

PE/VC PARTNERSHIP AGREEMENTS STUDY

2020 • 2021



PE/VC Partnership Agreements Study

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Sixth Edition

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- 1.5 International Buyout Firms: How many partners or partner-equivalent does your firm have? How many investment professionals?
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- 1.10 What regions will the fund be invested in?
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- 1.12 Year of first close or anticipated first close if fund is still open
- 1.13 Breakdown by fund size for all funds
 - 2.1 What is the fund's term?
 - 2.2 If extensions are allowed, what is the term of the extension?
 - 2.3 Are LPs required to pay management fees during any such extension period?
 - 2.4 What approval is required for extensions?
 - 2.5 What is the investment period?
 - 2.6 When does the investment period start?
 - 2.7 Can the investment period be extended?
 - 2.8 For what purposes may capital be called after the end of the investment period?
 - 2.9 Does the GP have the right to cause the fund to re-invest or recycle income or gain?
 - 2.10 If recycling is allowed, is there a limit on the amount that can be re-invested?
 - 2.11 If recycling is allowed, is the fund permitted to re-invest capital from deals that are disposed of within a certain time period?
 - 2.12 Can the fund provide temporary bridge financing?
 - 2.13 If yes, is there a time limit on the term of the bridge loan?
 - 2.14 If the fund can provide bridge financing, is there a cap (as a percentage of aggregate commitments) on the amount of bridge loans that can be outstanding at any time?
 - 2.15 Can the fund incur long-term debt (i.e. fund level leverage)?
 - 2.16 Can the fund obtain a short-term loan to finance a deal before drawing down capital from limited partners and putting permanent loans in place?
 - 2.17 If subscription credit lines are allowed, what is the duration allowed?
 - 2.18 After initial close of your fund, how much time did/do you have to reach a final closing?
 - 2.19 Did your fund need to seek an extension for its fund-raising period?
 - 2.20 Did you offer investors any special incentives to come in on an early close?
 - 2.21 Do you have an anchor investor that received special terms or equity in the management company?
 - 2.22 If you have an anchor investor, what special benefits do they receive?
 - 2.23 How much of the fund must be invested or reserved for follow-on investments, management fees and other expenses before a successor fund restriction is lifted?
 - 2.24 What is the nature of the successor fund restriction?
 - 2.25 Does the GP hold rights to co-invest alongside of the fund?
 - 2.26 If so, can the GP cherry pick investments or must it co-invest in all deals?
 - 2.27 Did the firm grant co-investment rights to any LPs?
 - 2.28 Do you charge fees and carry on co-investments?

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- 2.29** Does the partnership agreement have a provision which requires the GP to take steps to reduce or eliminate UBTI (unrelated business taxable income) allocated by the fund?
- 2.30** If so, what is the GP required to do under that term?
- 2.31** Does the partnership agreement have a provision which requires the GP to take steps to reduce or eliminate ECI (effectively connected income) allocated by the fund?
- 2.32** If so, what is the GP required to do under that term?
- 2.33** What are the penalties for a defaulting LP?
- 2.34** Is the GP permitted to waive the default of a LP?
- 2.35** If an LP defaults, is the GP required to notify the other LPs?
- 2.36** Does the partnership agreement include a ROFR (right of first refusal) in the case of a defaulting LP?
- 2.37** Does the partnership agreement include a ROFR (right of first refusal) in the case of an LP transfer?
- 2.38** Did you sign side letters or agreements with any LPs granting them more favorable terms than other investors?
- 2.39** Do you have "most favored nation" clauses with any of your LPs (allowing them to obtain the terms offered to other investors in side letters)?
- 2.40** If there is an MFN clause, does availability depend on the size of an LP's commitment?
- 2.41** What is the GP contribution to the fund, as a percentage of total commitments?
- 2.42** How do you fund your GP contribution?
- 2.43** Does the partnership agreement place limits on the GP's investment authority?
- 2.44** Does the partnership agreement place any limits on the percent of the management company that you can sell to a minority investor?
- 2.45** Does the partnership agreement (or side letters) place any limit on the size of your fund?
- 2.46** Could that limit be exceeded with approval of the LPAC?
- 2.47** What approval is required for exceeding?
- 2.48** Can the principals of the fund make related investments outside of the fund?
- 2.49** Did you create a parallel "affiliate" or "sidecar" fund that offers reduced fees/carry to those in a position to assist the fund?
- 2.50** If so, were any LPs of the main fund allowed to invest in the affiliated or sidecar fund?
- 3.1** How are your initial fund management fees structured?
- 3.2** When do you start charging management fees?
- 3.3** Do all LPs pay the same management fees?
- 3.4** What is the starting management fee, as a percentage of capital commitments or invested capital?
- 3.5** Is there a management fee scale-down during the term of the partnership?
- 3.6** If there is a management fee scale-down, what is the base for the management fee after it steps down?
- 3.7** Does the management fee formula change during any extension of the fund's term?
- 3.8** How are transaction and related fees treated?
- 3.9** Are portfolio company fees allocable to co-investors also subject to the offset formula above?
- 3.10** Do you have a cap on organizational expenses above which the GP or management company would pay for them?
- 3.11** For U.S.-based funds, if the fund manager is registered with the SEC as an investment adviser, who bears the related expenses of registering and compliance?
- 3.12** Who bears the expense of deal sourcing and monitoring?
- 3.13** Who bears broken-deal expenses?
- 3.14** If you have co-investors, who bears the the cost of the co-investors' share of broken-deal expenses?
- 3.15** Who bears the expense of the fund's operating advisors?
- 3.16** Who bears the expense of investment-related travel?
- 3.17** Who bears the expense of outside consultants?
- 3.18** Who bears the expense of reverse break-up fees?
- 3.19** Did you engage a placement agent for this fund-raising?
- 3.20** If yes, who bears the expense of placement fees and expenses of the placement agent?

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- 3.21** How are portfolio-company fees allocable to co-investors handled?
- 4.1** What is the carried interest the GP receives from investments?
- 4.2** Does the carried interest rate increase if the fund performs above a certain level?
- 4.3** Is the carried interest calculated net of fees and expenses?
- 4.4** Can you amend your partnership without LP or advisory committee permission to reflect changes in how carry is taxed?
- 4.5** Before the GP begins receiving carried interest distributions, what must first be returned to limited partners?
- 4.6** If you must return only a portion of contributed capital first, what amounts must be returned?
- 4.7** On top of that amount, does the GP also have to provide a priority return, or hurdle of some kind?
- 4.8** If yes, what is the hurdle or priority return per annum?
- 4.9** Is the hurdle or priority return based on IRR, compound interest or simple interest?
- 4.10** For those with a hurdle or priority return, does the fund have a "catch up" provision?
- 4.11** Does the fund have a "Net Asset Value" test to restrict the GP from receiving distributions on portfolio company exits unless the portfolio has outperformed a benchmark?
- 4.12** Does the fund have a GP clawback requiring the GP to return over-distributions of carried interest?
- 4.13** How is the clawback calculated?
- 4.14** Is the clawback guaranteed by the individual members of the GP or an institution?
- 4.15** Is there an escrow or equivalent to ensure the GP clawback?
- 4.16** Are clawback true-ups required at any time before the end of the fund term?
- 4.17** How quickly must the fund distribute cash due to the LPs?
- 4.18** Is the GP required to distribute freely tradable securities within a specified time after becoming freely tradable?
- 4.19** If yes, what is the timeframe?
- 4.20** Must you sell securities for cash on behalf of limited partners that request it?
- 4.21** For freely tradable securities that you distribute, how are they valued?
- 4.22** How are dividends and interest (other than proceeds from short-term investments of idle cash) distributed?
- 4.23** How are proceeds from short-term investments of idle cash distributed?
- 4.24** Does the GP have the right to cause the fund to make tax liability distributions?
- 5.1** How do you report track record to LPs?
- 5.2** How often do you report to LPs?
- 5.3** Do you have to disclose to LPs fees received from portfolio companies?
- 5.4** Do you have to disclose to LPs expenses charged to portfolio companies?
- 5.5** For U.S.-based funds, do you plan to follow the Global Investment Performance Standard when the CFA Institute makes it effective January 1, 2020?
- 5.6** For U.S.-based funds, do you have the right to withhold certain information from LPs governed by the Freedom of Information Act or similar laws?
- 5.7** For U.S.-based funds, do you have to provide to LPs copies of any deficiency letters received from the SEC?
- 6.1** How many LPs sit on the advisory committee?
- 6.2** What are the roles and powers of the LP advisory committee?
- 6.3** What conduct by the GPs would release the fund from providing indemnification?
- 6.4** Does the fund have an LP clawback to support legal claims against the GP?
- 6.5** If there is an LP clawback, is there a limit on the amount that can be clawed back?
- 6.6** If there is an LP clawback, is there any cap on the amount that applies to the GP's carried interest?
- 6.7** If there is an LP clawback, is there a limitation on the timing of the clawback?
- 6.8** If there is an LP clawback, can it be applied to any fund expenses or liabilities, or is it limited solely to cover indemnification liabilities?
- 6.9** Can LPs remove the GP for cause?

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- 6.10 Can LPs terminate the fund for cause?
- 6.11 If yes, what percentage of LPs must agree to proceed?
- 6.12 If the LP can remove the GP for cause or dissolve the fund, does the GP take a haircut on its carried interest with respect to pre-removal or pre-dissolution investments?
- 6.13 For both cause and no-cause removal, does the removed GP remain liable for its share of any GP clawback liability?
- 6.14 Is there a no-fault divorce clause letting LPs dissolve the fund for any reason?
- 6.15 If yes, what percentage of LPs must agree to proceed?
- 6.16 Does the fund have a no-fault suspension of the investment period clause?
- 6.17 If a no-fault suspension is to take place, what percentage of LPs must agree?
- 6.18 What standard of time commitment is imposed on the principals?
- 6.19 Does the fund have a key-person clause?
- 6.20 If yes, is there an automatic suspension on investments should the key-person event get triggered?
- 6.21 If there is an automatic suspension, do LPs have to vote to extend it?
- 6.22 If there is an automatic suspension, does it become permanent unless the LPs vote to end it?
- 6.23 What vote is required for the key-person provision?
- 6.24 What actions result from the key-person provision trigger?
- 6.25 Do you promote your terms and conditions as ILPA-compliant?
- 6.26 Has your firm adopted an environmental, social and governance policy?
- 6.27 Does your partnership agreement require your limited partners to explicitly waive the general partner's statutory fiduciary duties?