

# TABLE OF CONTENTS

## CHAPTER 1

### An Introduction to Private Equity Funds

§ 1.01	Overview . . . . .	1-3
§ 1.02	Private Ordering of the Financial Intermediary Relationship . . . . .	1-11
	[1] Economic Expectations . . . . .	1-11
	[2] Markets . . . . .	1-14
	[3] Alignment of Interests . . . . .	1-17
	[4] Practical Considerations . . . . .	1-19
§ 1.03	Venture Capital Funds . . . . .	1-23
	[1] Investment Strategy . . . . .	1-23
	[2] Organizational Structure . . . . .	1-25
	[3] Key Economic Terms . . . . .	1-25
	[a] Carried Interest . . . . .	1-26
	[b] Preferred Return . . . . .	1-26
	[c] Management Fees . . . . .	1-26
	[d] Transaction Fees . . . . .	1-27
	[4] Fund Size . . . . .	1-27
	[5] Typical Investors . . . . .	1-28
	[6] Leverage . . . . .	1-28
	[7] Transfer; Redemption . . . . .	1-28
	[8] Reinvestment . . . . .	1-28
	[9] Additional Investors . . . . .	1-29
§ 1.04	Leveraged Buyout and Merchant Banking Funds . . . . .	1-30
	[1] Investment Strategy . . . . .	1-30
	[2] Organizational Structure . . . . .	1-30
	[3] Key Economic Terms . . . . .	1-31
	[a] Carried Interest . . . . .	1-31
	[b] Preferred Return . . . . .	1-31

## PRIVATE EQUITY FUNDS

	[c] Management Fees . . . . .	1-32
	[d] Transaction Fees . . . . .	1-32
	[4] Fund Size . . . . .	1-32
	[5] Typical Investors . . . . .	1-33
	[6] Leverage . . . . .	1-33
	[7] Transfer; Redemption . . . . .	1-34
	[8] Reinvestment . . . . .	1-34
	[9] Additional Investors . . . . .	1-34
§ 1.05	Hedge Funds . . . . .	1-35
	[1] Investment Strategy . . . . .	1-36
	[2] Organizational Structure . . . . .	1-36
	[3] Key Economic Terms . . . . .	1-37
	[a] Carried Interest . . . . .	1-37
	[b] Preferred Return . . . . .	1-38
	[c] Management Fees . . . . .	1-38
	[d] Transaction Fees . . . . .	1-38
	[4] Fund Size . . . . .	1-38
	[5] Typical Investors . . . . .	1-39
	[6] Leverage . . . . .	1-39
	[7] Transfer; Redemption . . . . .	1-39
	[8] Reinvestment . . . . .	1-40
	[9] Additional Investors . . . . .	1-40
§ 1.06	Funds of Funds . . . . .	1-41
	[1] Investment Strategy . . . . .	1-42
	[2] Organizational Structure . . . . .	1-42
	[3] Key Economic Terms . . . . .	1-42
	[a] Carried Interest . . . . .	1-42
	[b] Preferred Return . . . . .	1-43
	[c] Management Fees . . . . .	1-43
	[d] Transaction Fees . . . . .	1-43
	[4] Fund Size . . . . .	1-43
	[5] Typical Investors . . . . .	1-44
	[6] Leverage . . . . .	1-44
	[7] Transfer; Redemption . . . . .	1-44
	[8] Reinvestment . . . . .	1-45
	[9] Additional Investors . . . . .	1-45
§ 1.07	Real Estate Funds . . . . .	1-46
	[1] Investment Strategy . . . . .	1-46
	[2] Organizational Structure . . . . .	1-46
	[3] Key Economic Terms . . . . .	1-47
	[a] Carried Interest . . . . .	1-47
	[b] Preferred Return . . . . .	1-47
	[c] Management Fees . . . . .	1-47
	[d] Transaction Fees . . . . .	1-48
	[4] Fund Size . . . . .	1-48

## TABLE OF CONTENTS

ix

[5]	Typical Investors . . . . .	1-48
[6]	Leverage . . . . .	1-48
[7]	Transfer; Redemption. . . . .	1-48
[8]	Reinvestment . . . . .	1-48
[9]	Additional Investors . . . . .	1-49
§ 1.08	Captive and Semi-Captive Funds. . . . .	1-50
§ 1.09	Hybrid Funds. . . . .	1-52
§ 1.10	Pledge Funds. . . . .	1-54
§ 1.11	Mezzanine Funds . . . . .	1-55
§ 1.12	Impact Funds. . . . .	1-56

## 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 . . . . .	2-7
	[1] Size of the Carried Interest . . . . .	2-8
	[2] Fund Income Subject to the Carried Interest . . . . .	2-11
	[a] Accounting . . . . .	2-11
	[b] Income From Portfolio Investments. . . . .	2-13
	[c] Other Income . . . . .	2-14
	[d] Calculations of Profits . . . . .	2-15
	[i] Aggregation. . . . .	2-16
	[ii] Management Fees. . . . .	2-17
	[iii] Organizational Expenses . . . . .	2-18
§ 2.03	Preferred Returns . . . . .	2-19
	[1] General Partner Make-Ups . . . . .	2-19
	[2] Formulating Hurdle Rates and Preferred Returns . . . . .	2-20
	[3] Calculating Hurdle Rates and Preferred Returns . . . . .	2-22
§ 2.04	Timing Issues and the Carried Interest. . . . .	2-25
	[1] General Timing Issues . . . . .	2-25
	[2] Clawback Approaches . . . . .	2-28

**PRIVATE EQUITY FUNDS**

	[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 . . . . .	2-46
§ 2.08	Key Economic Terms for Anchor Investors . . . . .	2-48

**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
	[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
	[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

**PRIVATE EQUITY FUNDS**

§ 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 . . . . .	6-31
	[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

## TABLE OF CONTENTS

xiii

	[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
	[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

## PRIVATE EQUITY FUNDS

	[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 . . . . .	8-29
		[a] Qualified Purchasers. . . . .	8-30
		[b] Investments. . . . .	8-32
		[i] Securities. . . . .	8-32
		[ii] Real Estate . . . . .	8-33
		[iii] Commodity Interests, Commodities and Financial Contracts. . . . .	8-33
		[iv] Cash and Cash Equivalents . . . . .	8-33
		[v] Investments Held by Certain Affiliated Entities . . . . .	8-33
		[vi] Retirement Plans, Pensions and Others . . . . .	8-34
		[vii] Investments Held by or with Spouse . . . . .	8-34
		[viii] Valuation of Investments . . . . .	8-34
	[4]	Knowledgeable Employees . . . . .	8-35
	[5]	Gratuitous Transfers. . . . .	8-38
	[6]	“Incubators” . . . . .	8-39
		[a] Section 3(a)(1)(A) . . . . .	8-40
		[b] Section 3(a)(1)(C). . . . .	8-44
		[c] Transient Investment Companies . . . . .	8-46
		[d] Section 3(b)(2) . . . . .	8-47
		[e] Venture Capital Funds and the Incubator Model. . . . .	8-48
§ 8.04		The Exchange Act Impact on Private Equity Funds. . . . .	8-50
	[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
	[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



## TABLE OF CONTENTS

xv

	[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 . . . . .	9-3
	[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
	[iii]	Aggregation of Non-U.S. Assets for U.S. Advisers . . . . .	9-17

## PRIVATE EQUITY FUNDS

	[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
		[a] Overview of Form ADV . . . . .	9-50
		[b] Umbrella Registration . . . . .	9-52
		[c] Separately Managed Accounts . . . . .	9-52.2

**TABLE OF CONTENTS**

xvii

	[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
§ 9.07	Custody of Client Assets . . . . .	9-110

**PRIVATE EQUITY FUNDS**

§ 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

**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

**TABLE OF CONTENTS**

xix

	[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
[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

## PRIVATE EQUITY FUNDS

	[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
§ 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

## TABLE OF CONTENTS

xxi

	[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
	[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

## PRIVATE EQUITY FUNDS

§ 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
	[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



## TABLE OF CONTENTS

xxiii

	[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
	[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 . . . . .	12-2
§ 12.02	Definitions and Interpretation. . . . .	12-5
	[1] Structure of Agreement . . . . .	12-5
	[2] Definitions . . . . .	12-6
	[3] Interpretation . . . . .	12-7
	[4] Class A-1 Members' Standard of Care . . . . .	12-7
§ 12.03	Organization . . . . .	12-9
	[1] Continuation of Limited Liability Company: Term. . . . .	12-9
	[2] Choice of Name. . . . .	12-9
	[3] Purpose . . . . .	12-10
	[4] Places of Business . . . . .	12-10
	[5] Registered Office and Agent. . . . .	12-11

## PRIVATE EQUITY FUNDS

	[6]	Fiscal Year . . . . .	12-11
	[7]	Powers . . . . .	12-11
	[8]	Certificate and Other Filings . . . . .	12-11
§ 12.04		Members . . . . .	12-12
	[1]	Class A and Class B Members . . . . .	12-12
	[2]	Liability of the Members . . . . .	12-12
	[3]	Limited Liability of Members . . . . .	12-14
	[4]	No Priority . . . . .	12-14
	[5]	Partnership Property . . . . .	12-14
§ 12.05		Capital Contributions; Capital Commitments . . . . .	12-15
	[1]	Capital Contributions . . . . .	12-15
	[2]	Admission of Additional Members; Sharing Percentages . . . . .	12-16
§ 12.06		Capital Accounts; Allocations . . . . .	12-18
	[1]	Capital Accounts . . . . .	12-18
	[2]	Allocation to Capital Accounts . . . . .	12-18
	[3]	Tax Allocations . . . . .	12-18
	[4]	Determinations by Class A-1 Members . . . . .	12-18
§ 12.07		Distributions . . . . .	12-19
	[1]	No Right to Withdraw . . . . .	12-19
	[2]	Ordinary Distributions . . . . .	12-19
	[3]	Distributions in Kind . . . . .	12-19
	[4]	Restrictions on Distributions . . . . .	12-19
	[5]	Withholding . . . . .	12-20
§ 12.08		Management . . . . .	12-21
	[1]	Management by Class A-1 Members . . . . .	12-21
	[2]	Borrowing and Guarantees . . . . .	12-21
	[3]	Tax Matters Partner . . . . .	12-21
	[4]	Other Activities of the Members and Related Persons . . . . .	12-21
§ 12.09		Expenses and Fees; Books of Account, Records and Banking . . . . .	12-22

## Appendices

<b>APPENDIX A:</b>	Summary of Principal Terms . . . . .	A-1
<b>APPENDIX A-2:</b>	Summary of Principal Terms— Sample Anchor Investor Arrangements . . . . .	A-21
<b>APPENDIX B:</b>	Certificate of Limited Partnership . . . . .	B-1
<b>APPENDIX C:</b>	Short-Form Partnership Agreement . . . . .	C-1
<b>APPENDIX D(1):</b>	Amended and Restated Agreement of Limited Partnership (Basic) . . . . .	D-1

**TABLE OF CONTENTS**

xxv

<b>APPENDIX D(2):</b>	Amended and Restated Agreement of Limited Partnership (Hub) . . . . .	D-141
<b>APPENDIX E:</b>	Investment Management Agreement . . . . .	E-1
<b>APPENDIX F:</b>	Certificate of Formation for Limited Liability Company . . . . .	F-1
<b>APPENDIX G:</b>	Short Form Limited Liability Company Agreement . . . . .	G-1
<b>APPENDIX H(1):</b>	Amended and Restated Limited Liability Company Agreement OF [GP NAME], L.L.C. (Basic) . . . . .	H-1
<b>APPENDIX H(2):</b>	Amended and Restated Limited Liability Company Agreement OF [NEW GP], L.L.C. (Multi-Class) . . . . .	H-47
<b>APPENDIX J(1):</b>	Form of Subscription Agreement and Supporting Documentation (For a Section 3(c)(1) Fund) . . . . .	J-1
<b>APPENDIX J(2):</b>	Form of Subscription Agreement and Supporting Documentation (For a Section 3(c)(7) Fund) . . . . .	J-83
<b>APPENDIX J(3):</b>	Privacy Statement (U.S. Fund Sponsors) . . . . .	J-161
<b>APPENDIX J(4):</b>	Privacy Statement (U.S.-EU Fund Sponsors) . . . . .	J-163
<b>APPENDIX K(1):</b>	Clawback Guaranty From (Individual Guarantors) . . . . .	K-1
<b>APPENDIX K(2):</b>	Clawback Guaranty (From Individual (Manager) . . . . .	K-7
<b>APPENDIX L:</b>	Legal Opinion . . . . .	L-1
<b>APPENDIX M:</b>	Form of Anti-Money Laundering Compliance Policy . . . . .	M-1
<b>APPENDIX M(1):</b>	Form of Anti-Money Laundering Policy . . . . .	M-15
<b>APPENDIX N:</b>	Limited Partnership Agreement for Hedge Fund . . . . .	N-1
<b>APPENDIX O:</b>	Declaration of Trust . . . . .	O-1
<b>APPENDIX P:</b>	Investment Advisory Agreement . . . . .	P-1
<b>APPENDIX Q:</b>	Pledge Fund Participation Agreement . . . . .	Q-1
<b>APPENDIX R:</b>	New Issue Questionnaire . . . . .	R-1
<b>APPENDIX S:</b>	Form of Confirmation Letter . . . . .	S-1
<b>APPENDIX T:</b>	Amended and Restated Certificate of Limited Partnership . . . . .	T-1

**PRIVATE EQUITY FUNDS**

<b>APPENDIX U:</b>	Amended and Restated Agreement of Limited Partnership (Series Limited Partnership) . . . . .	U-1
<b>APPENDIX V:</b>	Amendment to Amended and Restated Agreement of Limited Partnership . . . . .	V-1
<b>APPENDIX W:</b>	Amended and Restated Agreement of Limited Partnership of Mezzanine Partners, L.P. . . . .	W-1
<b>APPENDIX X:</b>	Rule 506 Questionnaire . . . . .	X-1
<b>APPENDIX Y:</b>	Consent Solicitation for Amendment . . . . .	Y-1
<b>INDEX</b>	. . . . .	I-1