ILPA Industry Intelligence

2020 ILPA Private Market Fund Terms Survey

Insights on Trends in Private Fund Negotiations & Terms

ILPA's inaugural 2020 ILPA Private Market Fund Terms Survey draws on insights from 70 LP organizations into what is "market" with respect to negotiations around private market fund terms. The 2020 Survey includes a snapshot of recent trends in management fees, hurdle rates, organizational expenses, MFN provisions and coinvestment rights. The Survey also illuminates the benefits of internal coordination on negotiating outcomes, as well as LP responses to deterioration in fiduciary duties and the legal issues of highest importance to ILPA members. Highlights include:

1. **Fiduciary Duties Are Being Eroded across the Industry:** Across private market strategies, 71% of LPs have seen fiduciary duties contractually modified or eliminated altogether over the last 12 months in at least 50% of the funds in which they have invested. Reduced fiduciary duties not only harm governance but also the quality of alignment between GPs and LPs.

2. **LPs are Footing the High Costs of Paying GP Counsel to Negotiate Against Them:** Even in the case of re-ups or significant fund size increases, organizational expenses remain steadily high, with 69% of LPs reporting typical organizational expense caps from 0.5% to above 1.5% of capital raised. Because fund formation costs are borne by LPs, LPs observe little incentive for GP counsel to conduct a more efficient process, resulting in higher legal costs for the LPs ultimately paying them. LPs have also noted that information from one negotiation is sometimes used against them precedentially in an entirely separate fund negotiation, where the same external GP counsel is engaged. The lack of competition—a small number of law firms represent the majority of GPs—means market forces do little to keep costs in check.

3. **The Death of the Preferred Return Hurdle Has Been Greatly Exaggerated:** Nearly 90% of respondents indicated that hurdle rates had not moved over the last 12 months, belying an oft-cited trend evidenced by only a small number of managers that have decreased or removed hurdles in recent funds. LPs have asserted that GPs seeking enhanced economics need to have "near-perfect" performance.

4. **No Fault Removal Is Critical for LP Protection & LPs Insist on It:** Over 71% of LPs reported that no-fault removal provisions were in place in at least half the funds in which they invested over the past year. While only 25% of respondents have experienced a GP removal within the last five years, ILPA members consider no-fault removal provisions to be an essential investor protection worth fighting for. Whereas for cause removal provisions can only be triggered by an unattainably high bar, no-fault provisions are more straightforward to execute and serve as a guaranteed forcing mechanism in cases of egregious mismanagement or behavior. No Fault Removal provisions have become all the more critical as 52% of respondents indicated that more than 75% of the funds in which they invested over the last 12 months included a gross negligence standard of care, which implies a high standard for establishing cause in the case of a removal.

5. **Ask and Ye Shall Receive:** LPs generally reported a high degree of success in receiving ILPA standardized reporting when an explicit request was made of the GP, regardless of whether fee and expense disclosures were cited as an LP "must have" during fund negotiations. However, respondents that prioritize fee and expense disclosures as a "must have" during negotiations were more likely to receive ILPA standardized reporting than those who did not. With a priority on the ILPA Reporting Template, 50% of LPs who requested an ILPA template received it more than 50% of the time.