

TABLE OF CONTENTS

CHAPTER 1

An Introduction to Private Equity Funds

§ 1.01	Lessons from the Rearview Mirror; Introduction	1-3
	[1] Lessons from the Rearview Mirror	1-3
	[2] Introduction	1-5
§ 1.02	Private Ordering of the Financial Intermediary Relationship	1-12.2
	[1] Economic Expectations	1-12.2
	[2] Markets	1-15
	[3] Alignment of Interests	1-18
	[4] Practical Considerations	1-20
§ 1.03	Venture Capital Funds	1-24
	[1] Investment Strategy	1-24
	[2] Organizational Structure	1-26
	[3] Key Economic Terms	1-27
	[a] Carried Interest	1-27
	[b] Preferred Return	1-28
	[c] Management Fees	1-28
	[d] Transaction Fees	1-28
	[4] Fund Size	1-29
	[5] Typical Investors	1-29
	[6] Leverage	1-30
	[7] Transfer; Redemption	1-30
	[8] Reinvestment	1-30
	[9] Additional Investors	1-31
§ 1.04	Leveraged Buyout and Merchant Banking Funds	1-32
	[1] Investment Strategy	1-32
	[2] Organizational Structure	1-33

PRIVATE EQUITY FUNDS

	[3]	Key Economic Terms	1-33
		[a] Carried Interest	1-33
		[b] Preferred Return	1-34
		[c] Management Fees	1-34
		[d] Transaction Fees	1-35
	[4]	Fund Size	1-35
	[5]	Typical Investors	1-36
	[6]	Leverage	1-36
	[7]	Transfer; Redemption	1-36
	[8]	Reinvestment	1-37
	[9]	Additional Investors	1-37
§ 1.05		Hedge Funds	1-38
	[1]	Investment Strategy	1-39
	[2]	Organizational Structure	1-39
	[3]	Key Economic Terms	1-40
		[a] Carried Interest	1-40
		[b] Preferred Return	1-41
		[c] Management Fees	1-41
		[d] Transaction Fees	1-41
	[4]	Fund Size	1-42
	[5]	Typical Investors	1-42
	[6]	Leverage	1-42
	[7]	Transfer; Redemption	1-42
	[8]	Reinvestment	1-43
	[9]	Additional Investors	1-43
§ 1.06		Funds of Funds	1-44
	[1]	Investment Strategy	1-45
	[2]	Organizational Structure	1-45
	[3]	Key Economic Terms	1-46
		[a] Carried Interest	1-46
		[b] Preferred Return	1-46
		[c] Management Fees	1-46
		[d] Transaction Fees	1-47
	[4]	Fund Size	1-47
	[5]	Typical Investors	1-47
	[6]	Leverage	1-47
	[7]	Transfer; Redemption	1-48
	[8]	Reinvestment	1-48
	[9]	Additional Investors	1-48
§ 1.07		Real Estate Funds	1-49
	[1]	Investment Strategy	1-49
	[2]	Organizational Structure	1-49
	[3]	Key Economic Terms	1-50
		[a] Carried Interest	1-50
		[b] Preferred Return	1-50

TABLE OF CONTENTS

vii

	[c] Management Fees.....	1-50
	[d] Transaction Fees.....	1-51
	[4] Fund Size.....	1-51
	[5] Typical Investors.....	1-51
	[6] Leverage.....	1-51
	[7] Transfer; Redemption.....	1-51
	[8] Reinvestment.....	1-52
	[9] Additional Investors.....	1-52
§ 1.08	Captive and Semi-Captive Funds.....	1-53
§ 1.09	Hybrid Funds.....	1-55
§ 1.10	Pledge Funds.....	1-57
§ 1.11	Mezzanine Funds.....	1-59
§ 1.12	Impact Funds.....	1-60

CHAPTER 2

Key Economic Terms: Carried Interest, Management Fees and Other Income

§ 2.01	Overview of the Typical Private Equity Fund.....	2-2
	[1] Economic Expectations.....	2-3
	[2] Lifecycle of the Typical Private Equity Fund.....	2-5
§ 2.02	The Basic Carried Interest.....	2-8
	[1] Size of the Carried Interest.....	2-9
	[2] Fund Income Subject to the Carried Interest.....	2-12
	[a] Accounting.....	2-13
	[b] Income From Portfolio Investments.....	2-14
	[c] Other Income.....	2-15
	[d] Calculations of Profits.....	2-16
	[i] Aggregation.....	2-18
	[ii] Management Fees.....	2-19
	[iii] Organizational Expenses....	2-19
§ 2.03	Preferred Returns.....	2-21
	[1] General Partner Make-Ups.....	2-21
	[2] Formulating Hurdle Rates and Preferred Returns.....	2-22
	[3] Calculating Hurdle Rates and Preferred Returns.....	2-24

PRIVATE EQUITY FUNDS

§ 2.04	Timing Issues and the Carried Interest	2-25
	[1] General Timing Issues	2-25
	[2] Clawback Approaches	2-28
	[3] Security for the Clawback	2-30
§ 2.05	Management Fees	2-33
	[1] Formulation and Size	2-33
	[2] Base for Calculation	2-36
	[3] Timing	2-39
	[4] Source of Payment and Effect on Capital Commitments	2-39
§ 2.06	Transaction and Other Fee Income	2-42
	[1] Approaches to Fee Income	2-42
	[2] Techniques for Sharing	2-45
§ 2.07	Treatment of Private Equity Fund Expenses	2-47
§ 2.08	Key Economic Terms for Anchor Investors	2-50

CHAPTER 3**General Structural Issues
for Domestic Funds**

§ 3.01	Limited Partnerships: Structural Features of the Traditional Choice	3-2
	[1] Applicable State Law	3-2
	[2] Multi-Tier Structures	3-3
	[3] Formation of a Limited Partnership	3-6
	[4] Limited Liability	3-8
	[5] Fiduciary Relationships	3-11
	[6] Establishment of Series Within a Limited Partnership	3-19
§ 3.02	Other Structural Terms	3-21
	[1] Multiple Fund Entities	3-21
	[2] Investment by the General Partner	3-22
	[3] Single or Multiple Closings	3-24
	[4] Hub and Spoke Structures	3-26
	[5] Liquidating Trust	3-27
§ 3.03	Secondary Transactions in Limited Partner Interests	3-29
	[1] Overview	3-29
	[2] Gating Issues: Obtaining Third-Party Consents	3-31
	[3] Structural Considerations	3-32

TABLE OF CONTENTS

ix

[4]	Allocation of Liabilities and Expenses Between Buyer and Seller.	3-33
[5]	General Partner's Perspective	3-35

CHAPTER 4

General Structural Issues for the General Partner and the Manager

§ 4.01	Structural Goals.	4-1
§ 4.02	Structural Options.	4-6
	[1] Subchapter S Corporation	4-6
	[2] Business Trusts.	4-7
	[3] Limited Partnerships	4-9
	[4] Limited Liability Company	4-9
§ 4.03	Limited Liability Companies: The Preferred Choice	4-11
	[1] Nomenclature	4-12
	[2] Formation of a Limited Liability Company	4-12
	[3] Limited Liability	4-15
	[4] Fiduciary Relationships	4-16
§ 4.04	Other Structural Terms.	4-19
	[1] Management	4-19
	[2] Investments.	4-21
	[3] Sharing the Carried Interest.	4-22
	[4] Dilution and Vesting	4-22
	[5] Estate and Tax Planning Structures	4-25
	[6] Going Concern Value	4-26

CHAPTER 5

Taxation of the Private Equity Fund and the Investors

§ 5.01	Classification as a Partnership	5-2
	[1] In General.	5-2
	[2] Publicly Traded Partnerships.	5-3
	[3] Alternatives to Funds.	5-9
§ 5.02	Taxation of Limited Partners	5-12
	[1] Acquisition of Fund Interest	5-12
	[2] Partner's Basis in Fund Interest	5-12

PRIVATE EQUITY FUNDS

	[3]	Allocations and Capital Accounts	5-18
	[4]	Distributions by the Fund	5-21
§ 5.03		Special Issues for U.S. Taxable Partners	5-22.1
	[1]	Noncorporate Partners	5-22.2
	[2]	Corporate Partners	5-22.3
§ 5.04		Special Issues for U.S. Tax-Exempt Partners	5-22.4
	[1]	Debt-Financed Income	5-23
	[2]	Possible Unrelated Business Taxable Income Items	5-26
§ 5.05		Special Issues for Non-U.S. Partners	5-29
	[1]	In General	5-29
	[2]	Engaged in a U.S. Trade or Business	5-31
	[3]	Income Not Effectively Connected with a U.S. Trade or Business	5-33
	[4]	Foreign Account Tax Compliance Act	5-34

CHAPTER 6**Taxation of the General Partner**

§ 6.01		Receipt by the General Partner of an Interest in the Fund	6-1
	[1]	In General	6-1
	[2]	Capital vs. Profits Interest	6-4
§ 6.02		Receipt of a Capital Interest by the General Partner	6-6
	[1]	Recognition Event	6-6
	[2]	Valuation of Capital Interest	6-6
	[3]	Consequences to Other Partners	6-8
	[4]	Capital Interest Subject to Forfeiture	6-12
	[5]	Proposed Regulations	6-13
§ 6.03		Receipt of a Profits Interest	6-15
	[1]	Historical Perspective	6-15
	[2]	<i>Campbell</i> and Revenue Procedure 93-27	6-17
	[3]	Unvested Profits Interests and Revenue Procedure 2001-43	6-23
	[4]	Proposed Regulations	6-30
	[5]	Audit Guidelines for Partnerships	6-32
	[6]	Carried Interest Legislation	6-33

CHAPTER 7

Miscellaneous Tax-Related Topics

§ 7.01	Partnership Exchange Funds in General	7-1
§ 7.02	Taxation of Exchange Funds	7-3
	[1] Diversification Requirement	7-5
	[2] Proposed Legislation	7-6
§ 7.03	Management Fees	7-7
§ 7.04	Structuring Foreign Investments by the Fund	7-9
	[1] In General	7-9
	[2] Controlled Foreign Corporations	7-9
	[3] Income Tax Treaties	7-12
§ 7.05	Special Issues Relating to Hedge Funds	7-14
	[1] General	7-14
	[2] Parallel Funds	7-15
	[3] Master-Feeder Funds	7-15
	[4] Compensation of General Partner/Investment Advisor	7-16
§ 7.06	Guaranteed Payments and Funds	7-18
	[1] General	7-18
	[2] Preferred Returns and Guaranteed Payments	7-21
§ 7.07	The Foreign Account Tax Compliance Act and the Common Reporting Standard	7-23
	[1] General	7-23
	[2] Determining FATCA and CRS Status and Registration Requirements	7-24
	[3] Diligence and Information Reporting	7-26
	[4] Withholding	7-28
	[5] Practical Implications	7-30

CHAPTER 8

**Regulation of Private Funds Under
the U.S. Securities Laws**

§ 8.01	Introduction	8-2
§ 8.02	The Securities Act	8-6
	[1] The Private Offering Exemption	8-6
	[2] Regulation D	8-7
	[a] Accredited Investors	8-9
	[b] General Solicitation and Advertising	8-12

PRIVATE EQUITY FUNDS

	[c]	Disclosure	8-13
	[d]	Resale Restrictions	8-14
	[e]	Form D: Notice and Blue Sky Requirements	8-15
	[3]	Internet Offerings	8-17
§ 8.03		The Investment Company Act	8-20
	[1]	Definition of Investment Company	8-21
	[2]	Section 3(c)(1) Companies	8-22
	[a]	The Statutory Look-Through Provision	8-22
	[b]	Integration	8-25
	[3]	Section 3(c)(7) Companies	8-28
	[a]	Qualified Purchasers	8-29
	[b]	Investments	8-32
	[i]	Securities	8-32
	[ii]	Real Estate	8-32
	[iii]	Commodity Interests, Commodities and Financial Contracts	8-32
	[iv]	Cash and Cash Equivalents	8-32
	[v]	Investments Held by Certain Affiliated Entities	8-33
	[vi]	Retirement Plans, Pensions and Others	8-33
	[vii]	Investments Held by or with Spouse	8-33
	[viii]	Valuation of Investments	8-34
	[4]	Knowledgeable Employees	8-34
	[5]	Gratuitous Transfers	8-37
	[6]	“Incubators”	8-38
	[a]	Section 3(a)(1)(A)	8-39
	[b]	Section 3(a)(1)(C)	8-42
	[c]	Transient Investment Companies	8-45
	[d]	Section 3(b)(2)	8-45
	[e]	Venture Capital Funds and the Incubator Model	8-47
§ 8.04		The Exchange Act Impact on Private Equity Funds	8-48
	[1]	Forward-Looking Statements	8-51
	[2]	Registration as a Municipal Advisor	8-53
§ 8.05		Offshore Private Equity Funds	8-59
	[1]	Private United States Offerings	8-59

TABLE OF CONTENTS

xiii

	[2]	Simultaneous Private United States Offerings and Public Offshore Offerings	8-60
	[3]	United States Persons	8-62
		[a] Natural Persons.	8-62
		[b] Partnerships and Corporations.	8-63
		[c] Foreign Agencies or Branches.	8-63
		[d] Trusts, Estates, Discretionary and Non-Discretionary Accounts	8-64
		[e] Employee Benefit Plans.	8-64
		[f] International Organizations Operating in the United States	8-65
	[4]	Permissible Activities in the United States	8-65
	[5]	Internet Offerings.	8-66
	[6]	Foreign Issuers and the Press: Rule 135e.	8-68
§ 8.06		FINRA Restrictions on Participating in Public Offerings	8-73
	[1]	Approach to Regulation of “New Issues”	8-73
		[a] Regulation of All “New Issues”	8-74
		[b] Approach to Restricted Status	8-75
		[c] The <i>De Minimis</i> Exemption.	8-76

CHAPTER 9

Regulation of Managers Under the U.S. Securities Laws

§ 9.01		The Investment Advisers Act.	9-4
	[1]	Definition of Investment Adviser	9-9
	[2]	Certain Exemptions and Exclusions from Registration.	9-11
		[a] Intra-State Exemption.	9-12
		[b] Insurance Company Clients Exemption	9-13
		[c] Private Adviser Exemption	9-13
		[i] The “Advises Solely Private Funds” Element	9-14
		[ii] Calculation of Private Fund Assets Under Management.	9-16

(Rel. 50)

PRIVATE EQUITY FUNDS

	[iii]	Aggregation of Non-U.S. Assets for U.S. Advisers	9-17
	[iv]	Reporting Obligations of Exempt Reporting Advisers	9-18
[d]		Foreign Private Advisers	9-19
	[i]	No Place of Business in the United States	9-20
	[ii]	Other U.S. Activities of Foreign Private Advisers	9-21
	[iii]	Counting Clients and Investors for Purposes of the 15-Client Limitation	9-22
	[iv]	Calculation of Assets under Management	9-24
	[v]	The “Holding Out” Element	9-25
[e]		Commodity Trading Advisers	9-26
[f]		Venture Capital Fund Advisers	9-26
	[i]	Definition of Venture Capital Fund	9-27
	[ii]	Application to Non-U.S. Advisers	9-33
	[iii]	Reporting by Exempt Reporting Advisers	9-33
	[iv]	Grandfathering Provision	9-34
[g]		Advisers to Family Offices	9-34
	[i]	Family Office Clients	9-36
	[ii]	Ownership and Control	9-41
	[iii]	Involuntary Transferees	9-42
	[iv]	Multifamily Offices	9-43
	[v]	Grandfathering Provisions	9-43
	[vi]	Transitional Provisions	9-44
[h]		Advisers to Small Business Investment Companies	9-45
	[i]	Affiliates and the “Alter Ego” Test	9-45
	[j]	Registration of Affiliates; Relief from Registration for Special Purpose General Partners	9-47
§ 9.02		Registering as an Investment Adviser	9-50
	[1]	SEC Registration and Filing Form ADV	9-50

TABLE OF CONTENTS

xv

	[a] Overview of Form ADV	9-50
	[b] Umbrella Registration	9-52
	[c] Separately Managed Accounts	9-52.2
	[2] Brochure and Brochure Supplement	9-52.3
	[a] Brochure Content	9-54
	[b] Brochure Supplement Content	9-66
	[3] Preemption of State Requirements	9-70
§ 9.03	Requirements Applicable to Registered Investment Advisers	9-72
	[1] Updating Form ADV and SEC Reporting	9-73
	[2] Delivery of Disclosure Document to Clients	9-74
	[a] Initial Delivery	9-75
	[b] Annual Delivery	9-76
	[c] Interim Delivery	9-77
	[d] Exceptions to Delivery Requirements	9-78
	[3] Performance-Based Compensation	9-78
	[4] Advertising and Performance Information	9-80
	[a] Testimonials	9-82
	[b] Performance Data	9-84
	[5] Advisory Contracts	9-92
	[6] Compliance Programs	9-92
	[7] Standards of Business Conduct	9-94
	[a] Code of Ethics	9-95
	[b] Diversity Standards	9-97
	[8] Cybersecurity	9-100
	[9] Recordkeeping	9-103
	[10] SEC Examinations	9-104
§ 9.04	Standard of Conduct for Investment Advisers	9-104.2
	[1] Fiduciary Duties Generally	9-104.2
	[a] Duty of Care	9-104.3
	[b] Duty of Loyalty	9-104.3
	[c] Waivers of Fiduciary Duty	9-104.4
	[2] Certain Transactions Requiring Client Consent	9-104.5
	[a] Agency Cross Transactions	9-104.8
	[b] Safe Harbor for Agency Cross Transactions	9-104.9
	[c] Principal Transactions	9-104.10
	[d] Dual Registrants Engaged in Principal Transactions	9-104.11
§ 9.05	Prohibition of Fraud under Rule 206(4)-8	9-105
§ 9.06	The Pay-to-Play Rules	9-108

PRIVATE EQUITY FUNDS

§ 9.07	Custody of Client Assets	9-110
§ 9.08	Additional Considerations for Foreign Investment Advisers	9-111
§ 9.09	The Securities Exchange Act of 1934	9-112
	[1] Broker-Dealer Status	9-112
	[2] Receiving Transaction-Based Compensation Without a Broker Registration	9-117
§ 9.10	Form PF Amended Filing Requirements	9-120
	[1] Current-Event Reporting Requirements for All Private Equity Fund Advisers	9-120
	[2] Current-Event-Based Reporting Requirements for Large Hedge Fund Advisers	9-122
	[3] Compliance Dates for the Amendments to Form PF	9-124
§ 9.11	FinCEN Beneficial Ownership Filing Requirements	9-125
	[1] Reporting Companies Subject to the BOI Rule	9-126
	[2] Reportable Information under the BOI Rule	9-127
	[3] Identifying the Beneficial Owners of a Reporting Company	9-129
	[4] Timing for Filing BOI Reports	9-130
	[5] Obligation to Update or Correct BOI Reports	9-131
	[6] Penalties	9-131
	[7] Related Rules	9-132
	[8] Security and Access	9-132
§ 9.12	Customer Identification Programs for Investment Advisers	9-133
	[1] Introduction to Proposed AML/CFT Programs	9-133
	[2] Summary of the Proposed Rules	9-135
	[a] Adoption of a Risk-Based AML Compliance Program	9-136
	[b] Monitoring Customer Activity and Reporting Suspicious Activity to FinCEN	9-138
	[c] Establishment of Recordkeeping and CDD Protocols	9-139
	[d] Implementation of CIP	9-140
	[3] Delegation	9-142
	[4] Recordkeeping	9-143

CHAPTER 10

Other Applicable Regulatory Regimes

§ 10.01	Commodities and Futures Regulations	10-3
	[1] Product and Entity Definitions Under the Derivatives Title; Cross-Border Application.	10-5
	[2] Commodity Pools.	10-8
	[3] Commodity Pool Operators and Commodity Trading Advisors.	10-10
	[a] Generally.	10-10
	[b] Exemption from Certain Disclosure, Recordkeeping and Reporting Requirements under CFTC Rule 4.7.	10-13
	[c] Amendments to CPO and CTA Exemptions Under CFTC Rule 4.7	10-14
	[d] Certain Exemptions from CPO Registration.	10-15
	[e] Certain Exemptions from CTA Registration	10-18
	[f] Systemic Risk Reporting Requirements for Registered CPOs and CTAs.	10-21
	[4] Large Trader Reporting Obligations, Position Accountability Levels and Speculative Position Limits.	10-22
	[a] Large Trader Reporting Obligations	10-22
	[b] Accountability Levels.	10-25
	[c] Speculative Position Limits	10-26
	[i] Generally.	10-26
	[ii] Certain Exemptions from Speculative Position Limits	10-28
	[d] Aggregation of Positions	10-30
	[e] Position Limits Rulemaking Re-Proposal	10-34
	[i] Position Limits Imposed.	10-36
	[ii] Bona Fide Hedge Exemption.	10-37
	[iii] Effect on Exchange Limits	10-38

PRIVATE EQUITY FUNDS

	[5]	Additional Regulatory Considerations Under the Derivatives Title.	10-40
	[a]	Mandatory Clearing and Exchange Trading for Certain Swaps	10-40
	[b]	Margin for Swaps That Are Not Cleared	10-42
	[c]	Swap Recordkeeping Requirements	10-46
	[d]	Swap Data Reporting Requirements	10-47
	[i]	Reporting of Transaction and Counterparty Data to Repositories	10-47
	[ii]	Real-Time Public Reporting of Price and Volume Data.	10-49
	[e]	ISDA Protocols.	10-51
	[f]	Anti-Manipulation and Abusive Trading Practices Authority.	10-52
	[i]	Anti-Manipulation.	10-52
	[ii]	Antidisruptive Practices	10-52.2
§ 10.02		The Bank Holding Company Act	10-52.5
	[1]	In General.	10-52.5
	[2]	The Volcker Rule.	10-52.6
§ 10.03		The Employee Retirement Income Security Act	10-56
	[1]	The Statutory Framework	10-57
	[a]	Fiduciary Duties	10-57
	[b]	Prohibited Transactions	10-58
	[c]	The QPAM Exemption	10-61
	[d]	Statutory Prohibited Transaction Exemptions.	10-63
	[i]	Block Trading.	10-63
	[ii]	Electronic Communication Network	10-63
	[iii]	Service Providers	10-64
	[iv]	Foreign Exchange Transactions	10-65
	[v]	Cross-Trading.	10-66
	[vi]	Statutory Grace Period.	10-67
	[e]	Incentive Compensation.	10-68
	[2]	Avoiding Plan Assets.	10-70
	[3]	Operating Companies.	10-71
	[4]	Significant Participation.	10-77

TABLE OF CONTENTS

xix

§ 10.04	Gramm-Leach-Bliley Act	10-81
	[1] In General.	10-81
	[2] Application of the FTC Regulations.	10-84
	[3] Obligations Under the FTC Regulations.	10-85
	[4] Compliance Procedures	10-91
§ 10.05	Anti-Money Laundering Compliance.	10-92
§ 10.06	The Alternative Investment Fund Managers Directive	10-93
	[1] Introduction	10-93
	[2] AIFMD Implementation Process.	10-94
	[a] Key Definitions	10-95
	[b] MiFID Authorization	10-96
	[3] Marketing of Private Funds to EU Investors	10-98
	[a] Definition of Marketing.	10-98
	[b] Marketing Passport Not Yet Available to Non-EU Managers	10-98
	[c] Using National Private Placement Regimes	10-99
	[d] Cooperation Arrangements.	10-100
	[e] Provisions Applying to Non-EU Managers Wishing to Market Under the Private Placement Rules.	10-100
	[4] Use of a Marketing Passport by Non-EU AIFMs	10-101
	[5] Authorization Requirements Under the AIFMD.	10-102.1
	[a] Capital Requirements.	10-102.1
	[b] Organizational Requirements.	10-102.2
	[c] Remuneration Policies	10-102.2
	[d] Service Provider Requirements	10-102.2
	[e] Disclosure Requirements	10-102.3
	[6] The EU European General Data Protection Regulation	10-102.3
	[a] Introduction.	10-102.3
	[b] Scope of Coverage.	10-102.4
	[c] Summary of the GDPR's Substantive Requirements	10-102.5
§ 10.07	Shelter Regulations.	10-102.6
§ 10.08	The Communications Act.	10-105
	[1] FCC Treatment of Limited Partners and LLC Members.	10-105

PRIVATE EQUITY FUNDS

[2]	Communications Ownership Limits	10-106
	[a] Multiple Ownership Limits	10-108
	[b] Cross-Ownership Limits.	10-109
	[c] Alien Ownership Limits.	10-110
[3]	Attribution	10-110
	[a] Threshold Investment Levels.	10-111
	[b] Business Relationships.	10-111
[4]	Insulation Provisions	10-112

CHAPTER 11

**Implementing the Economic Bargain:
The Private Equity Fund Limited
Partnership Agreement**

§ 11.01	Introduction	11-3
	[1] Structure of Agreement	11-4
	[2] Preamble and Recitals	11-6
	[3] Capitalized Terms	11-6
	[4] Definitional Standards	11-8
	[5] Interpretation	11-9
	[6] General Partner's Standard of Care	11-9
§ 11.02	Organization	11-16
	[1] Continuation of Limited Partnership; Term	11-16
	[2] Choice of Name	11-19
	[3] Purpose	11-19
	[4] Places of Business	11-20
	[5] Registered Office and Agent.	11-20
	[6] Fiscal Year	11-20
	[7] Powers	11-21
	[8] Certificates and Other Filings	11-21
§ 11.03	Partners	11-22
	[1] General and Limited Partners	11-22
	[a] Subsequent Closings.	11-22
	[b] Sharing of Expenses; Dilution.	11-23
	[2] Liability of the General Partner	11-24
	[3] Limited Liability of Limited Partners.	11-25
	[4] No Priority	11-25
	[5] Partnership Property.	11-25
	[6] Withdrawing Limited Partner	11-25
§ 11.04	Capital Contributions; Capital Commitments	11-26
	[1] Capital Contributions	11-26
	[2] Return of Unutilized Contributions.	11-26

TABLE OF CONTENTS

xxi

	[3] Excuse, Exclusion and Cancellation	11-27
	[4] Defaulting Limited Partners	11-28
	[5] Participation in New Issues	11-30
	[6] Key Person Provisions	11-30
	[7] Alternative Investment Vehicles	11-33
§ 11.05	Capital Accounts; Allocations	11-35
	[1] Separate Capital Accounts	11-35
	[2] Allocations to Capital Accounts	11-35
	[3] Tax Allocations	11-35
	[4] Determinations by General Partner	11-36
§ 11.06	Distributions	11-37
	[1] No Right to Withdraw	11-37
	[2] Ordinary Distributions	11-37
	[3] Waived Management Fees	11-40
	[4] General Partner Clawback	11-40
	[5] Distributions in Kind	11-43
	[6] Restrictions on Distributions	11-45
	[7] Withholding	11-45
§ 11.07	Management	11-46
	[1] Management by the General Partner	11-46
	[2] Investment Powers of the General Partner	11-47
	[a] General Investment Strategy	11-48
	[b] Diversification	11-49
	[c] Hostile Transactions	11-51
	[d] Investments in Other Private Equity Funds	11-52
	[e] Offshore Investments	11-53
	[f] Ethical Investor Limitations	11-53
	[g] Affiliated Portfolio Companies	11-54
	[h] Waivers	11-55
	[3] Limitations on the General Partner	11-56
	[4] Borrowing and Guarantees	11-56
	[5] Tax Matters Partner	11-56.1
	[6] Other Activities of the General Partner and Related Persons	11-56.1
	[7] Regulatory Covenants	11-56.2
	[8] Advisory Board	11-56.3
§ 11.08	Expenses and Fees	11-57
§ 11.09	Books of Account, Records and Banking	11-58
§ 11.10	Transfers of Partnership Interests	11-59
	[1] Transfer Restrictions	11-59
	[2] Applicable Law Withdrawal	11-60
§ 11.11	Indemnification	11-62
§ 11.12	Duration and Termination of the Partnership	11-66
	[1] Events of Termination	11-67

PRIVATE EQUITY FUNDS

	[a] Material Adverse Effect.....	11-67
	[b] Key Person Event.....	11-68
	[c] No-Fault Divorce.....	11-68
	[2] Liquidation and Winding-Up.....	11-70
§ 11.13	Amendments.....	11-72
§ 11.14	Side Letters.....	11-75
	[1] Negotiating Side Letters.....	11-76
	[2] Election Process.....	11-79
	[3] Regulatory Concerns.....	11-79
§ 11.15	Legal Opinions.....	11-81

CHAPTER 12

**Implementing the Economic Bargain:
The Limited Liability Company Agreement
for the General Partner**

§ 12.01	Introduction to LLC Agreements.....	12-2
§ 12.02	Definitions and Interpretation.....	12-6
	[1] Structure of Agreement.....	12-6
	[2] Definitions.....	12-8
	[3] Interpretation.....	12-9
	[4] Class A-1 Members' Standard of Care.....	12-9
§ 12.03	Organization.....	12-11
	[1] Continuation of Limited Liability Company; Term.....	12-11
	[2] Choice of Name.....	12-12
	[3] Purpose.....	12-12
	[4] Places of Business.....	12-13
	[5] Registered Office and Agent.....	12-13
	[6] Fiscal Year.....	12-13
	[7] Powers.....	12-14
	[8] Certificate and Other Filings.....	12-14
	[9] Beneficial Ownership Matters.....	12-15
§ 12.04	Members.....	12-17
	[1] Class A and Class B Members.....	12-17
	[2] Liability of the Members.....	12-17
	[3] Limited Liability of Members.....	12-19
	[4] No Priority.....	12-20
	[5] Partnership Property.....	12-20
§ 12.05	Capital Contributions; Capital Commitments...	12-21
	[1] Capital Contributions.....	12-21

TABLE OF CONTENTS

xxiii

	[2] Admission of Additional Members; Sharing Percentages	12-23
§ 12.06	Capital Accounts; Allocations	12-24
	[1] Capital Accounts	12-24
	[2] Allocation to Capital Accounts	12-24
	[3] Tax Allocations	12-24
	[4] Determinations by Class A-1 Members	12-25
§ 12.07	Distributions	12-26
	[1] No Right to Withdraw	12-26
	[2] Ordinary Distributions	12-26
	[3] Distributions in Kind	12-26
	[4] Restrictions on Distributions	12-26
	[5] Withholding	12-27
§ 12.08	Management	12-28
	[1] Management by Class A-1 Members	12-28
	[2] Borrowing and Guarantees	12-28
	[3] Tax Matters Partner	12-28
	[4] Other Activities of the Members and Related Persons	12-28
§ 12.09	Expenses and Fees; Books of Account, Records and Banking	12-30

Appendices

APPENDIX A:	Summary of Principal Terms	A-1
APPENDIX A-2:	Summary of Principal Terms— Sample Anchor Investor Arrangements	A-21
APPENDIX B:	Certificate of Limited Partnership	B-1
APPENDIX C:	Short-Form Partnership Agreement	C-1
APPENDIX D(1):	Amended and Restated Agreement of Limited Partnership (Basic)	D-1
APPENDIX D(2):	Amended and Restated Agreement of Limited Partnership (Hub)	D-127
APPENDIX D(3):	Amended and Restated Agreement of Limited Partnership (Alternative Investment Vehicle)	D-223
APPENDIX E(1):	Investment Management Agreement	E-1
APPENDIX E(2):	Delegate Portfolio Management Agreement [Sub-Advisory Agreement]	E-17

PRIVATE EQUITY FUNDS

APPENDIX F:	Certificate of Formation for Limited Liability Company	F-1
APPENDIX G:	Short Form Limited Liability Company Agreement	G-1
APPENDIX H(1):	Amended and Restated Limited Liability Company Agreement OF [GP NAME], L.L.C. (Basic)	H-1
APPENDIX H(2):	Amended and Restated Limited Liability Company Agreement OF [NEW GP], L.L.C. (Multi-Class)	H-47
APPENDIX J(1):	Form of Subscription Agreement and Supporting Documentation (For a Section 3(c)(1) Fund)	J-1
APPENDIX J(2):	Form of Subscription Agreement and Supporting Documentation (For a Section 3(c)(7) Fund)	J-83
APPENDIX J(3):	Privacy Statement (U.S. Fund Sponsors)	J-161
APPENDIX J(4):	Privacy Statement (U.S.-EU Fund Sponsors)	J-163
APPENDIX J(5):	Form of Additional Subscription Agreement	J-167
APPENDIX K(1):	Clawback Guaranty From (Individual Guarantors)	K-1
APPENDIX K(2):	Clawback Guaranty (From Individual (Manager)	K-7
APPENDIX L:	Legal Opinion	L-1
APPENDIX M:	Form of Anti-Money Laundering Compliance Policy	M-1
APPENDIX M(1):	Form of Anti-Money Laundering Policy	M-15
APPENDIX N:	[Reserved]	N-1
APPENDIX O:	[Reserved]	O-1
APPENDIX P:	Investment Advisory Agreement	P-1
APPENDIX Q:	Pledge Fund Participation Agreement	Q-1
APPENDIX R:	New Private Equity Fund, L.P. New Issues Supplement for All Subscribers	R-1
APPENDIX S:	Form of Confirmation Letter	S-1
APPENDIX T:	Amended and Restated Certificate of Limited Partnership	T-1
APPENDIX U:	Amended and Restated Agreement of Limited Partnership (Series Limited Partnership)	U-1

TABLE OF CONTENTS

xxv

APPENDIX V:	Amendment to Amended and Restated Agreement of Limited Partnership	V-1
APPENDIX W:	Form of Private Credit Fund Agreement	W-1
APPENDIX X:	Rule 506 Questionnaire	X-1
APPENDIX Y:	Consent Solicitation for Amendment	Y-1
INDEX	I-1