

## **CHECKLIST FOR LIMITED PARTNERSHIP REVIEW**

1. Name of Fund/Partnership.

- Who are the contact people?
- Where should notification be provided?

2. Nature of Legal Entity.

- Legal jurisdiction for contract interpretation
- Currency denomination
- Summary of investment policy
- Are there any significant local partnership issues? (are there limits on the number of parties or the type of limited partner? safe harbor rules that may be applicable?)
- Are parallel investment vehicles in existence or proposed?
- What is the fund size? (expected, maximum, and what is the mechanism to allow an adjustment in fund size?)

3. Key Dates.

- What is the term of the fund? Does it have allowances for extensions?
- What are the expected or proposed closing date(s)?
- What is the nature of the commitment? Is it based upon years or size of aggregate of total capital invested or committed?
- GP/LP capital contribution?

4. Advisory Committee.

The question presented here is the selection and appointment of advisory committee members. In particular, are committee members selected by the general partner (GP) or is the committee nominated by the GP and elected by the limited partners (LPs).

- What is the make-up of the committee (number of GPs/LPs, voting allocation, etc.)? Can one LP have more than one advisory committee member, thereby skewing the interest of the participating LPs?
- What are the duties of the committee? Does the committee review investment strategy, performance, and potential conflicts of interest?
- Does the agreement set forth any liability on behalf of the advisory committee members? Generally, under normal corporate law standards, there is a liability inherent in the position of advisory committee member for the breach of the duty of loyalty, *e.g.*, a committee member who co-invests on different terms from other LPs have a built-in conflict of interest. The agreement should be examined to determine the responsibility and activities of the committee members.

5. Co-investments or Side Funds.

- Does the partnership agreement allow for co-investments or side funds? Are there limitations on who may participate in such arrangements? Do those participants pay the same fees as other LPs?

6. Clawback Provisions.

- Does the agreement provide for clawback and, if so, what are the terms?
- Is there a reserve for the clawback and, if so, how is it funded?
- Does each LP have a segregated reserve account?
- Is there a clawback against the LPs if the GP is sued?
- Do LPs have to make up deficits in their capital accounts (which may be referred to as a "deficit make-up")? I.R.C. § 704.

7. Calls on Capital.

- How are capital calls performed? On a regular basis or as needed? Is there a minimum or maximum size on any call? Annual limits? Can a distribution of capital be treated as undrawn and subject to recall with the commitment period?

8. Conflicts of Interest.

- What are the terms of the conflict of interest provision? Do all partners have to agree to any amendment to that provision or just a majority?

- If the agreement allows for the GP to conduct transactions with the partnership, does the agreement require the rights, interests, and restrictions generated to not be any more favorable to the GP than that which is afforded to unrelated third parties?
- How are conflicts defined? Some require LPs to identify affiliation with other entities, *e.g.*, entities holding licenses to operate broadcast stations from the Federal Communications Commission (FCC) due to limitations on the ownership of such stations.

9. Defaulting Limited Partner.

- What are the provisions for an LP who defaults under the agreement?
- Is there adequate time and a flexible means by which an LP may cure the default?
- Does the GP possess extensive authority to coerce an LP to correct the default?

10. Distribution Policy.

- Under what circumstances will the LPs investment capital be returned? Receipt of proceeds? Upon realization of income from investments?
- How quickly does the GP catch up on its investment in the fund?

11. Diversification.

- If the agreement consists of a successor fund, how did the previous fund(s) perform, *e.g.*, did it meet its targeted returns?
- How much can be invested in a single entity or line of business?
- How many investments are expected over the life of a fund?
- Are the investments diversified by geography, industry subsector, or investment vehicle?

12. Expenses.

- Who pays the organizational and offering fees?
- Who pays the placement fees?

- Are fees from investee companies offset against the management fee in whole or in part?

13. Dispute Resolution.

- If there is more than one GP, is it clear who takes the lead in investment decisions?
- Is there "no fault divorce" language among the GPs?
- Is there a pre-set mechanism, such as compulsory arbitration, to settle a dispute among multiple GPs?
- Can the GP be removed with or without cause?
- Will removal of the GP terminate the partnership?

14. Indemnification.

- What is the scope of the indemnification language?
- Beyond the GP, does it cover affiliates or committees?
- Do the indemnification provisions favor the GP or the LP, *e.g.*, standards of conduct – willful, negligent, breach of agreement, or criminal conviction?

15. Key Man.

- Does the agreement contain a key man provision? If so, who is covered by the provision, *e.g.*, leading partner or all principals?
- Is there any language that allows LPs to decide when the key man may be released from obligation?
- What percentage of LPs must affirm that a "disabling event" has occurred to allow the exodus of the key man?
- Are there any transfer limitations of LP interests by the GP? Is consent required in GP's sole discretion?

16. Most-favored Nation Clause/Side Letters.

- Is there an "omnibus most-favored nation clause" in the agreement? (In other words, a favorable concession to one LP must be given to all LPs.)
- Is there a provision allowing all side letters to be distributed to LPs?
- If side letters are allowed, is there a time restriction for the LP to act to enforce a side letter provision granted to another LP.

17. Termination.

- Can the partnership be terminated and, if so, how?
- What are the conditions of a breach? Usually, typical terms will include negligent acts, fraud, or other illegal acts or actions, such as adverse civil judgments, which would prevent the GP from performing under the agreement.
- Is there any provision by which the partnership can be terminated as a result of the conduct of an LP?

18. Unrelated Business Income.

- What are the conditions by which the partnership can generate unrelated business taxable income (UBTI)?
- If UBTI is created, by what means is it created?
- Does the GP have a duty to report UBTI on a timely basis to LPs?
- Is there a UBTI "insulator," *e.g.*, a separate corporate entity to receive the income?
- If there are prior funds, how much UBTI did they generate and was it in line with expectations?
- Was it reported timely to LPs?
- Are there a significant number of ERISA investors (25% or more)? ERISA LPs have more in common with one another than with university endowment investors which may affect the investment strategy. For example, ERISA LPs may have termination provisions added to the agreement if the partnership no longer qualifies as a "venture capital operating company" under the Tax Code.

- How and when tax distributions, if any, be made through the partnership? Will this be on a set periodic basis or in the sole discretion of the GP? Will distributions reflect prior offsetting losses?

19. Documentation/Reports.

20. Windup/Exit Strategy.

- Does the agreement provide for a maximum time period for the winding down and termination of the partnership?
- Is there a financial incentive if the process is completed within a reasonable time frame? Is there a penalty if it is not completed within a reasonable time frame?
- Are there any continuing obligations after the termination of the partnership for which the LP may be subject?