly in each of the circumstances noted above.

Where a GP has agreed to a fee cap for a single investor or group of investors, any amount above the agreed upon cap must be absorbed by the GP and not included in the calculation of the management fee as a percentage of assets allocated to the remaining investors.

Basis for the Management Fee

When considering the basis for the calculation of the management fee, the following guidelines should be considered:

- During the investment period, GPs should determine the appropriateness of a commitment-based fee relative to operating costs and external market dynamics. GPs and LPs may wish to consider the relative merits of a bifurcated fee during the investment period, reflecting an appropriate blended percentage of the amount of capital committed and invested.
- Following the end of the investment period, the management fee should step down to a percentage of unrealized cost.
- To ensure that fee streams closely mirror the actual allocation of resources, GPs managing one or more predecessor funds should consider basing the initial management fees for any follow-on fund on invested rather than committed capital.
- For GPs utilizing subscription lines of credit to fund management fees, fund expenses and initial investments early in the life of the fund, the methodology by which amounts drawn from the facility but not yet called from investors will be accounted for in calculating the basis for management fees should be transparent and consistent.
- The term of the investment period should be clearly and appropriately defined in the fund documents, to avoid ambiguities that may unnecessarily prolong the investment period and result in excessive management fees being charged to the partnership.
- During a fund extension, no fees should be charged unless and until LPs agree to such fees on the basis of the facts and circumstances related to maximizing the value of and liquidating any remaining assets.

Fee Income Beyond the Management Fee

Fund documentation should adequately detail the policies regarding the calculation, assessment, and reporting of any fees and expenses allocable to portfolio companies that have a significant impact on the LP's commitment to the fund and/or net investment return.

No fees should be charged to portfolio companies. Any portfolio company fees that are charged should be 100% offset against the management fee and subject to standard disclosure. Fees exempt from the offset provisions should be rare, but clearly defined in the LPA. Where such fees are not fully offset, the GP should disclose the amount of fees received by the GP, including those that fall outside of any offset provision.

Any disclosure of transaction fees that are likely to be collected, but not subject to offset, should be based on a standard that exceeds the prevailing definition of a Related Party.

Portfolio company fees that cannot be offset should be distributed to LPs eligible to receive residual rebates at the end of the fund's life.

Any fees generated by an affiliate of the GP, such as an advisory firm or in-house consultancy, whether charged to the Fund or an underlying portfolio company, should be reviewed and approved by a majority of the LPAC.

The application of offsets to any fee income paid in-kind should account for the fair market value of such payment. Where a fair market value is unavailable, the payment should be offset against the management fee as soon as the security becomes marketable or at the end of the life of the fund, whichever is first.

Fee Offsets Related to Co-Investments

Unless prohibited by the LPA, a GP may charge management and other fees, such as transaction fees, on co-investments.

Where such fees are collected, the firm should clearly disclose the implication for allocation of transaction or other fees collected from the portfolio company between the fund and co-investors, as well as the application of offsets for any such fees applied.

The approach to allocating broken-deal expenses for co-investments should align with the approach to allocating and offsetting any co-investment related fees collected between the GP and co-investors.

Reasonable Organization and Partnership Expenses

Expenses allocable to the partnership as a whole should be reasonable, clearly disclosed prior to the initiation of the fund and at regular intervals to all LPs, e.g., clarified in capital call notices. The allocation of such agreed expenses to the partnership should be consistent and subject to periodic LP and independent auditor review and certification.

Organization Costs–Costs related to the formation of the fund should be reasonable and capped at an amount appropriate to the size of the fund. Increases in organization cost caps for successor funds should not necessarily be linear with growth in fund sizes but rather clearly aligned with specific cost factors not otherwise rationally covered under the management fee, e.g., placement agent expenses or compliance with a new regulatory regime. Should the agreed cap on organizational costs be exceeded, any excess should be offset against the management fee. Any agreed cap on organizational costs should take into account the costs associated with negotiating side letters. Organizational costs that are specific to an alternative vehicle, parallel vehicle, co-invest vehicle, etc. should be borne solely by that vehicle. This includes organization expenses of the GP specific to the GP's commitment to the fund.

Side Letters–The cost of negotiating and complying with side letters can be sizeable. In order to minimize the cost and complexity of side letter compliance, GPs should seek whenever possible to include those provisions common across the majority of a fund's side letters into the LPA itself. The costs of negotiating the side letters should be considered an organizational expense and subject to any agreed cap in place. Any costs associated with negotiating side letters not subject to the agreed cap should be fully disclosed to LPs. To minimize the cost and complexity of negotiations, LPs should endeavor to limit the substance of side letters to essential statutory or other institution-specific requirements.

Expenses Shared Between the GP and the Partnership

The specific circumstances surrounding the following, and the LPA's treatment thereof, should determine how the following expenses are shared between the GP and the fund:

Broken Deal Expenses–Broken deal expenses should be charged to the fund. To the extent that other vehicles participated in the broken deal, including but not limited to special purpose vehicles, co-investment vehicles, and parallel investment vehicles, in most cases it is appropriate to share broken deal expenses across these entities with the fund on a pro rata basis. Expenses incurred through preliminary due diligence and sourcing, i.e., including related travel, should not be considered broken deal expenses.

LPs should be made aware of any parallel co-investment vehicles that are not allocated a pro rata share of broken deal expenses and the treatment of any fee income related to such parallel or co-investment vehicles.

Any reverse termination fees collected by the fund should be used to reimburse LPs to offset previously incurred broken deal expenses.

The allocation of broken deal and co-investment expenses should be clearly and consistently disclosed across all fund documents, including the PPM, the LPA, marketing materials, and regulatory filings, e.g., Form ADV Part 2 filed with the SEC.

Technology, Cyber Security and Software Upgrades– To the extent that a technology implementation or an upgrade to the GP's existing system solely or chiefly benefits the GP, and can be utilized across multiple funds over time, the GP should pay the associated costs.

Expenses Specific to Individual LPs–An individual LP or subset of LPs may require the engagement of a third party with respect to organization costs or expenses pertaining to a specific transaction, e.g., jurisdiction-specific or institution-specific matters. Such expenses should be allocated to the parties with the specialized requirements rather than to all LPs in the fund.

Expenses Allocable to the Partnership

In most circumstances, the following expenses should be allocable in full to the partnership:

LPAC Meetings/Annual Investor Meetings—The partnership should pay for costs related to hosting LPAC meetings and annual/special meetings of the investors, including expenses associated with meeting venue, meeting materials, and meeting supplies. The costs of entertainment, including speaker fees, should not be charged to LPs.

Third Party Administration—Third party administrator costs should only be allocated to the partnership when the GP has the approval of LPs to utilize a third party administrator. The GP should be able to justify and monitor quality and costs related to the use of outsourced resources. Allocation of a portion of the GP's full-time staff time to administer the fund is deemed not reasonably charged to the fund, as such costs are to be covered under the management fee.

Travel—Travel related to sourcing deals, networking, and preliminary due diligence should be paid by the manager out of the management fee. When a potential investment advances past the initial term sheet, then travel related to the investment should be treated as a transaction cost borne by the fund. LPs should be vigilant for excessive travel expenses and should request the GP's travel policy, which should include parameters addressing use of non-commercial travel, i.e., private planes, and entertainment expenses.

Interest Expenses and Fees—Costs associated with the use of subscription lines of credit and similar credit facilities drawn for the benefit of the fund should be paid by the partnership. The use of credit facilities with terms longer than one year should be subject to LPAC approval. LPs should review the terms of any credit facilities used.

Audits—The partnership should bear the cost of annual fund audits as well as audits related to the Partnership or GP conducted by regulatory bodies to that specific fund, including but not limited to the cost of completing IRS audits and fees incurred for assistance in responding to such audits.

Legal Expenses—Third party legal expenses incurred specifically in connection with fund matters are allocable to the partnership. In cases where the GP elects to allocate a charge for a portion of the GP's internal legal staff's time to the partnership, the rationale for utilizing internal resources, and the market basis applied in calculating any such charges should be provided to LPs. Legal costs associated with an investigation of the GP or any of its partners, e.g., following an examination by a regulator or government authority of the adviser to the fund, should be borne by the GP as covered by the management fee, and not allocated to the Partnership.

Indemnification, Insurance, and Litigation Expenses—LPs should ensure proper standard of care limitations and confirm the GP is required to pursue alternative sources of indemnification. LPs should ensure internal disputes among GPs are excluded from coverage paid for by the partnership and ensure that obligations only extend to fund matters and not general indemnification for the manager for all manager actions.

Regulatory Expenses—The cost of satisfying regulatory requirements and communicating with regulators at the level of the firm should be borne by the GP out of the management fee. Fund specific costs tied to transactions by the fund (e.g., regulator approval for certain deals) should be a fund expense.

Expenses Fully Offset or Covered Under the Management Fee

As a general rule, any third-party expenses incurred in the provision of services that typically would be provided by the GP to similar funds should be offset against the management fee. In most circumstances, the following expenses, if charged to the partnership, should be fully offset:

Consultants' Fees–Only costs related to specialized consulting services should be borne by the fund. Due diligence consulting costs are expected to be charged to the portfolio company or covered by the management fee. Any work performed by consultants affiliated with the GP should be disclosed to LPs and subject to any agreed cap on fees. In most cases, the cost of specialized consultants hired at the request of one or more LPs should be paid by the requesting LPs, e.g., for a jurisdiction- or institution-specific matter.

ESG-related Expenses–Consultant costs related to ESG due diligence, management and reporting should be regarded in the same way as general due diligence consulting costs. If specialized consultants are required to fulfill specific LP requirements, resulting fees should be paid by the requesting LPs.

Placement Agent Fees–The economic arrangement of the GP and its placement agents should be fully disclosed as part of the due diligence materials provided to prospective LPs. Placement agent fees should be borne by the fund manager while placement expenses should be borne by the fund. Where placement agent fees are allocated to the fund, the management fee should be fully offset for such amounts. The LPAC should review placement agent expenses to ensure they are reasonable and not excessive.

Operating Partners/Consultants–Increasingly, GPs are engaging Operating Partners with specialized expertise to execute on specific strategic growth plans, paid for by the portfolio company. Where such partners are presented to LPs as members of the GP's team, LPs should understand how they are compensated, i.e., directly by the GP or by the portfolio company. Any fees paid by the portfolio company for services performed by Operating Partners deemed to be affiliates of the GP should be fully offset against the management fee.

Unforeseen Expenses–During the life of a fund, expenses will arise that may not have been considered at the initiation of the fund and are therefore are not covered in the fund documents. GPs should create with their LPs decision frameworks that will allow for making consistent, rational, and defensible expense allocations over time. GPs should engage LPs in their decision-making process regarding the allocation of such expenses and ensure that the LPAC is apprised and supportive of expense allocation policies and evolving interpretations of existing policies.

The LPAC should review the application of fee offsets and partnership expenses annually.

Fund Term and Structure

GP Commitment and Ownership

The GP should have a substantial equity interest in the fund. The GP commitment should be contributed in cash as opposed to contributed through the waiver of management fees or via specialized financing facilities.

The GP should not be allowed to co-invest in select underlying deals, i.e., "cherry picking", but rather its whole equity interest shall be via a pooled fund vehicle, whose sharing percentage may not decrease. An annual election to increase the co-invest percentage may be permitted.

GPs should proactively disclose the ownership of the management company. GPs should notify all LPs if the ownership of the management company changes over the life of the fund.

The GP should be restricted from transferring their real or economic interest in the GP in order to ensure continuing alignment with the LPs. LPs should be notified of any intent to transfer GP interests to a third party, however small, but in particular where such a transfer may pose a conflict of interest for either the GP or any LP in the partnership.

In notifying LPs of the intention to transfer GP interests to a third party, the GP should make clear: 1) the goals and rationale for the transaction, 2) the impact on any distributable and long term cash flows; and 3) how fund- and GP-level economics will change post-transaction, in particular the impact on carried interest distribution among remaining members of the GP not participating in the transaction.

Fund Term Extensions

Fund term extensions should be permitted only in one-year increments and limited to a maximum of two extensions. Fund term extensions should first be approved by the LPAC and then proceed only with approval of a super majority of LP interests in the fund. Absent LP consent following expiration of the fund term, the GP should fully liquidate the fund within a one-year period.

No fees should be charged after the original term of the fund has ended. If circumstances warrant a fee to incentivize the manager to liquidate any remaining assets, the GP should seek an amendment to the LPA to allow such a fee. Any fee agreed during a fund term extension should take into account the lower expense burden during extension, notably where a GP has raised successor funds.

The LPAC, and preferably all LPs in the fund, should be provided notice of a GP's intention to request an extension as early as possible and at minimum of 1-2 quarters in advance of the fund's expiration to give LPs/LPACS adequate time to consider what is most appropriate for the portfolio.

Vehicles Investing Alongside the Fund

To accommodate legal, tax, regulatory or other considerations of certain investors, GPs should be able to form pooled investment vehicles, parallel or alternative investment vehicles as necessary. Alternative vehicles should be managed by the GP or an affiliate and should be governed by documents containing substantially the same terms and provisions as the original fund.

Alternative vehicles should not provide GPs with additional economic benefits that are disproportionate to the additional economic benefits received by LPs. GPs should provide LPs participating in alternative vehicles a copy of documents governing the alternative vehicles at least 10 business days before signing.

Investments by such additional vehicles should be made at the same time as the fund. Any investment expenses and fee income related to the investment should be shared between the fund and any parallel or alternative investment vehicles in proportion to capital committed.

The fund and parallel vehicles should sell their interests in the portfolio company at the same time and on the same terms as the investment by the fund, save for legal, tax, regulatory or other considerations.

Investment results of any alternative vehicles should be aggregated with the investment results from the fund for the purpose of determining distributions, unless the GP determines with the consent of the LPAC that such aggregation increases the risk of adverse tax, legal or regulatory consequences.

The fundraising period should terminate within a reasonable period of time following the initial close, e.g., 12 months. In the interval between initial and final close, interest should be charged on subsequent LPs committing to the fund. Such interest should be credited to the investors in the initial close on a pro rata basis and not treated as an asset of the fund.

Key Person

Identification and Changes to Key Person(s)

The investment team is a critical consideration in making a commitment to a fund. Accordingly, any significant change in that team should allow LPs to reconsider their decision to commit, through the operation of the key person provisions.

Key persons should be the individuals that will determine the investment outcomes of the fund—not solely the founders, regardless of the title they have.

Sound succession planning and smooth transitions in firm ownership are critical to the long-term success of the manager and GP-LP alignment; GPs should work to ensure orderly planned and unplanned transitions of key persons and make transparent to LPs once successor candidates have been identified.

LPs should be notified in a timely manner of any personnel changes, not solely key person, with the potential to impact fund performance, and immediately notified when key person provisions are tripped.

Changes to key person provisions should be approved by majority of interest of LPs.

The key person should not be so broadly drafted such that departures of individuals reasonably believed to be key people would not trigger the provision. When departures of individuals listed as key people do occur, whether or not it triggers a suspension, the ramifications should be discussed in full with LPs, or at minimum the LPAC.

Time and Attention

Key persons should devote substantially all their business time to the fund, its predecessors and successors within a defined strategy, and its parallel vehicles. Situations impacting a principal's ability to meet the specified "time and attention" standard as delineated within the LPA should be disclosed in a timely manner to all LPs and discussed with, at a minimum, the LPAC.

Key persons for the fund, as identified in the LPA, must not act as a GP for a separate fund managed by the same firm with substantially equivalent investment objectives and policies until after the investment period ends, or the fund is invested, expended, committed or reserved for investments and expenses.

LPs should consider how the key person provisions would operate, if at all, following the end of the investment period, as the harvest period may present the most critical time for continuity of key persons in order to maximize the value of unrealized assets and managing dispositions.

Key Person Triggers and Process to Resolve

A "key person" or "for cause" event, e.g., fraud, material breach of fiduciary duties, material breach of agreement, bad faith, gross negligence, illegal activities etc., should result in an automatic suspension of the investment period, to become permanent within 180 days, unless and until a defined super majority of LPs affirmatively vote to reinstate.

In the event of an investment period suspension triggered by the key person provision, the GP should not otherwise use fund assets, including recycling of capital or borrowing against fund assets or uncalled commitments, to make new investments or other expenditures, unless expressly permitted to do so by the LPA. The decision to close a deal committed to prior to a key person event should made in consultation with the LPAC.

Any such vote to reinstate the investment period or to remove the GP should exclude the LP interests held by the GP or its affiliates.

As a matter of course, on the occurrence of a key person event, an interim clawback test should be performed and satisfied if there is a deficiency.

GP Removal and Replacement

As fiduciaries themselves, it is critical that limited partners preserve the ability to activate a remedy in the event of material breach of fiduciary duties or material breach of agreement, fraud, bad faith or gross negligence.

In the event of a cause event, the termination of the individual responsible for such actions should not be deemed an automatic cure or remedy.

When a cause event occurs, a majority in interest vote of LPs should be sufficient to trigger a no-fault suspension or termination of the commitment period. A simple majority in interest vote of LPs should be sufficient for the removal of the GP or dissolution of the fund. A super majority, i.e., a vote of two-thirds in interest of LPs, should be sufficient for the no fault removal of the GP or dissolution of the fund.

In the event of the no fault removal of the GP, a majority vote in interest of limited partners should be sufficient to appoint a liquidator.

In the case of removal—whether no fault or for cause—the GP should see a meaningful forfeit of or reduction to carried interest, to ensure sufficient economics remain to incentivize a new manager.

Fund Governance

Fiduciary Duty

Limited Partnership Agreements should reinforce rather than dilute the fiduciary duties of GPs to LPs. The "gross negligence, fraud, and willful misconduct" or breach of the agreement should be the minimum in terms of the exculpation standard agreed by LPs without any qualifiers with respect to prior knowledge or material and adverse effect. GPs should not acquiesce to counsel recommendations to lessen the fiduciary duty owed LPs.

Within the partnership agreement and the PPM, GPs should clearly, affirmatively and prominently disclose the standard of care they owe to the private fund as a whole and the individual LPs within that fund, including both any standard owed under statute as well as any conflicting standard owed under the laws of where the fund is domiciled.

LPs should reject provisions allowing the GP to reduce all fiduciary duties to the fullest extent allowable by law, as well as any waivers of broad categories of conflicts of interest. Provisions awarding the GP sole discretion should be permissible only where the LP has sufficient comfort and an attestation that the interests of LPs and the partnership as a whole will not be adversely affected. LPs should note that such disclaiming language may appear in unanticipated sections of the LPA or in documents other than the LPA.

GP breach of the agreement or behavior constituting "gross negligence, fraud or willful misconduct" should be excluded from the protections of indemnification and exculpation clauses, even if the governing law would permit it.

Individuals that have committed such behavior, in breach of contract or of relevant securities or other laws, and are subsequently removed from the fund or separated from the firm should not be eligible to receive carried interest or retain other residual economic interests in the fund.

GPs should endeavor to provide an equivalent standard of care to all partners in the fund and ensure that arrangements with any one or subset of LPs do not disadvantage other LPs in the fund or disproportionately advantage the GP.

LPs should reject provisions within the LPA that allow the GP or its affiliates to be indemnified for conduct constituting a material breach of the partnership agreement, breach of fiduciary duties or other "for cause" events.

Indemnification expenses should be capped as a percentage of total fund size.

As a general rule, GPs shouldn't undertake action that constitutes or could potentially constitute a conflict of interest between the fund, a portfolio investment, and/or a portfolio manager on one hand and the GP, key persons, affiliates, etc. on the other, without prior written approval from the LPAC. Conflicts of interest disclosed in the fund's offering documents should not be deemed permissible conduct and should not reduce or eliminate the requirement of prior written approval from the LPAC, nor should failure of the LPAC to act be deemed to clear the conflict on behalf of the GP.

Investment Management Considerations

The GP should recognize the importance of time diversification during the stated investment period as well as industry diversification within the portfolio and should seek to avoid over-concentration in short time periods by considering limitations on the amount of capital that can be called on an annual basis from LPs. Funds should have appropriate limits on investment and industry concentration (excluding sector-focused funds).

The GP should also accommodate an LP's exclusions policy, which may proscribe the use of its capital in certain sectors and/or jurisdictions, while taking into account any increased concentration effects on remaining LPs. It is recommended to provide full transparency around the process and policies for honoring LPs' exclusion requests in the event of a non-ratable allocation.

The GP should commit to directing all appropriate investment opportunities to the fund during the investment period. For multi-product firms, the GP should affirmatively state an investment allocation policy that has been reasonably designed to fairly allocate opportunities between the fund and any other investment vehicles. The GP's policy for allocating opportunities should be provided to LPs upon request. The GP's investment limitation policy should apply to each LP on an individual basis.

Changes to the Fund

For any change to the fund requiring an LP vote, "no responses" should be treated as abstentions, and excluded from both the numerator and denominator.

Recommended Thresholds for Key Changes to the Fund

LPA Amendments	Super Majority of Interest
Dissolving Fund Without Cause, GP Removal	Super Majority of Interest
Investment Period Suspension (e.g., Key Person Trigger)	Simple Majority of Interest
Reinstatement of the Investment Period	Super Majority of Interest

LPA Amendments

Except for removals or issues requiring specified consent, any amendment to the LPA should require the consent of the GP and the approval of a super majority in interest of the LPs, and should be disclosed to all LPs, even if the LPA allows the LPAC to approve the amendment. Subsequent and continuous amendments made to the LPA, as fundraising negotiations advance, should be disclosed to all LPs, and GPs should confirm that all LPs have acknowledged receipt of all final documents prior to closing. The LPAC should reserve the right to express an opinion on the matter to other LPs. Amendments that negatively impact the economics of a single LP should require that LP's consent. Notice of any amendments to the LPA should be distributed to all LPs.

GP Removal

A super majority in interest of the LPs should have the ability to elect to dissolve the fund or remove the GP without cause. LPs should have the ability to remove a GP for bad acts upon preliminary determination, rather than a final court decision not subject to appeal. The termination of the individual responsible for such actions should not be deemed to be a cure or remedy.

Suspension of Commitment/ Investment Period

A simple majority in interest of the LPs should have the ability to elect to effectuate an early termination or suspension of the commitment period or the investment period without cause.

A key person or cause event, e.g., fraud, material breach of fiduciary duties, material breach of agreement, bad faith, gross negligence, etc., should result in an automatic suspension of the investment period, to become permanent within 90 days, unless and until a super majority of LPs in interest affirmatively vote to reinstate.

Stated Investment Strategy

The stated investment strategy is an important dimension that LPs rely on when making a decision to commit to a fund. Most LPs commit to PE funds within the context of a broad and diversified portfolio of investments and select each fund for the specific strategy and value proposition it presents. The fund's strategy must be well-defined and investments made by the GP should be consistent with the investment strategy that was described when the fund was raised. In addition to concentration limits for particular sectors that may be contractually set, the GP should consider limitations on the amount of capital that can be called on an annual basis to avoid over-concentration in short time periods. Any changes to the fund's investment strategy should be disclosed and approved by a super majority in interest of the LPs.

GP-led Secondary Transactions

LP Engagement and Role of the LPAC

GPs should engage the LPAC at the earliest opportunity around the objectives and logic for the transaction, process of the transaction, and terms and framing of the deal. In presenting the rationale, GPs should provide information on the quality and outlook for the remaining investments, the amount of (new) capital required, the projected time to realization, and the reasoning for a GP-led transaction with the addition of new capital rather than a fund term extension or other alternative.

Before the terms of the deal are presented to all LPs, any conflicts related to the transaction should be disclosed, mitigated where possible, and approved by the LPAC.

GPs should disclose to the LPAC, and to electing LPs upon request:

- Number, range, and content of bids received;
- LPAC member participation as acquirers, if any;
- Management fee and carried interest amount for LPs in the continuation fund;
- Management fee and carried interest for LPs allocating primary capital (i.e., staple), if any;
- Any other meaningful changes in the terms versus the original fund, e.g., approvals, key persons, related to either the continuation vehicle or the stapled primary capital.

For a more detailed list of expected disclosures, and the expected timing around these disclosures, both LPs and GPs should refer to ILPA's *GP-led Secondary Fund Restructurings: Considerations for General and Limited Partners*.

Structure of the Process

GPs should ensure processes are fair and transparent. GPs should ensure that LPs are afforded sufficient time to evaluate the transaction and that transaction fees and expenses are allocated according to existing fund documents and/or in relation to which parties benefit from the transaction.

LPs electing to roll their interests rather than sell should be provided the option to participate in the new structure with no change in economic terms, i.e., a "status quo" option.

Any process should conform with the LPA, which should include high-level anticipatory language around the process, such as disclosures, notice periods, conflict approval protocols and voting processes, and expense allocations.

Advisors to the Transaction

GPs should engage an experienced advisor to solicit bids at the cost of the GP and not the fund. The LPAC should review the GP's selection of the advisor including the advisor's role, scope of services, and fee arrangement. The LPAC should have the right to hire its own advisor to offer counsel on the process, separate from the GP-selected advisor.

In certain instances, particularly in complex transactions, selling LPs may benefit from an independent fairness opinion.

Cross-Fund Investments

GPs should seek to limit the number of overlapping investments between funds; the LPA should stipulate a maximum threshold, either by number of deals or by investment size, and a contribution agreement between related partnerships should conform with any stated parameters.

The treatment of carried interest and application of any relevant fee offsets should be consistent to both fund's investments, even where the funds have different terms.

The annual notes to the financials should disclose information about all overlapping investments, e.g., name of investment, investment size by each fund, expected termination date/number of extensions/ remaining dry powder of each fund, etc.

The fees received by the GP from any overlapping positions should be disclosed to LPs, e.g., in the "Affiliated Positions" section of the ILPA Reporting Template.

As a general principle, GPs should seek to avoid transfers of assets between funds. In cases where the GP seeks to transfer assets from one fund to a successor fund, the GP should provide to LPs evidence of a competitive and transparent process for the valuation of said assets and carried interest should be rolled in kind. LPAC approval should be requested for any such transfers, and the LPAC members should be provided with a compelling business rationale for the transaction.

Co-Investment Allocations

GPs should disclose to all LPs in advance, through both the PPM and LPA as well as any regulatory filings, a framework for how co-investment opportunities, interests and expenses will be allocated among the fund and any participating co-investors, including whether any prioritization will be applied to how such opportunities will be allocated. Such a framework may make reference to certain factors that may influence GP discretion in allocating opportunities as they occur.

Policies should describe how GPs will disclose and/or mitigate potential conflict of interest issues as well as any risks tied to a specific transaction due to the co-investment tranche, e.g., concentration limits. Policies should be disclosed in writing. Such policies should not be excessively prescriptive, but sufficiently clear as to be verifiable *ex post*.

Where rights to evaluate or participate pro-rata in co-investment opportunities have been granted via side letters, GPs should disclose the existence of such arrangements to all LPs. GPs should also disclose whether differentiated economics have been offered to LPs participating in co-investments, as well as the allocation of any follow-on investments related to co-investments. Any fees payable to the co-investment vehicle should accrue to the underwriting fund to be offset against management fees.

During the fundraising process, where GPs have granted preferential access to co-investment opportunities to LPs participating in subsequent closes, GPs should carefully consider how to balance interests across different investors and classes of LPs. GPs should have the option but not the obligation to provide co-investment opportunities to any electing LPs or third parties.

GPs should ensure that all suitable investment opportunities received by the GP, fund manager, key persons, or affiliates will first be allocated to the fund, if the opportunity fits the fund's investment strategy and the fund has available remaining commitments. In presenting a co-investment opportunity to LPs, GPs should provide prospective co-investors with the strategic reasoning for including the co-investment tranche rather than allocating the entire amount to the fund.

Any parallel vehicles or any affiliates of the GP should be permitted to participate in co-investment opportunities, but only in the same securities and on the same terms as the LPs in the fund. Any related fees or expenses should be allocated on a pro rata basis across all classes of investors.

Where co-investments have been offered to any other vehicle managed by the GP or an entity beyond the commingled fund, GPs should disclose to the LPAC, particularly where there may be a conflict of interest, including an explanation as to why it has been offered to more than one vehicle or an entity beyond the fund, especially if the deal does not broach a fund's agreed concentration limits.

GPs should disclose any and all syndication fees and who benefits from them.

GPs could consider employing a pre-qualifying assessment or other process, during fundraising and at appropriate intervals over the investment period, to confirm LPs' interest and ability to execute on a co-investment opportunity.

LPAC Best Practices

The private equity industry has made meaningful strides in instituting standardized approaches to Limited Partner Advisory Committees (LPACs), including their constitution, role in the partnership and meeting protocol. The LPAC plays a critical role in fund governance, by providing a sounding board for the GP, and serves as an important source of input on critical governance determinations, conflicts of interest in particular.

Still, more can be done to ensure that the LPAC is optimally situated to fulfill its role. LPs and GPs should explicitly establish the duties of the LPAC through the LPA and mutually adopt a preferred meeting protocol upon establishment of the LPAC. Further, the process or rationale by which GPs select LPAC members should be affirmatively and clearly disclosed to all LPs in the fund.

While individual LPs serving on the LPAC act in their own interests in good faith, the LPAC should seek to operate as a committee with its roles and responsibilities clearly outlined in the LPA. To this end, standards in the composition, meeting processes, participation requirements, mandates and procedures for Limited Partner Advisory Committees should be adopted across the industry to maximize the effectiveness of these bodies for the benefit of the partnership. These best practices include representational diversity reflecting the LP base at large and/or disclosures of LPAC meeting agendas and minutes; the appointment of a Committee chair; *in camera* meetings without the GP present; and *in camera* meetings between the LPAC and the auditor.

Common objectives of every LPAC should include: facilitating the performance of the advisory board without undue burden to the GP, creating an open forum for discussion of matters of interest and concern to the partnership while preserving confidentiality and trust, and providing sufficient information to LPs so they can fulfill these responsibilities.

LPACs: Guidance for GPs

Mandate

The mandate of the LPAC should be clearly disclosed and should generally include matters specific to evaluating conflicts of interest as presented by the GP, and other matters that would require a change to or interpretation of certain provisions within the LPA, including:

- Conflicts of interest such as cross-fund investments and GP investment in portfolio companies outside of the fund's interest or that violates the stated exclusions policy;
- Review of valuation methodologies and any changes thereto as reported by the GP to the partnership and auditors;
- Matters related to key person time and attention, changes to the key person provision or departures of key staff;
- Fund term extensions;
- Matters concerning tests of investment strategy, geographic, allocation or concentration limitations;
- Use of leverage;
- Affiliated transactions;
- Reviews of any material ESG incidents and/or risks to the fund's portfolio;
- LP defaults; reduction or expansions in fund size; performance considerations such as clawbacks or true-ups;
- Reviews of the costs of operational advisors;
- Discussions around fees and expenses.

The GP should not be an LPAC member, actual or perceived. In cases where voting members of the LPAC have an interest in the GP, such as a minority ownership stake in the management company, the GP should disclose the existence of those relationships to the LPAC.

As materiality is a subjective criterion, it is best to consult the LPAC in all instances of any conflicts and/or non-arm's length transactions. No GP should clear its own conflicts under any circumstances.

GPs should not seek waivers for actions taken in accordance with LPAC approval, where it could be reasonably understood that the full partnership should take a view; there should be no "deemed consent" provisions related to LPAC voting.

Composition and Structure

GPs should be able to articulate the rationale for how LPAC members are selected, even when LPAC composition is solely at the GP's discretion. GPs are encouraged to consider the diversity of institutions and opinions when selecting LPAC members.

To ensure the LPAC is optimally constituted to fulfill its main objective to advise the GP on conflicts of interest, the LPAC should be limited in size to a workable number, comprised of a representational cross-section of investors by commitment size, type, tax status and quality of relationship with the GP.

Smaller LPACs are better situated to decisively advise on conflicts and matters testing the parameters within the partnership agreement. Whereas larger and more inclusive LPACs may afford the GP a sounding board on strategic decisions for the fund or the platform, a larger body—such as one that includes several non-voting observers—presents challenges in LPAC member participation around critical decisions requiring a vote.

An LPAC composed entirely of the fund's largest LPs may lack the representational diversity of perspective on certain matters. GPs should strive to include on LPACs those LPs without co-investment or secondaries programs, or otherwise likely to be conflicted due to interests in specific decisions taken by the GP, such as due to a minority interest in the management company, strategic partnership or co-investment activity.

Voting arrangements for Limited Partner Advisory Boards (LPACs) should be structured such that no single organization has de facto or de jure veto power.

After the initial constitution of the LPAC, any replacements of LPAC members should be determined by the GP with any additional or eliminated seats to be approved by mutual consent of a majority of the LPAC and the GP.

LPAC members should have one vote per institution, i.e., no super vote.

Meetings, Materials, and Agendas

LPACs should meet regularly on a pre-agreed cadence, with the option to attend remotely via telephone or video.

GPs are encouraged to convene the LPAC more frequently to discuss time-sensitive matters (e.g. conflicts); in these cases, LPAC members should be flexible and responsive.

LPAC meeting agendas and materials should be provided to LPAC members in advance. LPAC members should be notified prior to the meeting of any plans to call a vote, and any materials to inform an LPAC vote should be provided in advance with adequate time for review and internal consultation, particularly around more complex matters.

LPAC meetings can be called at anytime by a pre-agreed percentage of members of the LPAC, as outlined in the LPA.

Each meeting should include an *in camera* session. Votes should not be taken without a prior *in camera* meeting among LPAC members.

LPAC members should receive no remuneration, however the costs of attending LPAC meetings should be reimbursable by the partnership and treated as a fund expense.

LPA Provisions

To ensure fulsome and consistent participation by LPAC members, the cost of LPAC participation in LPAC meetings should be borne by the fund.

The LPA should establish clear voting thresholds including requiring a quorum of 50% of LPAC members to conduct a vote.

LPAC members should be indemnified.

GP Disclosures

Simultaneously with each closing, the list of LPAC members should be disclosed to all LPs in the fund, including their contact information. An updated list should be provided to all LPs if and when any information is changed.

Either the GP or the LPAC member in question should disclose when an individual LPAC member has a conflict of interest that relates to the matter under consideration, e.g., the LPAC member being a potential lender to a portfolio company, co-investment or secondary investment activity alongside the fund, investments in prior funds, ownership of an interest in the management company, etc. GPs should remind LPAC members of relevant conflicts of interest prior to votes being held.

Minutes should be made available to all LPs upon request. However, GPs should not include commercially sensitive information in meeting minutes and LPs should be aware of their institution's responsibilities regarding confidential information and public disclosures, i.e., public records acts. Ultimately, the contents of the minutes should be up to the GP's discretion.

GPs should provide notice to the full partnership when the LPAC has engaged counsel or third parties to provide specialized advice, e.g., valuations experts.

GPs should notify the full partnership upon certain decisions taken or approved by the LPAC, such as related party transactions, settlements of claims that will lead to indemnification, indemnification payments in excess of a prescribed limit, change in the fund auditor, "cure" of a cause event by removal of offending GP individual; replacement of a key person.

The GP should disclose to the LPAC on an annual basis all fee income paid or payable and the yearly calculations and list of the management fee, carried interest, fund expenses and organizational expenses.

The GP should record all votes taken and maintain a copy of all consents obtained. Detailed voting records should promptly be made available by the GP to any LPAC member upon request.

Recommended Elements of an LPAC Meeting Agenda

The following is a set of recommended elements that could comprise an LPAC meeting agenda. This list is not intended to cover all potential topics at LPAC meetings. Ultimately, LPAC agendas are up to the GP's discretion.

- Overall GP (firm) update (not to the exclusion of the other items on the list);
- Overall PE market update, i.e., investment conditions that fund is observing and the effect on strategy;
- Regulatory & legal (if any litigation) update;
- Fund compliance with LPA provisions, e.g., concentration limits, key person, etc.;
- Disclosure of any potential amendment, waiver, vote or matter which may be requested or presented to LPs or the LPAC before the next scheduled LPAC meeting;
- Team changes, e.g., departures, additions, promotions, expected changes;
- Review of new deals / realizations;
- Pipeline update;
- Fund overview / dashboard on performance per company relative to original plan;
- Portfolio company snapshot of each unrealized investment (financial and qualitative with initial investment highlights);
- Portfolio company valuations, methodology used over last four quarters (to highlight changes);
- Discussion of potential exits—timing and amounts (preferably in writing);
- Detailed fund expenses including payments to affiliates, broken deal, administrative, etc. and offsets;
- Disclosure of any conflicts or investments completed in similar strategies and why they weren't a fit for the fund;
- Disclosure of capital call line usage, fund performance excluding the capital call line and the terms of line;
- ESG reporting;
- Annual *in camera* discussion with the auditor regarding financial statements, valuations, carried interest, fees, etc.;
- *In camera* (LP only) session.

LPACs: Guidance for LPAC members

Structure and Processes

The GP or the LPAC should appoint a rotating chair, e.g., with one to two-year terms, to chair LPAC meetings and to serve as an additional point of interface between the LPAC and the GP.

All LPAC meetings should include an *in camera* session that does not include the GP, and LPAC members should provide feedback to the GP post *in camera*.

For critical governance matters, the LPA should identify clearly which issues require communication with or a vote among the full partnership, e.g., LPA amendments, strategy changes, key person replacements, extension of the fund's offering period, investment period and term. Areas of confidentiality should also be identified.

LPAC members should disclose potential conflicts of interest specific to a matter under the LPAC's consideration to the entire LPAC in advance of a vote, such as co-investments in underlying portfolio companies, exposures to the GP in other funds, minority ownership of the GP, etc.

Responsibilities and Powers

LPAC members should be generally understood not to have a fiduciary duty to the fund beyond the duty to act in good faith. LPAC members should ensure that they are appropriately indemnified and not implicated as fiduciaries acting on behalf of other LPs in the fund.

Any LP that seeks and accepts an LPAC seat should be expected to participate and vote. Abstentions should be reserved only for LPAC members who may be conflicted on the issue under consideration and not as a general response.

Participating individuals should have delegated authority to vote on behalf of their organizations; LPAC members should actively participate in meeting discussions. However, in advance of votes, GPs should provide a reasonable amount of time based on the complexity of the issue for LPAC members to review materials and discuss the matter internally prior to the vote being held.

LPAC members should be able to add an item to the meeting agenda subject to a reasonable and agreed upon notice requirement to the GP.

LPAC members should ensure they have a contractual right to call for external counsel or expertise, at the fund's expense, and should exercise such rights as needed.

LPAC members should study materials and prepare opinions and questions in advance of each meeting.

LPAC members should have *in camera* access to the auditor.

The partnership agreement should clearly state expectations for LPAC participation including penalties for failure to uphold such expectations, e.g., revocation of an LPAC member's seat for repeated failure to attend meetings or vote on matters presented.

Auditor Independence and Scope of the Fund Audit

The auditor of a private equity fund should be independent and focused on the best interests of the partnership as a whole, rather than the interests of the GP. The client of the fund audit should be the partnership as a whole, rather than the GP alone.

The GP should form an audit committee comprised of representatives from all LPs in the fund and not solely LPAC members. The mandate for such a committee could include the approval of the firm selected to perform the fund audit, the scope of agreed upon procedures as well as the performance of any services by the same firm beyond the fund audit.

Auditors hired to conduct the fund audit should be requested to provide a statement to LPAC members detailing other work performed for the fund.

LPAC members should be provided the opportunity to review the scope of work for the fund audit, with sufficient detail as to the agreed upon procedures that will be performed.

The GP should notify the LPs of any changes to the appointed auditor.

The scope of the audit should include the examination of a sampling of Capital Account Statements, fees and expenses captured through the ILPA Reporting Template (2016). Waterfall calculation formulas and the calculation's constituent inputs should be examined by the fund auditor. In addition, the scope of agreed upon procedures could include: an examination of management's assertion relating to its compliance with these key terms; certain procedures in connection with the financial statements as a whole on a supplemental schedule of changes in partners' capital; an internal controls review covering control objectives related to capital.

In cases where the LPAC of a fund or an individual LP has reason to engage a third party audit of LPA compliance, fund document language should allow for the access of this third party to any information necessary to the engagement as determined by the LP.

The findings of an audit in summary form should be available to all investors in the fund. LPAC members should have access to the management letter provided by the fund auditor and the ability to pose questions to the auditor directly. A discussion of the annual audit findings should be a standing item on LPAC meeting agendas.

Financial Disclosures

In order to act as effective partners and investors in a fund, as well as to fulfill their own fiduciary duties, LPs must have access to a wide range of information regarding the management of a fund. While the specific needs and requests will vary depending on the relationship, the LP should at minimum be notified of any fee or expense assessed, either to the partnership or to any portfolio companies, as outlined in the ILPA Reporting Template for Fees, Expenses and Carried Interest (2016).

Fees and expenses charged to individual LPs and the fund as a whole and carried interest calculations should regularly and consistently be disclosed and subject to periodic review by the Limited Partner Advisory Committee and certification by an independent auditor.

Fees and Expenses

Fund documentation should adequately detail the definition, calculation, assessment and reporting of any fees and expenses allocable to the partnership or to portfolio companies that impact on the LP's commitment to the fund and/or the net investment return. Fee and expense policies should be appropriate, reasonable, arm's length and fully disclosed to investors.

All fees charged to portfolio companies should be 100% offset against the management fee and accrue to the benefit of the fund regardless of the application of tax burdens or claw backs. Any management fees allocated on a pro rata basis to co-invest vehicles should accrue to the fund and be offset.

The types of fees and expenses to be assessed to the LP, to the partnership and to portfolio companies should be disclosed to investors prior to the initiation of the fund.

GPs and LPs should assure there is a shared and adequate common understanding of how the language in the Limited Partnership Agreement affects key fund terms, in particular provisions relating to the calculation and application of fees and expenses charged to individual investors in the fund and to the partnership.

GPs should disclose each LP's commitment percentage in order to assist reconciliation of fees and expenses.

Fees and expenses charged to the portfolio companies, to the investors in the fund, or to the partnership, and any fees charged by captive operations providing services to the GP, should be consistently disclosed on a quarterly basis to all LPs, following the data points and definitions as expressed in the ILPA reporting standards including the Reporting Template for Fees, Expenses and Carried Interest (2016).

These quarterly disclosures should be provided with sufficient detail to enable investors to evaluate and validate the calculation of management fees and partnership expenses, offsets to management fees and partnership expenses, as well as accrued and paid carried interest and other features as detailed in the ILPA Reporting Template (2016).

GPs should provide the models used for calculations of fees, expenses, carried interest and net IRR calculations and be responsive to requests to provide or explain their models.

All fees not subject to offset should be disclosed to investors.

Fund documentation should outline clear definitions used for related parties and list the related parties that will be involved in the management or operations of the fund, with subsequent notifications to investors as necessary over the life of the fund. Fees received by related parties, whether charged to investors or to portfolio companies, should be appropriately noted as in the ILPA Reporting Template (2016). If an operating partner or other affiliate acting in support of the fund's operations is participating in the economics of the GP, this should also be disclosed.

Fee and expense reporting should be included within the scope of the fund's annual audit, which should also include testing of a representative sample of LP-level expense allocations and waterfall calculations.

The presentation of allocable and charged fees and expenses should be consistent with provisions in the limited partnership agreement and side letters and should be presented such that it can be referenced within that pre-agreed language.

Other Financial Information, Quarterly

In addition to quarterly disclosures on fees and expenses, LPs should receive quarterly:

- Unaudited quarterly profit and loss statements also showing year-to-date results;
- Information on material changes in investments and expenses;
- Summary of all capital calls and distribution notices including balances on uncalled capital commitments;
- Management comments about changes during the quarter;
- An explanation of any quarter-to-quarter valuation changes, including any changes in the valuations methodology applied.

Financial Disclosures, Annual

GP annual reporting should include portfolio company and fund information on material risks and how they are managed. These should include:

- Concentration risk at fund level;
- Foreign exchange risk at fund level;
- Leverage risk at the fund and portfolio company levels;
- Realization risk (i.e. change in exit environment) at the fund and portfolio company levels;
- Strategy risk (i.e. change in, or divergence from, investment strategy) at the portfolio company level;
- Reputation risk at the portfolio company level;
- Environmental, social and governance risks, at the fund and portfolio company levels;
- Portfolio company information consistent with the ILPA Standardized Reporting for Portfolio Companies.

Annual Reports–Funds should provide the following information at the end of each year (within 90 days of year-end) to investors:

- Management letter describing the activities of the fund directed to the LPAC but distributed to all investors;
- Audited financial statements (including a clean opinion letter from auditors and a statement from the auditor detailing other work performed for the fund);
- Internal Rate of Return ("IRR") calculations prepared by the fund manager that clearly set forth the methodology for determining the IRR. Best practice is to disclose the net IRR on both a levered and unlevered basis, taking into account any impact from capital call credit facilities.
- Schedule of aggregate carried interest received;
- Political contributions made by the manager or any associated individuals to trustees or elected officials on investor boards.

More immediate reporting may be required for material events.

GPs should also provide, during due diligence or on a pre-agreed cadence with LPs, information on salaries, bonuses and dividends paid, particularly the commitment and carry split by individual partner, and the same split between current and previous funds. LPs should have an understanding of the carry/ownership percentages in the management company held by the partners in the GP.

Capital Calls and Distributions

Capital calls and distributions should provide information consistent with the ILPA Standardized Reporting format, including the exact amount of carried interest and provide build-up to carry calculation, percentages for each limited partner and detail in calculation (including offsets) of management fees. The GP should also provide estimates of quarterly projections on capital calls and distributions.

Subscription Lines of Credit

Quarterly and annual reporting should include a schedule of fund-level leverage, including commitments and outstanding balances on subscription financing lines or any other credit facilities in use by the fund.

During fundraising, and included in regular reporting over the life of the fund, LPs should be provided with performance information, i.e., IRR and TVPI or MOIC figures, with and without the use of such facilities in order to inform performance comparisons on a vintage year basis and relative to other funds.

The terms for any such subscription facilities should be disclosed or available to LPs on request. Any subscription line facility used should be reasonable in both size as a percentage of the total fund as well as duration.

LPs should be offered the option to opt out of a facility at the onset of the fund. There should be a reasonable window of at least 10 business days for LPs to respond to capital call requests.

At the time of the fund close, or on the occurrence of initiating such a facility, GPs should disclose to all LPs:

- The anticipated size of any facilities contemplated;
- Proposed limits on duration (both cleanup and term);
- Parameters around the intended use of proceeds;
- Protocols for regular disclosure of the total amount outstanding and any costs incurred by the fund related to the use of such facilities including estimated basis points on the front end, unused fees, and interest rates. Current rates should be explicit;
- How commitment-secured facilities or NAV-secured facilities will be treated in the context of overall leverage limitations on the fund (e.g., facilities to increase investment capacity of the fund versus bridging facilities).

Portfolio Company Information

Commercially sensitive portfolio company information should be provided separately and distinctly from fund-level reporting.

Valuation information related to the portfolio companies should be disclosed on a quarterly basis, consistent with the ILPA Portfolio Company Metrics Reporting Template.

Financial and Performance Reporting

Performance information provided to LPs on both a quarterly and annual basis should include figures that are both gross and net of accrued carried interest, as well as the methodology used to compute performance. Historical performance figures provided during fundraising should include detail on the assumptions used to calculate unrealized gains, including EBITDA adjustments. Should a GP elect to report performance net of accrued carry, the amount of accrued carried interest should be disclosed to LPs.

In order to verify performance and ensure (at a minimum) the reasonability of waterfall/fee calculations, an LP needs access to detailed fund cash flows.

At the end of the fund's life, LPs should be provided with a detailed breakdown of each historical cash flow, expressed in appropriate accounting categories to complete a reconciliation against their internal ledgers. It is recommended that GP-provided cash flows mirror the categories used within the ILPA Capital Call and Distribution Notice Template.

Specific checks against the GP-reported numbers can include:

- Performance (net/gross IRR, MOIC);
- Carry and clawback obligations;
- Preferred return calculations (proper catch-up);
- Return of capital and fees;
- Fee calculations including offsets.

Fund Marketing Materials

Marketing materials with respect to a fund should include the following information:

- Values for each unrealized portfolio company in prior funds based on most recent audited financials;
- Explanation by the GP of those values that deviate from the audited statements;
- Description of any pending or threatened litigation;
- Performance information for prior funds on a gross and net basis, including IRR, multiple of capital and distributed to paid-in capital metrics, as well as the explanation for the derivation of IRR;
- Description of any pending or threatened litigation;
- Disclosure of agents and sub-agents used;
- Political contributions made by the manager or any associated individuals to trustees or elected officials on investor boards;
- Valuation policy;
- Policy for subscription line usage.

Information Access and Fund Audits

Investors or their designated proxies should consider the following as it relates to access to fund auditors and fund auditor-generated reports as well as findings from any third party engaged by an individual LP or the LPAC to review compliance of the GP's reporting and policies with the LPA:

- The fund auditor has an ultimate responsibility to ensure that financial reports are free from fraud or misstatement for the benefit of all partners in a fund including limited partners.
- The findings of the fund audit, in summary form, should be available to all investors in a fund.
- Limited Partners Advisory Committee (LPAC) members should additionally have access to the management letter provided by the fund auditor and the ability to pose questions to the auditor directly. A discussion of the annual fund audit findings should be a standing item on LPAC meeting agendas.
- A sampling of Capital Account Statements, Fees and expenses captured through the ILPA Reporting Template (2016) and waterfall calculation formulas and the calculation's constituent inputs should be examined by the fund auditor. The results of this examination should be disclosed to investors upon request.
- In cases where the LPAC of a fund or an individual LP has reason to engage in a third-party audit of LPA compliance, fund documentation language should allow for the access of this third party to any information necessary to the engagement as determined by the LP.

Notifications and Policy Disclosures

In addition to robust financial reporting that is consistent with both ILPA guidance and industry best practice, GPs should provide to investors disclosures relating to policies and specific events that impact the fund, including material developments related to ESG factors, regulatory compliance or that present legal, reputational or business risk to the GP that may impact the fund. In general these disclosures should act as assurances that all investors are able to access relevant information surrounding potential conflicts of interest and any events that may impact the fund or any individual LP.

ESG Policies and Reporting

Among such disclosures, GPs should consider maintaining and periodically updating an ESG policy, provided to all LPs or to potential LPs on request. The policy should include information sufficient to enable an LP to assess the degree to which the GP's investment strategy and operations are aligned with an individual LP institution's ESG policies, including how ESG is factored into due diligence as well as incident disclosures and performance reporting. The policy should identify procedures and protocols that can be verified and/or documented, rather than a vague commitment of behavior.

Responsible investment, or ESG investing, is an approach to investment that incorporates ESG factors into investment decisions, to better manage risk and generate sustainable, long-term returns. As a fiduciary and steward of capital, the LP expects that all potentially material risks and opportunities for the fund are identified and managed by the GP.

GPs can demonstrate their commitment to ESG as an investment philosophy through a responsible investment policy, or by adhering to industry standards such as the Principles for Responsible Investment or the AIC Guidelines for Responsible Investment. Reporting frameworks have been established to help LPs understand, verify and assess GP processes for ESG integration, including:

- ESG Disclosure Framework for Private Equity;
- PRI Limited Partners' Responsible Investment Due Diligence Questionnaire;
- ILPA Portfolio Company Metrics Template voluntary ESG reporting section to support portfolio company-level reporting on ESG factors;
- IFC Toolkit for Disclosure and Transparency;
- PRI ESG Reporting Framework.

> To the extent that a GP claims to pursue an impact investing strategy specifically, a framework to measure, audit and report on the impacts achieved by the fund should be adopted.

LPs should take into account the ability of the GP to deliver on more bespoke or detailed ESG-related disclosure requirements when formulating such requests. Conversely, GPs should take into account that LPs may have limited flexibility to change their ESG disclosure requests due to institutional policies or other requirements.

Both the LP and the GP will benefit from a clear understanding of mutually agreed outputs/outcomes at the start of a fund. LPs may wish to affirm this understanding in the fund terms through a side letter, if their requirements are not already covered by any generally applicable representations made by the GP in the LPA. However, the LP understands that the GP's approach to ESG will evolve over the lifetime of the fund or that there may be instances of confusion over LP requirements. Therefore while expectations should be made clear, there should be flexibility for adaptation and dialogue.

Other Policy Disclosures and Notifications

Any policy or event with a significant effect on the fund or its investors should be proactively and explicitly disclosed to all LPs upon their issuance, modification or occurrence, including policies governing:

- Allocation of co-investments, and the fees assessed to co-investors including broken or dead deal expense;
- Separate accounts or commercial relationships that impact the economics of the fund;
- Secondary sales and any secondary transactions as they occur;
- Approval and/or required notification to LPs of transfers of minority ownership interest in the GP;
- Risk management policies including ESG, currency, and reputational risk;
- Compliance policies on conflicts of interest generally, including policies relating to parallel vehicles that invest alongside the fund, as well as the use of third parties and consultants;
- Organizational code of conduct governing policies and protocols as relates to harassment, discrimination and workplace violence.

Notifications

The following is an indicative list of notifications that should be provided to LPs on occurrence, or disclosed upon request:

Amendments or Breaches to LPA

- The event of a modification of the LPA even in cases where the modification is expressly beneficial to investors;
- Any breach of a provision of the LPA or other fund documents.

Regulatory Examinations and Disclosures

- On occurrence, the event of any legal or regulatory inquiry or examination into the fund, including the type of examination that occurred and a summary of the resulting findings or actions;
- Upon request, full access to the results of any regulatory investigation or examination;
- Changes to a manager's obligatory disclosures under regulation.

Co-Investments

- Co-investments as they occur, preferably in the context of regular capital call notices.

Changes in Economic Ownership or Control

- Changes in the actual or beneficial economic ownership, voting control of the GP, or changes or transfers to legal entities who are a party to any related document of the fund.

Economic and Risk Management Notifications

- Disclosures in the event that a hurdle rate is exceeded;
- The collection of revenues from portfolio companies' use of group purchasing organizations;
- Any material contingency or liability arising during the fund's life.

Incidents Presenting Potential Breach of ESG Policy or Code of Conduct

- Disclosures of any incident that presents a potential violation of the GP's stated ESG policy;
- Disclosures of any incident representing a potential breach of a GP's organizational code of conduct.

Acknowledgement of the receipt of any of the abovementioned disclosures should not be interpreted to imply acceptance of the substance of the disclosures by an LP unless otherwise indicated.

LP Disclosures

To exercise their obligations as fiduciaries, and in particular the governance rights accorded to them in the partnership agreement, LPs require sufficient understanding as to the nature and identity of the other LPs in the fund.

For critical governance matters, the confidentiality provisions of the LPA should allow investors within the same fund to discuss these issues.

GPs should provide, subsequent to the closing of the fund, a list of other LPs in the fund including a list of LPAC members as well as contact information. At regular intervals over the life of the fund, the GP should provide updated lists of LPs in the fund to reflect any subsequent transfers of LP interest or changes to LP contact information.

LPs acknowledge the important responsibility they bear with higher transparency in the form of confidentiality. All proprietary information provided by the GP to the LP, as covered within any confidentiality provisions agreed within fund documentation, should be protected from public disclosure.

Definitions

Affiliates and Related Parties | With respect to any specified Person, an Affiliate is a Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, the Person specified. Portfolio Companies, Fund Vehicles and Feeder Entities are exempted from the Affiliate designation. Each Key Person, the General Partner and the Fund Manager are generally considered to be an Affiliate of the others.

Break Up Fee (Broken Deal) | Requires the party responsible for a break-up in an acquisition to pay the other party a negotiated amount of liquidated damages.

Bridge Financing | In the context of subscription lines of credit, short-term fund-level financing secured by uncalled LP commitments and intended primarily to temporarily finance investments or expenses in advance of calling capital from LPs. See also: Subscription Lines of Credit.

Capital Call | (Also known as a draw down) Capital that LPs have pledged to the fund that is requested and transferred from LPs to GP to finance an investment or fund expenses.

Carried Interest | (Also known as carry) An agreed share of the profits resulting from the realization of an investment, accruing to the GP. Calculation of carried interest is stipulated within the fund's legal documents and becomes payable once investors have recouped their original investment in the fund, plus a defined hurdle rate, if applicable.

Change of Control Provision | A clause in a business contract which stipulates that if ownership of a majority of the equity of the management company changes hands, then the other party to the contract has a right to cancel, usually without liability for paying any compensation.

Clawback | A limitation on the GP's ability to collect a greater share of the fund's cumulative profits over the life of the fund than the specified percentage stipulated by the LPA. When triggered, the clawback provision requires that the GP return to the fund's LPs an amount equal to what is determined to be "excess" distributions.

Closing (Fund) | The first closing is the date on which the first LPs have made their commitments and are admitted to the fund. The final closing date is the date on which the last LP is admitted to the fund and the fund is closed to any further subscriptions from interested LPs.

Co-investment | The syndication of a private equity financing round or an investment by individuals (usually general partners) alongside a private equity fund in a financing round. Two or more investors in a given transaction. Also known as syndication. The average rate of co-investment is the total number of investments made in the total number of deals in a given period.

Commitment (Fund) | An LP's contractual obligation to provide capital to a fund, in response to capital calls from the GP for fund investments, to up to the amount specified in the subscription agreements.

Cross-fund Investing | Where a firm invests in the same company at different times from different funds, i.e., uses their current fund towards a financing round in a company which forms part of the portfolio of one of their earlier funds.

Distributions | Cash and/or securities, i.e. payments "in-kind", delivered to LPs, excluding amounts returned in relation to temporary, bridging or aborted investments and net of any distributed amounts which have subsequently been clawed back, e.g. for warranty claims.

ESG | Environmental, social and governance factors that can impact the performance of a portfolio company, the investment portfolio as a whole, or the GP itself. It is a phrase commonly used alongside and in the context of responsible investment.

Fiduciary Duty | The legal or ethical relationship of confidence or trust between two or more parties, most commonly a fiduciary and a principal. In the fund context, it is the obligation of the GP to put the interests of the fund as a whole before that of a subset of investors or of the GP itself.

Fund | A designated pool of capital targeted at private equity investment, established with the intent to exit investments within a stated timeframe.

Fund Formation Documents | All legal documents pertaining to the obligations and rights of the GP and LP, including the Limited Partnership Agreement (LPA), any side letters agreed by the LP and GP, and subscription documents binding the LP to the fund.

General Partner Commitment | (Also known as the GP Contribution) The amount of capital that the GP contributes to the fund, alongside LPs in the partnership. The GP commitment is a critical aspect of alignment of interest with the LPs in the fund. Standard practice is that the GP commit 2-5 percent of the capital of the fund as a whole.

GP-Led Secondary | A secondary transaction in which the GP, on behalf of the fund, enters into an agreement with an acquirer to purchase a significant portion of the assets of the fund. Existing LPs of the fund are provided with the option to: (a) sell and receive a pro rata portion of the cash purchase price, (b) "roll" their pro rata share of the LP interests in the fund into a special purpose vehicle (SPV) established to purchase the assets of the target fund or (c) in some cases, to receive a combination of options (a) and (b).

Indemnification | Typically included within the LPA along with the exculpation provision, an indemnity clause protects the GP from third party claims related to the underlying transactions within the fund. The exculpatory clause addresses exemptions to the indemnity that would bar the LP or third parties from pursuing a legal claim against the GP in particular circumstances as stated in the LPA.

Internal Rate of Return (IRR) | The discount rate at which the present value of future cash flows of an investment equals the cost of the investment. It is determined when the net present value of the cash outflows (the cost of the investment) and the cash inflows (returns on the investment) equal zero, with the discount rate equal to the IRR. IRR is typically used as a measure of performance for private equity funds relative to other asset classes, and for the purposes of performance benchmarking.

Investment Period | The time from the initial closing of the fund to the end date as specified in the LPA, or the date of an early termination of the Investment Period, during which capital can be called from LPs to fund investments.

Key Person Clause | If a specified number of key named executives cease to devote a specified amount of time to the Partnership, which may include time spent on other funds managed by the manager, during the commitment period, the "key person" clause provides that the manager of the fund is prohibited from making any further new investments (either automatically or if so determined by investors) until such a time that new replacement key executives are appointed. The manager will, however, usually be permitted to make any investments that had already been agreed to be made prior to such date.

Limited Partner Advisory Committee (LPAC) | A committee of LPs within the fund comprising a cross-section of LPs, mandated to consider conflicts of interest and provide the GP with guidance on any material situations impacting the fund.

Limited Partnership Agreement (LPA) | Legally binding document that articulates the operating rules for a fund together with the rights and responsibilities of the parties subscribing to it; see Fund formation documents.

Management Fee | The management fee is used to provide the partnership with resources such as investment and administrative personnel, office space and administrative services required by the partnership. Typically, the management fee is charged as a percentage, e.g., 1-2%, of committed or invested capital, or some combination thereof.

Management Fee Offsets | The extent to which monitoring, transaction, and other fees charged directly to portfolio companies and paid to the GP are offset against management fees paid by the LP to the GP, typically 60-100%, with 100% offset preferred by LPs.

MOIC | The return to LPs on the investment expressed as a multiple of the individual LP's investment determined by dividing the aggregate amount of distributions received by the LP by the aggregate amount of capital invested by the LP.

NAV (Net Asset Value) | The amount by which the value of all of the assets of a fund exceeds all debt and liabilities of the fund, as determined in accordance with GAAP or other accounting or valuation metrics.

No Fault GP Removal | A clause in the LPA that permits investors, after the final closing date, to remove the GP and either terminate the Partnership or appoint a new general partner, such as in circumstance where there has been no finding of breach of contract.

Partnership Expenses | Expenses borne by the partnership including costs associated with the organization of the partnership, the purchase, holding or sale of securities, and legal and auditing expenses.

Preferred Return (Hurdle Rate) | The internal rate of return that a fund must achieve before the GP or managers may receive an increased interest in the proceeds of the fund. Often, if the expected rate of return on an investment is below the hurdle rate, the project is not undertaken.

Private Placement Memorandum (PPM) | (Also known as an Offering Memorandum or "PPM") A document that outlines the terms of securities to be offered in a private placement including a formal description of the investment opportunity drafted in compliance with securities regulations and addresses the terms of the sale, fees, capital structure and historical financial statements; a description of the business; summary biographies of the management team; and the numerous risk factors associated with the investment.

Recycling | A provision in the LPA allowing the GP to recycle the proceeds from an exit back into the fund, within a defined period of time. Recycled capital is added back to the LP's undrawn capital commitment and available for draw down for further investments during the investment period.

Standard of Care | The degree of care or competence that the GP is expected to exercise in its investment decisions and control of the fund, typically framed as a good faith standard subject to the care that an ordinarily prudent person would exercise under similar circumstances.

Subscription Lines of Credit | Often referred to as bridge financing, typically a short-term revolving line of credit secured by the uncalled commitments to the fund, collateralized by awarding capital call rights to the lender.

Syndication | A number of investors offering capital together as a group on a particular deal. A lead investor may coordinate such deals and represents the group's members. Also see: Co-investment.

Total Value to Paid In (TVPI) | The ratio of the current value of remaining investments within a fund, plus the total value of all distributions to date, relative to the total amount of capital paid into the fund to date. TVPI is considered to be preferable measure of performance before the end of a fund's life.

Vintage Year | Either the year of first closing, or the year in which management fees commence.

Waterfall | Delineates the method by which capital gains are allocated between the participants in an investment, by defining the order in which distributions are allocated to LPs and the GP. The preferred waterfall structure distributes all committed capital back to LPs before the GP begins to accrue carried interest, also known as a whole of fund waterfall structure.

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