Limited Partnership Agreement
Survey Results - GPs

Center for Private Equity and Entrepreneurship
Tuck School of Business at Dartmouth

June 2004
Characteristics of survey respondents

Q.1 “How would you describe yourself as a sponsor of funds?” (n=123)

- Private: 90.2%
- Corporate: 4.1%
- Investment bank: 3.3%
- Other: 2.4%

(*) Respondents selecting “Other” category included SBICs and captive funds
Characteristics of survey respondents

Q.2  “If you manage multiple funds with different investment goals, how would you characterize the majority of your funds under investment?” (n=117)

- Venture: 72.6%
- Buyout: 21.4%
- Mezzanine: 4.3%
- Secondary: 0.9%
- Other: 0.9%

(*) Respondents selecting “Other” category included distressed debt funds
Characteristics of survey respondents

Q.3 “What is the total committed capital of your most recent fund?” (n=122)

- 34% <$100M
- 22% $100M-$249M
- 23% $250M-$499M
- 8% $500M-$749M
- 3% $750M-$1B
- 10% >$1B
Characteristics of survey respondents

Q.4 “How many funds does your firm/partnership presently manage?” (n=122)

- 70.50% of respondents manage 1-3 funds
- 16.40% manage 3-5 funds
- 9.00% manage 5-10 funds
- 4.10% manage more than 10 funds
Characteristics of survey respondents

Q.5  “In what jurisdiction are the majority of your funds organized?” (n=122)

- Delaware: 62%
- USA: 10%
- California: 7%
- New York: 3%
- Texas: 3%
- Other (*): 15%

(*) Respondents selecting “Other” category included (among others) other US states and Canadian provinces, as well as Japan, Cayman Islands, and the Channel Islands
Characteristics of survey respondents

Q.6 “In the typical fund in which you invest, who develops the first draft of the LPA?” (n=123)

96% GP  

2% Leading LP investor

2% Other
Cost of the Limited Partnership Agreement

Q.7 “For your most recent fund, about how much did you spend in total in outside legal services for negotiating the LPA with all your LPs?” (n=103)

Average: $262,712
Median: $125,000
Cost of the Limited Partnership Agreement

Q.8 “How many LPs invested in your latest fund?”

- 26% <20
- 30% 20-49
- 34% 50-100
- 11% >100

(n=121)
Cost of the Limited Partnership Agreement

Q.9 “Do you have inside counsel participate in the process?” (n=125)

67% No

33% Yes
Importance of the LPA’s Economic Provisions

Q.10a “Please indicate how important the structure and clarity of the following clause is to you”

Waterfall structure/Carry calculations (n=124)

- Insignificant: 2%
- Not Important: 2%
- Somewhat Important: 3%
- Important: 21%
- Very Important: 73%
Importance of the LPA’s Economic Provisions

Q.10b “Please indicate how important the structure and clarity of the following clause is to you”

Clawback provisions (n=123)
Importance of the LPA’s Economic Provisions

Q.10c “Please indicate how important the structure and clarity of the following clause is to you”

Management fees (n=124)

- Insignificant: 0%
- Not Important: 0%
- Somewhat Important: 10%
- Important: 27%
- Very Important: 63%
Importance of the LPA’s Economic Provisions

Q.10d “Please indicate how important the structure and clarity of the following clause is to you”

Organizational fees and expenses (n=123)
Importance of the LPA’s Economic Provisions

Q.10e “Please indicate how important the structure and clarity of the following clause is to you”

Portfolio company fee offset and allocation (n=122)

- Insignificant: 11%
- Not Important: 13%
- Somewhat Important: 38%
- Important: 25%
- Very Important: 12%
Importance of the LPA’s Economic Provisions

Q.10f “Please indicate how important the structure and clarity of the following clause is to you”

UBTI/ECI or similar tax protection provisions (n=121)
Importance of the LPA’s Economic Provisions

Q.10g “Please indicate how important the structure and clarity of the following clause is to you”

Distributions in stock vs. cash (n=123)
Importance of the LPA’s Economic Provisions

Q.10h “Please indicate how important the structure and clarity of the following clause is to you”

Co-investment rights (n=122)
Importance of the LPA’s Economic Provisions

Q.10i “Please indicate how important the structure and clarity of the following clause is to you”

Reinvestment/bridge financing restrictions (n=123)
Importance of the LPA’s Governance Provisions

Q.11a “Please indicate how important the structure and clarity of the following clause is to you”

GP Capital Commitment (n=123)
Importance of the LPA’s Governance Provisions

Q.11b “Please indicate how important the structure and clarity of the following clause is to you”

GP conflict issues (n=123)
Importance of the LPA’s Governance Provisions

Q.11c “Please indicate how important the structure and clarity of the following clause is to you”

Escrow Account (n=122)
Importance of the LPA’s Governance Provisions

Q.11d “Please indicate how important the structure and clarity of the following clause is to you”

Role & Powers of Advisory Board (n=123)
Importance of the LPA’s Governance Provisions

Q.11e “Please indicate how important the structure and clarity of the following clause is to you”

LP Approval Rights (n=122)
Q.11f “Please indicate how important the structure and clarity of the following clause is to you”

Transfer of LP Interests (n=123)
Importance of the LPA’s Governance Provisions

Q.11g “Please indicate how important the structure and clarity of the following clause is to you”

Valuation Reporting (n=123)
Importance of the LPA’s Governance Provisions

Q.11h “Please indicate how important the structure and clarity of the following clause is to you”

Confidentiality provisions (n=122)
Importance of the LPA’s Governance Provisions

Q.11i “Please indicate how important the structure and clarity of the following clause is to you”

<table>
<thead>
<tr>
<th>Importance Level</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Insignificant</td>
<td>2%</td>
</tr>
<tr>
<td>Not Important</td>
<td>20%</td>
</tr>
<tr>
<td>Somewhat Important</td>
<td>39%</td>
</tr>
<tr>
<td>Important</td>
<td>26%</td>
</tr>
<tr>
<td>Very Important</td>
<td>13%</td>
</tr>
</tbody>
</table>

Record Keeping (n=122)
Importance of the LPA’s Governance Provisions

Q.11j “Please indicate how important the structure and clarity of the following clause is to you”

Side-letters/Most Favoured Nation provisions (n=122)

- Insignificant: 8%
- Not Important: 16%
- Somewhat Important: 28%
- Important: 28%
- Very Important: 20%
Importance of the LPA’s Governance Provisions

Q.11k “Please indicate how important the structure and clarity of the following clause is to you”

ERISA Exemptions (n=122)
Importance of the LPA’s Governance Provisions

Q.11l “Please indicate how important the structure and clarity of the following clause is to you”

Investment Strategy, Limitations, and Guidelines (n=120)
Importance of the LPA’s Governance Provisions

Q.11m “Please indicate how important the structure and clarity of the following clause is to you”

Fundraising Period, investment period, and term (n=122)

- Insignificant: 2%
- Not Important: 4%
- Somewhat Important: 29%
- Important: 36%
- Very Important: 30%
Importance of the LPA’s Governance Provisions

Q.11n “Please indicate how important the structure and clarity of the following clause is to you”

Key man provisions (n=122)
Importance of the LPA’s Governance Provisions

Q.11o “Please indicate how important the structure and clarity of the following clause is to you”

No-fault suspension/Divorce (n=120)

- Insignificant: 8%
- Not Important: 15%
- Somewhat Important: 20%
- Important: 29%
- Very Important: 28%
Importance of the LPA’s Governance Provisions

Q.11p “Please indicate how important the structure and clarity of the following clause is to you”

Indemnification of GPs and LPs (n=122)
Importance of the LPA’s Governance Provisions

Q.11q “Please indicate how important the structure and clarity of the following clause is to you”

Limitations of liability of GPs and LPs (n=121)

- Insignificant: 5%
- Not Important: 20%
- Somewhat Important: 33%
- Important: 42%
- Very Important: 0%
Importance of the LPA’s Governance Provisions

Q.11r “Please indicate how important the structure and clarity of the following clause is to you”

Permitted activities of GPs (n=121)
Q.12 “Please list which 2 sections of an LPA typically require the most time negotiating with LPs.

<table>
<thead>
<tr>
<th>Most heavily-negotiated clauses</th>
<th>Additional comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Clawbacks</td>
<td>“Getting the LP's to agree was more difficult than negotiating with the GP's”</td>
</tr>
<tr>
<td>Key man</td>
<td>“No one item seems to take a disproportionate amount of time”</td>
</tr>
<tr>
<td>Mgt fees</td>
<td>“Comments are all over the place. No 2 stand out.”</td>
</tr>
<tr>
<td>Carry</td>
<td>“None, we set fair/conservative terms from the outset thus there is minimal LP negotiation”</td>
</tr>
<tr>
<td>Side letters</td>
<td>24</td>
</tr>
<tr>
<td>Waterfall</td>
<td>20</td>
</tr>
<tr>
<td>Indemnification</td>
<td>18</td>
</tr>
<tr>
<td>Mgt fees</td>
<td>17</td>
</tr>
<tr>
<td>Side letters</td>
<td>10</td>
</tr>
<tr>
<td>Waterfall</td>
<td>9</td>
</tr>
<tr>
<td>Indemnification</td>
<td>7</td>
</tr>
</tbody>
</table>
### Negotiating the LPA

Q.13 “Please list which 2 sections of an LPA you typically spend the most time in renegotiating with your LPs during the life of the fund.

<table>
<thead>
<tr>
<th>Most heavily re-negotiated clauses</th>
<th>Additional comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Clawbacks</td>
<td>“Have not been put in a situation where we had to renegotiate.”</td>
</tr>
<tr>
<td>Mgt fees</td>
<td>“Have not renegotiated any substantive terms/issues...”</td>
</tr>
<tr>
<td>Transfers</td>
<td>“I haven't had experiences with renegotiations.”</td>
</tr>
<tr>
<td>Extensions</td>
<td></td>
</tr>
<tr>
<td>Key man</td>
<td></td>
</tr>
<tr>
<td>Valuations</td>
<td></td>
</tr>
</tbody>
</table>

(by frequency of mention)
Q.14 “Do you believe that the LPA should govern the transparency and detail of fund and portfolio company reporting?” (n=122)
The LPA as a Governance Document

Q.15 “If there were to be guideline or model LPA documents, to what degree would you prefer that they be used?” (n=122)
Q.16a “If there were to be guideline or model LPA documents, would it be useful to include:”

- Not at all useful: 3%
- Somewhat useful: 30%
- Definitely useful: 25%
- Very useful: 30%
- Extremely useful: 12%

Annotations (n=121)
The LPA as a Governance Document

Q.16b “If there were to be guideline or model LPA documents, would it be useful to include:”

Numerical examples (n=121)
Q.17 “Some industry groups, such as the EVCA and PEIGG, have recommended that funds establish a valuation policy committee (VPC), which could be all or part of a fund’s advisory committee. Have any of your funds implemented a valuation policy committee?” (n=123)
Q.18. “Which of the following best described the role you feel a valuation policy committee should fulfill?” (n=122)
Partnership Governance Mechanisms

Q.19a “Please rate how important the following fund governance mechanisms are to you”

Advisory Board (n=122)
Partnership Governance Mechanisms

Q.19b “Please rate how important the following fund governance mechanisms are to you”

Valuation Policy Committee (n=119)

- Insignificant: 14%
- Not Important: 33%
- Somewhat Important: 34%
- Important: 11%
- Very Important: 8%
Q.19c “Please rate how important the following fund governance mechanisms are to you”

Specification of valuation methodologies (n=122)
Partnership Governance Mechanisms

Q.19d “Please rate how important the following fund governance mechanisms are to you”

Quarterly disclosure of general fund-level information (n=121)
Partnership Governance Mechanisms

Q.19e “Please rate how important the following fund governance mechanisms are to you”

Quarterly disclosure of detailed fund (including portfolio company) information (n=122)
Partnership Governance Mechanisms

Q.20a  “For your current fund(s), please rate, on average, how satisfied you are with the following.”

Advisory Board (n=118)
Partnership Governance Mechanisms

Q.20b “For your current fund(s), please rate, on average, how satisfied you are with the following.”

VPC (n=79)
Partnership Governance Mechanisms

Q.20c “For your current fund(s), please rate, on average, how satisfied you are with the following.”

Frequency of reporting (n=122)
Q.20d “For your current fund(s), please rate, on average, how satisfied you are with the following.”

Detail of reporting (n=122)
Partnership Governance Mechanisms

Q.21 “What other governance issues do you think could best be addressed within the LPA?”

Note: Only 15 responses were recorded to this question. The commentary is therefore viewed as having only anecdotal value.

- “FOIA, via-a-vis different report generation for FOIA LPs”
- “Necessity of, and ability to avoid, reporting to FOIA LPs”
- “Provisions for dealing with LPs in default”
- GP succession planning
- Confidentiality
Opinions Regarding Standardized Language

Q.22. “How do you view the absence of a commonly accepted guideline or model LPA?” (n=124)

- 46% Not at all important
- 49% Somewhat important, but there are more important issues
- 3% Important, this needs attention
- 2% Very important, this is critical for the industry to develop
Opinions Regarding Standardized Language

Q.23 “Do you think that a guideline or model LPA would be useful as a starting point for negotiating investments in a private equity fund?” (n=121)

47% 53%

No Yes
Opinions Regarding Standardized Language

Q.24a “Please rate how potentially valuable an industry-wide guideline or model LPA would be for addressing the following concerns”

Reduce negotiation time and cost (n=122)

- No value: 17%
- Some value: 34%
- Valuable: 28%
- Very valuable: 14%
- Extremely valuable: 7%
Opinions Regarding Standardized Language

Q.24b “Please rate how potentially valuable an industry-wide guideline or model LPA would be for addressing the following concerns”

<table>
<thead>
<tr>
<th>Facilitate more important due diligence (n=122)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rating</td>
</tr>
<tr>
<td>No value</td>
</tr>
<tr>
<td>Some value</td>
</tr>
<tr>
<td>Valuable</td>
</tr>
<tr>
<td>Very valuable</td>
</tr>
<tr>
<td>Extremely valuable</td>
</tr>
</tbody>
</table>

28% 36% 25% 9% 2%

Center for Private Equity and Entrepreneurship
Opinions Regarding Standardized Language

Q.24c “Please rate how potentially valuable an industry-wide guideline or model LPA would be for addressing the following concerns”

Improve reporting  (n=120)
Opinions Regarding Standardized Language

Q.24d “Please rate how potentially valuable an industry-wide guideline or model LPA would be for addressing the following concerns”

Provide greater transparency (n=121)
Opinions Regarding Standardized Language

Q.24e “Please rate how potentially valuable an industry-wide guideline or model LPA would be for addressing the following concerns”

Facilitate dispute resolution (n=121)
Opinions Regarding Standardized Language

Q.24f “Please rate how potentially valuable an industry-wide guideline or model LPA would be for addressing the following concerns”

<table>
<thead>
<tr>
<th>Identify alternative solutions, and provide specific language for such alternatives</th>
<th>(n=122)</th>
</tr>
</thead>
<tbody>
<tr>
<td>No value</td>
<td>15%</td>
</tr>
<tr>
<td>Some value</td>
<td>25%</td>
</tr>
<tr>
<td>Valuable</td>
<td>35%</td>
</tr>
<tr>
<td>Very valuable</td>
<td>19%</td>
</tr>
<tr>
<td>Extremely valuable</td>
<td>7%</td>
</tr>
</tbody>
</table>
Opinions Regarding Standardized Language

Q.24g “Please rate how potentially valuable an industry-wide guideline or model LPA would be for addressing the following concerns”

Reduce likelihood of litigation (n=121)

- No value: 33%
- Some value: 26%
- Valuable: 24%
- Very valuable: 14%
- Extremely valuable: 2%
Opinions Regarding Standardized Language

Q.24h “Please rate how potentially valuable an industry-wide guideline or model LPA would be for addressing the following concerns”

Facilitate secondary market transactions  (n=120)

- No value: 28%
- Some value: 26%
- Valuable: 27%
- Very valuable: 13%
- Extremely valuable: 6%
Opinions Regarding Standardized Language

Q.25 “If there are other important benefits of an industry – wide guideline or model LPA, please describe them below.”

Note: Only 13 responses were recorded to this question. The commentary is therefore viewed as having only anecdotal value.

“...de facto there are models because certain law firms handle a large number of fund formations”

“We are a licensed SBIC therefore, we are bound by SBA's model partnership agreement.”

“It would make the industry more accessible to more investors, and create the appearance of uniformity as an important investment class.”

“Effectively, there is a standard model that is used by law firms whose provisions are based upon market discussions with LPs.”
Obstacles and Opportunities for a Model LPA

Q.26a “How would you rate these potential challenges of developing an industry-wide guideline or model LPA?”

Low likelihood of agreement between GPs and LPs (n=118)
Obstacles and Opportunities for a Model LPA

Q.26b “How would you rate these potential challenges of developing an industry-wide guideline or model LPA?”

Top-tier GP resistance (n=121)

- Not an issue: 1%
- Minor challenge: 2%
- Moderate challenge: 8%
- Significant challenge: 41%
- Very large obstacle: 47%
Obstacles and Opportunities for a Model LPA

Q.26c “How would you rate these potential challenges of developing an industry-wide guideline or model LPA?”

**Commonality with prior funds** (n=120)

- **Not an issue**: 3%
- **Minor challenge**: 9%
- **Moderate challenge**: 31%
- **Significant challenge**: 34%
- **Very large obstacle**: 23%
Obstacles and Opportunities for a Model LPA

Q.26d “How would you rate these potential challenges of developing an industry-wide guideline or model LPA?”

Difficulty in writing specific clauses (n=120)

- Not an issue: 3%
- Minor challenge: 16%
- Moderate challenge: 35%
- Significant challenge: 32%
- Very large obstacle: 15%
Obstacles and Opportunities for a Model LPA

Q.26e “How would you rate these potential challenges of developing an industry-wide guideline or model LPA?”

Overly complex and unique regulatory requirements (n=120)
Obstacles and Opportunities for a Model LPA

Q.26f “How would you rate these potential challenges of developing an industry-wide guideline or model LPA?”

Differences among venture, buyout, and mezzanine (n=118)
Obstacles and Opportunities for a Model LPA

Q.27 “If there are other notable obstacles to developing an industry-wide guideline or model LPA, please describe them below.”

Note: Only 27 responses were recorded to this question. The commentary is therefore viewed as having only anecdotal value.

“... 'model' agreements tend to move to the over defined and rigid as each iteration has more legal boilerplate piled on. You end up with a mortgage document.”

“How about the attorneys balking at using a model agrt. Drafting agtrs can be a significant source of revenue; and every attorney thinks they have the best LPA!!”

“Violates the VC Legal Profession Full Employment Act. But seriously, the LPA is the single most important document for a Fund. It CANNOT be made into a 'fill-in-the-form' model. However, EXAMPLES of LPA sections would be extremely helpful. A survey of current terms (which is available from The Private Equity Analyst) is also very helpful.”
Value of an LPA Template

Q.28a “How would you rate the overall usefulness of a guideline or model LPA in the following areas?”

Structuring the investment  (n=118)
Value of an LPA Template

Q.28b “How would you rate the overall usefulness of a guideline or model LPA in the following areas?”

Managing the LP relationship (n=118)

- Ineffective: 38%
- Somewhat effective: 51%
- Very effective: 11%
Value of an LPA Template

Q.28c “How would you rate the overall usefulness of a guideline or model LPA in the following areas?”

Managing transfers of interest (n=118)

- Ineffective: 34%
- Somewhat effective: 53%
- Very effective: 14%
Value of an LPA Template

Q.28d “How would you rate the overall usefulness of a guideline or model LPA in the following areas?”

Closing out a fund  (n=116)

- **36%** Ineffective
- **53%** Somewhat effective
- **9%** Very effective
LPA Conference

Q.29  “If a conference were to be held regarding development of a guideline or model LPA document, would you be interested in participating?”  (n=123)

63%  No

37%  Yes
About the Center for Private Equity and Entrepreneurship

The Center for Private Equity and Entrepreneurship aims to produce practical and insightful global private equity and entrepreneurship research and education. The Center intends to be a trusted independent source of information on best practices and trends in private equity and entrepreneurship. It covers both macro and micro issues relating to private equity in areas such as capital markets, financing structures, governance and entrepreneurship. The Center is actively involved in the practitioner communities of private equity and entrepreneurship, both to gain information about current trends and challenges and to share insights and solutions. The Center interacts with institutional investors, venture capitalists, buy-out investors, corporate ventures, angel investors, entrepreneurs, portfolio companies, industry lawyers and accountants, industry associations, and the media.

A thought leader in the field of private equity, the Center’s work is represented in prestigious publications and industry conferences. The Center is a regular contributor to the *Venture Capital Journal*, the leading industry magazine, and its directors are often sought out as authorities by top business publications, such as *The Wall Street Journal*. The Center seeks to educate Tuck students in private equity investing and entrepreneurial management through such courses as Private Equity Finance, Advanced Entrepreneurship, Field Studies in Private Equity and through supporting internships, fellowships and independent studies.

For additional information on the Center for Private Equity and Entrepreneurship please visit: [http://mba.tuck.dartmouth.edu/pecenter](http://mba.tuck.dartmouth.edu/pecenter)
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➢ The analysis and presentation of the survey results were conducted and developed by:
  ▪ Professor Colin Blaydon
  ▪ Adjunct Assistant Professor Fred Wainwright
  ▪ Research Assistant Erickson DeOliveira