

Negotiating Private Equity and Venture Capital Fund Terms

Presenter:

Scott Peterman, Partner, Orrick, Herrington & Sutcliffe

Course Details:

Date: 27 August 2019, Tuesday	Language: English	CPD Law Points: 2.0
Time: 4:00 pm – 6:10 pm	Level: Standard ³	CPD BC Law Points: 2.0
Venue: Room 201 2/F Prosperous Building 48-52 Des Voeux Road Central, Hong Kong	Fee: HK\$1,600 / HK\$1,440 (for online registration)*	CPT Hours¹: 2.0
		CFA CE/SER Credits²: 2.0 / 1.0

Hot button topics in today's private equity / venture capital fund terms include demands by limited partners (LP) for **kick-out and termination rights** with respect to the general partner (GP) of the fund. LPs may also demand that the agreement specify the standard of care for GP actions and the scope of the GP's fiduciary duties. In return, the GP typically demands indemnification for actions related to the fund's investment activities.

Investors continue to pressure GPs to **adopt global waterfalls** whereby the hurdle threshold is calculated at fund level. GPs can pressure investors to stick with deal-by-deal waterfalls by proposing alternatives such as interim clawbacks. Investors have shown an **increasing desire to co-invest in equity** and seek a lower fee structure and more flexibility than traditional PE investments provide. The terms of co-investment and club arrangements are typically negotiated on a case-by-case basis depending on factors such as the type and identity of the investor, asset type or portfolio company business, the intended use of the capital, and key tax considerations.

When sponsors and investors negotiate the terms of an investment fund agreement, the treatment of various fees and expenses is often a much-negotiated issue. From **fund design through regulatory review and enforcement**, the costs borne by an investment fund are a point of intense focus. Investors demand **full disclosure of fees and expenses** in the agreement and will measure compliance with that disclosure throughout the life of the fund. In response, expense provisions in fund governing documents are getting longer and more detailed. They must address investment evaluation expenses, marketing costs, expenses associate with monitoring investments, broken deal expenses, treatment of co-investors, calculation of transaction and management fees, and reporting obligations, and other operating costs, among many others. Meanwhile, investors have become more conscious of the need for **sustainable investing**.

Please join Orrick's Scott Peterman and Anson Chan as they take a deep dive on the key terms and trends driving current private equity fund terms.

Highlights of the course include:

- General Partner Removal: "No Fault" vs. "For Cause"
- Indemnities / General Partner Standard of Care
- Carried Interest and Management Fees
- Ancillary Fees (transaction fees, breakup fees)
 - Why are fees and expenses such a contentious issue between sponsors and investors? Which are the most sensitive?
 - What are the most significant trends about fees, expenses and reporting?
 - How have transaction and management fees evolved?
 - What are the chief concerns for co-investors about fees and expenses
- Co-Investment / Capacity Rights
- Conflicts
- Navigating Broker / Dealer Type 1 Issues
- Who is Required to Register with SFC?
- Accommodating the Tax Needs of Different Types of Investors
- Responsible Investing (ESG / Impact Investing)

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