

Template General Partner Entity Agreement for Your New Private Equity or VC Fund

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Part of a series on structuring the team and legal infrastructure of a new private equity/VC fund:

- [Writing the Constitution for Your New Private Equity or VC Fund: Strategy, Culture, Decision-Making, Budget, and Data Ownership](#)
- [The Legal Issues You Need to Nail Down for Your New Private Equity or VC Fund](#)
- [Template General Partner Entity Agreement for Your New Private Equity or VC Fund](#)
- [Template Management Company Agreement for Your New Private Equity or VC Fund](#)
- [Template Structure for the Anchor Investor in Your New Private Equity/ VC Fund](#)
- [How to Join a VC or Private Equity Firm as a Partner or Recruit a Partner](#)

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In the prior essays in this series, we've only been able to touch on a handful of the items that need to be considered when forming a GP entity. To make this process easier for you, please see the template below, which can serve as a checklist for aspiring fund managers. We hope that you will find it helpful!

Executive Summary of Agreed-Upon Key Terms of General Partner Entity ("Executive Summary")

The following information is presented as a summary of certain agreed-upon key terms of a to-be-formed special purpose legal entity to be called [Insert Name of GP Entity], a Delaware limited liability company (the "GP Entity"). The GP Entity will serve as the general partner of [Insert Name of Fund], a Delaware Limited Partnership (the "Limited Partnership"), and one or more offshore feeder vehicles that may be formed from time to time to accommodate the tax and/or regulatory needs of one or more investors (such entities, together with the Limited Partnership, the "Fund").

Each person that is a party to this Executive Summary acknowledges and agrees that the rights and obligations summarized herein shall be incorporated into a limited liability company agreement of the GP Entity to which each such person shall be a party to be executed on or around the initial closing date of the Fund. Notwithstanding the foregoing, the anticipated terms set forth below are subject to modification and the eventual terms set forth in the operative agreements of the GP Entity will be reflected in such legal entity's limited liability company agreement, which will be controlling.

The Fund:	[Insert Name of Fund].
Investment Strategy of the Fund:	Seek to generate significant yield and long-term capital appreciation through the Fund's proposed direct equity investment rights in [early-stage] [high-growth] technology companies organized and operating in the United States].
Legal Structure of the Limited Partnership:	A Delaware Limited Partnership.
Legal Structure of Feeder Vehicles of the Fund:	[Cayman Islands], [British Virgin Islands] [Luxembourg].
Target Fund Size:	The Fund will target aggregate capital commitments of US [\$___] million.
Target Fund Closing Date:	The first closing of the Fund is expected to occur prior to [_____].
Fund Investment Period; Fund Term:	The Fund will have a [__]-year investment period following the [initial] [final] closing date of the Fund (subject to a 1-year extension at the discretion of the GP Entity (as defined below) and another 1-year extension with the prior written consent of either a limited partner advisory committee, if any, (the " <u>LPAC</u> ") or a majority in interest of the limited partners) (the " <u>Investment Period</u> "); [__]-year term from the [initial] [final] closing date of the Fund (subject to a 1-year extension at the discretion of the GP Entity and another 1-year extension with the prior written consent of either the LPAC or a majority in interest of the limited partners).
GP Entity:	[Insert Name of GP Entity].
GP Economics:	The GP Entity will be entitled to a [___%] carried interest of the aggregate profits of the Partnership [after each limited partner of the Fund receives its [___%] per annum "preferred return"] (the " <u>GP Carry</u> "). ¹
Initial Members of the GP Entity (collectively, the "<u>Initial Members</u>"): ²	[Insert Name of First Member of GP Entity (" <u>Member 1</u> ")], [Insert Name of Second Member of GP Entity (" <u>Member 2</u> ") and [Insert Name of Third Member of GP Entity (" <u>Member 3</u> ")].
Titles of Initial Members of the GP Entity:	Member 1: [Insert Title of Member 1]; Member 2: [Insert Title of Member 2]; and Member 3: [Insert Title of Member 3]. Only those Initial Members with the title

¹ NTD: In the private equity world, we sometimes see "deal by deal" allocation of GP Carry, but in venture capital, carry participants typically receive percentages of the collective pool.

² NTD: This Executive Summary assumes that there will be three members of the GP Entity.

of “Managing Member” shall have the power and authority to bind the GP Entity.

Key Persons and Their Time and Attention Requirement:

[Each Managing Member] [Member __ and Member __] shall be designated as a “Key Person” of the Fund and shall be required to devote substantially all of their respective business time and attention to the affairs of the Fund, other funds now existing or hereafter formed, and their respective portfolio companies (the “Time and Attention Requirement”). Failure of a Key Person to satisfy the Time and Attention Requirement shall constitute “cause” under the Operating Agreement of the GP Entity which shall trigger the right of the other Managing Members to remove such Key Person as a Member of the GP Entity.

Funding of Initial Operations of the GP Entity:

The amount needed to finance the initial operations of the GP Entity shall be [\$_____]³ and shall be funded by the Initial Members as follows on an “as needed” basis: [Member 1: [__%]; Member 2: [__%]; and Member 3: [__%]].⁴

Allocation of GP Carry:⁵

Member 1: [__%]; Member 2: [__%]; and Member 3: [__%].⁶ [In addition, [__%] of the GP Carry shall be set aside to fund a “Carry Pool” to be allocated and distributed to the Members and/or non-managing members of the GP Entity as determined by [unanimous agreement] [agreement of a majority in interest] of the Managing Members.⁷

Vesting of GP Carry:⁸

The GP Carry shall vest as follows: [_____]⁹. In addition, vesting of the GP Carry with respect to a particular Member shall accelerate upon the death or permanent disability of such Member. Each recipient of GP Carry will be subject to a “GP clawback” and shall severally (and not jointly) guarantee the payment of the GP’s Entity’s clawback obligation.

Dilution of GP Carry:

In the event the Managing Members agree to allocate a portion of the GP Carry to additional individuals or entities (e.g., associates and staff), the Initial Members previously allocated GP Carry shall be diluted as follows: Member 1: [__%]; Member 2: [__%]; Member 3: [__%]; and [__%] to the Carry Pool.¹⁰

³ NTD: Provide amount of initial capitalization of the GP Entity.

⁴ NTD: Provide breakdown of how the initial capitalization of the GP Entity shall be split up among the Managing Members.

⁵ NTD: Outside investors to the Fund may be interested in the overall allocation. The allocation should be consistent with the role / importance of the various team members since this reflects on the “culture” of the firm.

⁶ NTD: Averages from various surveys are as follows: (1) Managing Member / CEO ~ 45%, (2) Senior Partner ~ 30%, (3) Mid-Level Partner at ~10% and (4) Junior Partner ~ 5%. Investors are interested in making sure that all of the investment personnel (including the more junior team members) are incentivized to stay.

⁷ The Managing / Senior Partners typically get around 70% of the GP Carry Pool.

⁸ NTD: Typically see 5~6 years for Managing Members/“Senior Partners” and 6~7 years for “Junior Partners.”

⁹ NTD: Cliff-vesting or back-end loaded vesting provisions are often seen.

¹⁰ NTD: Often dilution of the Members’ percentage of the GP Carry is allocated entirely to the Managing Member(s).

Allocation of Unvested GP Carry:

In the event previously allocated GP Carry does not vest, such unvested GP Carry shall be allocated as follows: Member 1: [___%]; Member 2: [___%]; Member 3: [___%]; and [___%] to the Carry Pool.

GP Entity's Subscription Amount:¹¹

Up to [___%] of the Fund's aggregate capital commitments or [\$_____], whichever is greater (to be paid either in cash, as an offset against Management Fees (as defined below), or a combination of both). The funding of the GP Entity's Subscription Amount shall be allocated among the Members as follows: Member 1: [___%]; Member 2: [___%]; and Member 3: [___%]. Each Initial Member shall be responsible to fund his or her percentage of the GP Entity's Subscription notwithstanding his or her departure from the GP Entity.

Management:

The GP Entity (who has the exclusive right and power to manage and operate the Fund) will engage [Insert Name of the management Company] (the "Management Company") to assist with the management of the Fund. (See Summary of Key Terms – Management Company for more details regarding the ownership, economics, management, etc. of the Management Company.)

Investment Criteria:

The parties hereto agree that the Fund's investment criteria shall be as follows: [_____].

Fund Investment Related Decisions:

Fund investment decisions shall be made as follows: [_____].¹²

Ability of One or More Managing Members to Remove another Managing Member From the GP Entity:

For Cause, with "Cause" defined as the occurrence of any of the following events [(as determined by a court or arbitral body having appropriate jurisdiction)]: (i) willful or intentional infliction of substantial injury upon any of the GP Entity or any of its direct or indirect affiliates (collectively, the "Entity Parties") by such Managing Member, (ii) such Managing Member's embezzlement, fraud or other acts of a criminal nature in connection with the Managing Member's rights and obligations to the Entity Parties, (iii) the Managing Member intentionally or recklessly engaging in an act that materially and adversely affected the reputation, goodwill or business interests of the Entity Parties or (iv) the Managing Member's conviction of or no contest plea to any crime involving moral turpitude.

¹¹ NTD: The GP entity is almost always required to make a capital commitment to the Fund (typically between 1~5%). Each Partner will be responsible for a part of this capital commitment. This is often allocated along the same lines as the GP Carry, but not necessarily.

¹² NTD: Typically Fund investment decisions are made by an investment committee. Many will have a "unanimous consent" or "unanimous consensus" mechanism. Occasionally, in smaller "seed" funds, investment decisions are made unilaterally by each Managing Member – particularly when such fund allocates a fixed percentage for each Managing Member to invest, does not set aside capital for follow-on investments and uses an "eat what you kill" allocation of the GP Carry (assuming, of course, that such fund has achieved the right to pay out GP Carry on an aggregate fund basis).

Upon the removal of a Manager Member for Cause, any unvested interest in the GP Carry shall no longer vest, and any vested interest in the GP Carry shall be automatically revoked.

GP Entity Operational Decisions:

In addition to what is already provided herein, the following operational decisions of Fund, the GP Entity shall be made as follows:¹³

- (A) Admission of new partners to the GP Entity (including by way of transfer and by way of issuing new interests): [_____].
- (B) Negotiation of the Fund terms with potential investors: [_____].
- (C) Timing of capital calls to Fund investors: [_____].
- (D) Day-to-day and other decisions regarding the management of the Fund and/or the GP Entity: [_____].
- (E) Voting the securities of the Fund's portfolio companies: [_____].
- (F) Management decisions at the Fund's portfolio companies: [_____].
- (G) Determination of investor default remedies at the Fund level and/or the GP Entity level: [_____].
- (H) Liquidation-related decisions regarding the Fund: [_____].
- (I) Changes in the Fund and/or GP Entity's name: [_____].
- (J) Timing and amount of distributions from the Fund: [_____].
- (K) Timing and amount of distributions from the GP Entity (including, without limitation, tax distributions): [_____].
- (L) Withdrawal of amounts from the GP Entity: [_____].
- (M) Valuation of Fund assets / GP Entity assets: [_____].
- (N) Incurring indebtedness or entering into material contracts for the GP Entity and/or the Fund: [_____].
- (O) Guaranteeing indebtedness of others on behalf of the GP Entity and/or the Fund: [_____].
- (P) An affiliated party buying from, or selling to, the GP Entity and/or the Fund, any securities (including,

¹³ NTD: This list may not be exhaustive depending on the nature and focus of the Fund.

without limitation any warehoused securities):
[_____].

(Q) Grant of indemnification or pursuing indemnity claims: [_____].

(R) Amending the Fund LPA: [_____].

(S) Amending the GP Entity Operating Agreement: [_____].

Restrictive Covenants With Respect to Managing Members:

The GP Entity employment agreements shall contain the following restrictive covenants: [noncompete;¹⁴ limitations on outside activities (including investment opportunities and other business activities); non-solicitation;¹⁵ restrictions on activities after termination of the Fund and/or the GP Entity; ongoing compliance with standard internal policies and compliance manuals and handbooks (including, without limitation, conflicts of interest); mutual nondisclosure and non-disparagement requirements to be triggered upon departure from the GP Entity; ownership of investment track record; dispute resolution; etc.

Succession Plan:

The succession plan for the GP Entity is as follows: [_____].

Ownership of Name:

The parties acknowledge and agree that Member [] owns exclusively all right, title, and interest in and to the name of the Fund, the GP Entity and related trademarks (collectively, the “Venture Mark”). Member [] shall grant to the Fund and the GP Entity an irrevocable, perpetual, royalty-free, exclusive license, to the extent necessary, to use the name of the Fund and the GP Entity and the rest of the Venture Mark as part of its name (as applicable) and in connection with its activities.

Transfers:

A Managing Member’s interest in the GP Entity (other than a portion of the economic right to receive GP Carry and/or excess management fees (as applicable) not to exceed 50% in connection with a divorce) will not be assignable or transferable without the prior written consent of the other Managing Members.

Tax Aspect of the GP Entity:

For U.S. Federal Income Tax purposes, the GP Entity shall be treated as a partnership and not as an association taxable as a corporation.

Governing Law and Jurisdiction:

The rights, obligations and relationships of the Managing Members will be governed by Delaware law.

¹⁴ NTD: Enforceability of “noncompete” covenants varies from state to state. Be sure to check with Fund counsel before including any such covenant.

¹⁵ Enforceability of “non-solicitation” covenants also varies from state to state. Be sure to check with Fund counsel before including any such covenant.

We cross-posted this template on [OpenVC](#).