

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	1-12
	[1] Economic Expectations	1-12
	[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
	[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
	[c] Management Fees	1-50
	[d] Transaction Fees	1-51
	[4] Fund Size	1-51

TABLE OF CONTENTS

ix

	[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		Private Credit Funds.	1-59
§ 1.12		Impact Funds.	1-62

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
§ 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	2-47
§ 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
	[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	6-32
	[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

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	8-28
		[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
	[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.	9-4
	[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
	[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

§ 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

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

TABLE OF CONTENTS

xix

[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
[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

PRIVATE EQUITY FUNDS

	[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
§ 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

TABLE OF CONTENTS

xxi

	[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
	[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
	[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

TABLE OF CONTENTS

xxiii

§ 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
	[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	12-5
	[1] Structure of Agreement	12-5
	[2] Definitions	12-7
	[3] Interpretation	12-8
	[4] Class A-1 Members' Standard of Care	12-8
§ 12.03	Organization	12-10
	[1] Continuation of Limited Liability Company: Term	12-10
	[2] Choice of Name	12-11
	[3] Purpose	12-11
	[4] Places of Business	12-12
	[5] Registered Office and Agent	12-12
	[6] Fiscal Year	12-12
	[7] Powers	12-12
	[8] Certificate and Other Filings	12-12
§ 12.04	Members	12-12.2
	[1] Class A and Class B Members	12-12.2
	[2] Liability of the Members	12-12.2
	[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

TABLE OF CONTENTS

xxv

§ 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

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-141
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
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
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