

# Overview of ILPA Principles 3.0 and Model LPA

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The Institutional Limited Partners Association (ILPA) recently released the third version of its principles (Principles 3.0)<sup>1</sup>, as well as a form of limited partnership agreement (model LPA, and together with Principles 3.0, new ILPA Guidelines)<sup>2</sup>.

Principles 3.0 is significantly more detailed and specific than its version 2.0 predecessor released in January 2011 (Principles 2.0). In respect of the model LPA, ILPA's rationale for drafting and releasing the model LPA was to lower cost and complexities associated with negotiations of limited partnership agreements (LPAs) in the current market by providing a common starting point for both general partners (GPs) and limited partners (LPs). The model LPA was produced through the collaboration of ILPA and an international group of counsel (including Torys LLP).

This article provides: 1) an overview of the new ILPA Guidelines and ILPA's guiding principles; 2) a select summary of changes from Principles 2.0 to the new ILPA Guidelines; and 3) ILPA's recommended changes to LPA voting thresholds.

## Overview of the new ILPA Guidelines and ILPA's Guiding Principles

### Overview of the new ILPA Guidelines

The new ILPA Guidelines include recommendations as to ILPA's views on industry best practices with its cited goal of improving the private equity industry for the long-term benefit of all industry participants. Many of the recommendations in the new ILPA Guidelines should be considered uncontroversial, however, some of ILPA's recommendations reflect LP-favourable practices that are not necessarily standard in the current market but are an effort by ILPA to shift current market practices, or at least trigger discussions of certain of these practices.

The model LPA should be most beneficial for first-time private fund sponsors who: a) are focused on understanding the requirements of prospective LPs; and b) may have low negotiating leverage with prospective LPs.

In addition, while both LPs and GPs should become familiar with the new ILPA Guidelines as they may prove effective in framing their negotiations, both GPs and LPs should keep in mind that the new ILPA Guidelines are not intended by ILPA to act as a checklist.

We are available to discuss the recommendations included in the new ILPA Guidelines and their implications.

### ILPA's Guiding Principles

The new ILPA Guidelines maintain the guiding principles that originated in ILPA's first version of the principles released in September 2009 and that were also of central importance in Principles 2.0: (i) alignment of interest, (ii) transparency and (iii) governance. These guiding principles flow through Principles 3.0, with many of ILPA's

recommendations focusing on heightened disclosure, more frequent and detailed reporting, and written policies that are shared with LPs.

## Three guiding principles

### Alignment of interest

- It is ideal for there to be a substantial equity commitment by GP where its wealth creation is primarily after LP return requirements are met.
- GP should make decisions considering benefit to fund as a whole.
- GP should establish written conflict of interest policies and procedures.
- Annually, GP should disclose source and value or any material benefit accruing to GP as investment manager.

### Transparency

- LPs should receive timely access to and notifications of information re: GP and management of fund's investments.
- All LP disclosures should be clear, complete, fair and not misleading.
- Fees and expenses should be regularly disclosed and subject to LPAC review and independent auditor certification.
- Fees should be reasonable; fund should not incur expenses that could be expected to be covered by the management fee as a cost of operating the fund.

### Governance

- GPs should not seek to pre-clear actions through overly broad disclosure that could result in a conflict of interest.
- GPs should make an affirmative statement of the standard of care owed to the fund.
- LPACs should be thoughtfully constructed, mandated and managed as an important adviser to the fund.
- LPAC members should be held to minimum participation standards.
- LPAC meetings should be followed by an *in-camera* session.

## Select summary of changes from Principles 2.0 to the new ILPA Guidelines

Principles 3.0 divides ILPA's recommendations by new topics and sub-topics (many of which are entirely new concepts). A comparison of a select summary of changes from Principles 3.0 together with the model LPA, to Principles 2.0, is provided below.

### 1(a). GP and fund economics: waterfall structure

Status: generally unchanged in the new ILPA Guidelines

What's been maintained in the new ILPA Guidelines:	What's been added in the new ILPA Guidelines:
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<ul style="list-style-type: none"> <li>• A whole of fund model is best practice.</li> <li>• For other models: <ul style="list-style-type: none"> <li>• Distributions should be based on return of all realized cost for a given investment with continuous makeup of partial unrealized impairments and write-offs, and return of all fees and expenses to date.</li> <li>• For a deal-by-deal waterfall, all unrealized investments should be valued at the lower of cost or market.</li> <li>• Accrued carried interest should be held in escrow accounts with significant reserves (e.g., 30% of carry or more) and require additional reserves to cover potential clawback liabilities.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Waterfalls should be readily comprehensible and preferably investors are provided with a model.</li> </ul>
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## 1(b). GP and fund economics: calculation of carried interest

Status: updated and expanded in the new ILPA Guidelines

What's been maintained in the new ILPA Guidelines:	What's been added in the new ILPA Guidelines:
<ul style="list-style-type: none"> <li>• Carried interest should be calculated based on net profits, factoring in the impact of fund-level expenses, on an after-tax basis.</li> <li>• No carried interest should be taken on current income or recapitalizations until the full amount of invested capital is realized.</li> </ul>	<ul style="list-style-type: none"> <li>• Amendments to carried interest calculations based on changes in tax policies impacting individual GP members should be limited and subject to LP advisory committee (LPAC) approval.</li> <li>• Carried interest calculation should use a “hard hurdle”, such that carried interest is based only on the portion of profits that exceed the preferred return.</li> <li>• Preferred return should be calculated from the capital call date to the distribution date; however, when bridging or drawing from a credit facility, the calculations should run from the date capital is at risk (i.e., date facility is drawn).</li> <li>• Lines of credit (LCs) should be used to benefit the fund (i.e., for administrative ease or as bridge financing), rather than to enhance reported internal rate of return (IRR) to accelerate accrual and distribution of carry.</li> <li>• LCs should be no more than 180 days outstanding and limited to a maximum percentage of commitments; LCs should not be used to fund early distributions.</li> </ul>

## 1(c). GP and fund economics: recycling of distributions

Status: entirely new in the new ILPA Guidelines

- Aggregate distributions subject to recycling should have either: a) a mutually agreed cap; or b) a monitoring threshold such that LPs can more accurately project their cash requirements.
- Recycling provisions (including the classification of any unused, recallable distributions) should expire at the end of the fund's investment period.

## 1(d). GP and fund economics: clawback

Status: updated and expanded in the new ILPA Guidelines

What's been maintained in the new ILPA Guidelines:	What's been added in the new ILPA Guidelines:
<ul style="list-style-type: none"><li>• Best approach to minimize clawback liabilities is an “all capital back” waterfall.</li><li>• If in a clawback situation, consider:<ul style="list-style-type: none"><li>• establishing a net asset value (NAV) coverage test to ensure sufficient margin of error on valuations;</li><li>• interim clawbacks (at least 125%) should be triggered both at defined intervals and upon specific events (e.g., key person, insufficient NAV coverage);</li><li>• joint and several liability of individual GP members as a best practice (where not provided, receive creditworthy guarantee of entire clawback repayment by substantial parent or individual GP member or subset of GP members); and</li><li>• escrow account of at least 30%.</li></ul></li></ul>	<ul style="list-style-type: none"><li>• Actual and potential clawback liabilities should be clearly disclosed to LPs at the end of every reporting period.</li><li>• Clawback should be gross of taxes paid, and repaid no later than two years following liability recognition.</li><li>• Interim clawbacks should be well defined in fund documents (e.g., defined intervals and upon specific events).</li><li>• LPs should have robust enforcement powers, including ability to directly enforce a clawback against guarantors.</li><li>• Cost of enforcing clawback guarantees should be a GP expense.</li></ul>

## 1(e). GP and fund economics: management fees

Status: updated and expanded in the new ILPA Guidelines

What's been maintained in the new ILPA Guidelines:	What's been added in the new ILPA Guidelines:
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<ul style="list-style-type: none"> <li>• Should be based on reasonable operating expenses and reasonable salaries.</li> <li>• Prospective LPs should receive a fee model to guide how management fees will be calculated over the term.</li> <li>• Should consider lower management fees for follow-on funds, at the end of the investment period, or if term is extended (e.g., step-downs).</li> </ul>	<ul style="list-style-type: none"> <li>• GP should bear overhead costs, salaries of employees and any relevant advisers or affiliates, travel expenses and any other costs related to the investment activities of the manager on behalf of the fund.</li> <li>• Where there is a management fee cap for a single investor or group of investors, any amount above such cap should be a GP expense and not included in the calculation of the management fee as a percentage of assets allocated to the remaining investors.</li> <li>• ILPA has included more detail relative to how the basis for calculating management fees should be determined (i.e., during and after the investment period, if managing multiple funds, if using LCs, during term extensions, etc.).</li> </ul>
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## 1(f). GP and fund economics: fee income beyond the management fee

Status: entirely new in the new ILPA Guidelines

- Fund documentation should detail the policies regarding the calculation, assessment, and reporting of fees and expenses allocable to portfolio companies that have a significant impact on an LP's commitment and/or net investment return.
- No fees should be charged to portfolio companies, but to the extent they are charged they should be 100% offset against the management fee and disclosed (plus guidance on what to do when portfolio company fees cannot be offset).
- Fees generated by a GP affiliate, whether charged to the fund or a portfolio company, should be subject to LPAC approval (this is consistent with Principles 2.0).
- Unless prohibited by the LPA, GP may charge management fees and other fees on co-investments, as long as they disclose how such fees affect the allocation (as between the fund and co-investors) of transactions and/or other fees collected from the portfolio company, as well as the application of offsets for any such fees applied.

## 1(g). GP and fund economics: reasonable organization and partnership expenses

Status: entirely new in the new ILPA Guidelines

- Expenses allocable to the fund should be reasonable, clearly disclosed to all LPs prior to the initiation of the fund and at regular intervals thereafter, and should be subject to periodic LP and independent auditor review and certification.

- Organizational costs:
  - Should be reasonable and capped.
  - Increases in caps for successor funds should be aligned with specific factors not covered under the management fee as opposed to linear with growth in fund size (e.g., placement agent expenses, compliance with new regulatory regime).
  - Excess organizational costs above the organizational expense cap should offset management fee.
  - Any cap should take into account side letter negotiation costs.
  - Organizational costs of alternative investment vehicles (AIVs), parallel vehicles and co-investment vehicles should be borne solely by that vehicle.
- To minimize costs of side letters:
  - GPs should, wherever possible, include common provisions across side letters in the LPA.
  - LPs should limit the substance of side letter provisions to statutory or other institution-specific requirements.

- Expenses shared between GP and the fund:
  - Broken deal expenses:
    - Should be charged to the fund.
    - Expenses incurred through preliminary due diligence/sourcing should not be considered broken deal expenses.
    - LPs should be made aware of all co-investment vehicles not allocated a pro rata share of broken deal expenses.
  - Technology, cybersecurity and software upgrades:
    - GP should pay associated costs if they chiefly benefit GP and can be used across multiple funds.
  - Expenses specific to individual LPs:
    - Should be allocated to the parties with the specialized requirements rather than all LPs.
  - LPAC meetings/annual investor meetings:
    - Fund should pay for costs relating to hosting meetings, including meeting venue, materials and supplies.
    - GP should pay costs of entertainment (including speaker fees).
  - Third party administrators:
    - Costs should only be allocated to the fund when the LPs have approved the use of a third-party administrator.
    - GP should bear the cost of any full-time staff time allocated to administer the fund.
  - Travel:
    - Management fee should cover travel costs incurred in respect of sourcing deals, networking and preliminary due diligence.
    - If the fund advances past initial term sheet, travel should be treated as a transaction cost borne by the fund.
    - LPs should request GP's travel policy (which should address non-commercial travel and entertainment expenses).
  - Interest expenses and fees:
    - Fund should pay costs associated with subscription LCs and other credit facilities drawn for the fund's benefit.
    - Use of credit facilities for terms longer than one-year should be subject to LPAC approval.
    - LPs should review credit facility terms.
  - Audits:
    - Fund should bear cost of fund auditors.
  - Legal expenses:
    - External counsel's costs should be allocable to the fund if incurred for fund matters.
    - If GP wishes to charge its in-house counsel's time to the fund, LPs should be provided with the rationale for using internal resources and the market basis applied in calculating any such charges.
    - GP should bear the legal costs associated with the investing activities of GP or its partners.

- Indemnification, insurance and litigation expenses:
  - Should only extend to fund matters (i.e., internal disputes among GPs should be excluded from coverage).
- Regulatory expenses:
  - Should be borne by GP, but fund-specific costs tied to transactions by the fund (e.g., regulatory approval for certain deals) should be a fund expense.
- Expenses fully offset or covered under the management fee:
  - Third-party expenses that would typically be provided by GP should fully offset the management fee.
  - To the extent charged to the fund, the management fee should be offset by: consultant fees; environmental, social and governance (ESG)-related expenses; placement agent fees; operating partner/consultant costs; and unforeseen expenses (allocation of the foregoing should be disclosed to LPs and LPAC should be supportive).
  - LPAC should review the application of fee offsets and partnership expenses annually.

## 2(a). GP and fund economics: GP commitment and ownership

Status: updated and expanded in the new ILPA Guidelines

What's been maintained in the new ILPA Guidelines:	What's been added in the new ILPA Guidelines:
<ul style="list-style-type: none"> <li>• GP should have a substantial equity interest in the fund, which should be contributed in cash rather than management fee waiver.</li> <li>• GP shareholders should be restricted from transferring their interest in GP.</li> <li>• Entire equity interest should be via a pooled fund vehicle (no cherry picking).</li> </ul>	<ul style="list-style-type: none"> <li>• LPs should be notified of any intent to transfer GP interests to a third-party, including details of any such transfer (i.e., rationale, impact on cash flows, changes to economics, etc.).</li> <li>• GP should disclose ownership of manager and any changes over the life of the fund.</li> </ul>

## 2(b). Fund Term and Structure: fund term extensions

Status: updated and expanded in the new ILPA Guidelines

What's been maintained in the new ILPA Guidelines:	What's been added in the new ILPA Guidelines:



<ul style="list-style-type: none"> <li>• Absent LP consent, GP should fully liquidate the fund within a one-year of the expiration of the term.</li> <li>• Term extensions in one-year increments with approval of LPAC or LPs.</li> </ul>	<ul style="list-style-type: none"> <li>• Term extensions should be limited to a maximum of two extensions, with approval of LPAC and a super majority in interest of LPs.</li> <li>• No fees should be charged after the original term of the fund has ended.</li> <li>• If circumstances warrant a fee to incentivize liquidation of any remaining asset, GP should seek an LPA amendment, any such fee should consider the lower expense burden during an extension.</li> <li>• Notice of GP's intention to request an extension should be provided to the LPAC (and preferably all LPs) at least one to two quarters in advance of the term's expiration.</li> </ul>
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## 2(c). Fund term and structure: vehicles investing alongside the fund

Status: entirely new in the new ILPA Guidelines

- Alternative vehicles (i.e., pooled investment vehicles, parallel vehicles, AIVs) should be managed by GP or an affiliate and should be governed by documents containing substantially the same terms and provisions as the fund.
- Alternative vehicles should not provide LPs with additional economic benefits that are disproportionate to the economic benefits received by LPs in the fund.
- GPs should provide AIV governing documents to those LPs participating therein at least 10 business days before signing.
- Investments by alternative vehicles should be made and disposed of at the same time as the fund (except due to legal, tax and regulatory or other considerations).
- Expenses should be shared between the fund and any alternative vehicle in proportion to committed capital.

## 3(a). Key person: identification and changes to key person(s)

Status: updated and expanded in the new ILPA Guidelines

What's been maintained in the new ILPA Guidelines:	What's been added in the new ILPA Guidelines:
<ul style="list-style-type: none"> <li>• LPs should be notified of any personnel changes and when key person provisions are triggered.</li> <li>• Changes to key person provisions should be approved by a majority in interest of LPs.</li> </ul>	<ul style="list-style-type: none"> <li>• When key persons depart, ramifications should be discussed in full with LPAC (and preferably all LPs), regardless of whether a suspension is triggered.</li> </ul>

### 3(b). Key person: time and attention

Status: updated and expanded in the new ILPA Guidelines

What's been maintained in the new ILPA Guidelines:	What's been added in the new ILPA Guidelines:
<ul style="list-style-type: none"><li>• Key persons should devote substantially all business time to the fund, its parallel funds, its predecessors and successors within a defined strategy (LPA should specify any exceptions).</li></ul>	<ul style="list-style-type: none"><li>• Key persons should not act for other separate funds with substantially equivalent investment objectives until after the investment period ends.</li><li>• LPs should consider key person provisions post-investment period, as the harvest period may present the most critical time for continuity in order to maximize value of unrealized assets and manage dispositions.</li></ul>

### 3(c). Key person: key person triggers and process to resolve

Status: updated and expanded in the new ILPA Guidelines

What's been maintained in the new ILPA Guidelines:	What's been added in the new ILPA Guidelines:
<ul style="list-style-type: none"><li>• Key person events should result in an automatic suspension of the investment period, to become permanent within 180 days of suspension unless a super majority in interest of LPs vote to reinstate.</li></ul>	<ul style="list-style-type: none"><li>• Unless LPA permits otherwise, during a suspension, GP should not use fund assets (including recycling or borrowing) to make investments or incur expenses.</li><li>• LPAC should be consulted if GP is considering whether to close a deal during a suspension of the investment period.</li><li>• Any vote to reinstate the investment period should exclude GP interests.</li><li>• Upon a key person event, an interim clawback test should be performed and satisfied if there is a deficiency.</li></ul>

### 3(d). Key person: GP removal and replacement

Status: updated and expanded in the new ILPA Guidelines

What's been maintained in the new ILPA Guidelines:	What's been added in the new ILPA Guidelines:
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<ul style="list-style-type: none"> <li>• Upon a cause event, a majority in interest of LPs should be able to remove GP or terminate the fund.</li> </ul>	<ul style="list-style-type: none"> <li>• Upon a cause event, a majority in interest of LPs should be able to suspend or terminate the investment period.</li> <li>• A super majority in interest of LPs should be able to remove the GP or dissolve the fund without fault.</li> <li>• Following a no-fault removal, a majority in interest of LPs should be able to appoint a liquidator.</li> <li>• A removed GP should be subject to a meaningful carry haircut.</li> </ul>
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## 4(a). Fund governance: fiduciary duty

Status: updated and expanded in the new ILPA Guidelines

What's been maintained in the new ILPA Guidelines:	What's been added in the new ILPA Guidelines:
<ul style="list-style-type: none"> <li>• Fiduciary duties should not be reduced or escaped.</li> </ul>	<ul style="list-style-type: none"> <li>• Gross negligence, fraud, and willful misconduct or breach of agreement should be the minimum indemnification and exculpation standard, without any qualifiers.</li> <li>• GPs should not lessen the fiduciary duties owed to LPs.</li> <li>• Fund documents should disclose the GP's standard of care owed to the fund and LPs (i.e., under statute or otherwise).</li> <li>• Persons who violate a standard and are removed should receive no carry or other economic interests in the fund.</li> <li>• Indemnification expenses should be capped at a percentage of fund size.</li> </ul>

## 4(b). Fund governance: investment management considerations

Status: updated and expanded in the new ILPA Guidelines

What's been maintained in the new ILPA Guidelines:	What's been added in the new ILPA Guidelines:

<ul style="list-style-type: none"> <li>• GPs should consider limiting on the amount that may be called per annum and imposing investment and industry concentration limits in order to diversify investments over time and by industry and avoid over-concentration.</li> <li>• GPs should accommodate LP exclusion policies while considering increased concentration effects on other LPs.</li> </ul>	<ul style="list-style-type: none"> <li>• All appropriate investment opportunities should be allocated to the fund during the investment period.</li> <li>• Allocation policy should be provided to LPs upon request.</li> </ul>
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## 4(c). Fund governance: changes to the fund

Status: updated and expanded in the new ILPA Guidelines

- See Section 3 for a chart that compares ILPA's recommended LP voting thresholds for key changes to the fund.

## 4(d). Fund governance: GP-led secondary transactions

Status: entirely new in the new ILPA Guidelines

- LPAC should be engaged as soon as possible, GPs should provide rationale for any such transactions and GPs should disclose to LPAC, and to electing LPs upon request, the following: (i) number, range, and content of bids received, (ii) LPAC member participation as acquirers, if any, (iii) management fee and carried interest amount for LPs in the continuation fund, (iv) management fee and carried interest for LPs allocating primary capital (i.e., staple), if any, and (v) any other meaningful changes in the terms as compared to those of the original fund.
- Conflicts should be disclosed, mitigated, and approved by LPAC prior to deal terms being presented to LPs.
- Processes should be fair and transparent; LPs should have sufficient time to evaluate the transaction.
- LPs should be provided a status quo option with no change in economic terms.
- Processes should conform with LPA processes (i.e., notice periods, conflict approval protocols, expense allocations, voting processes, disclosures, etc.).
- GPs should engage an advisor at GP's cost; in addition, LPAC should have the right to hire its own adviser.

## 4(e). Fund governance: cross-fund investments

Status: entirely new in the new ILPA Guidelines

- GPs should limit the number of overlapping investments between accounts, LPAs should provide a maximum threshold (i.e., number of deals or investment size), and contribution agreements between related funds should conform with any stated parameters.
- Carry and fee offsets should be consistent to both funds' investments.
- Fees received by GP from any overlapping positions should be disclosed to LPs.
- LPAC approval should be required for transfers of assets between funds, although such transfers should generally be avoided.

## 4(f). Fund governance: co-investment allocations

Status: entirely new in the new ILPA Guidelines

- GPs should disclose how co-investment opportunities, interests and expenses will be allocated among the fund and participating co-investors, including how any prioritization will be applied.
- Where rights to evaluate or participate pro rata in co-investments have been granted via side letters, GPs should disclose the existence of such arrangements to all LPs.
- All suitable opportunities should first be allocated to the fund if they fall within its investment strategy and there are remaining commitments.
- In presenting co-investments to LPs, GPs should provide the strategic rationale for including the co-investment tranche rather than allocating the entire amount to the fund.
- Any parallel vehicles or GP affiliates should be permitted to participate but only in the same securities and on the same terms as LPs in the fund.
- If a co-investment is offered to any other vehicle, GPs should disclose this to the LPAC and provide the rationale therefor.

## 4(g). Fund governance: LPAC best practices

Status: updated and expanded in the new ILPA Guidelines

What's been maintained in the new ILPA Guidelines:	What's been added in the new ILPA Guidelines:
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- LPAC duties should be established in the LPA and by way of mutually adopted preferred meeting protocol, as between the GP and LPs.
- A portion of each meeting should include an in-camera session.
- LPAC members should receive no compensation but should be reimbursed by the fund for costs of attending meetings (such costs treated as a fund expense).
- Fund should indemnify all LPAC members.
- List of LPAC members should be shared with all LPs, including their contact information, upon each closing.
- LPAC members should disclose when they have a conflict of interest relating to a matter under consideration.
- LPAC members should be able to add items to meeting agendas upon reasonable notice to GP.
- GP should record all votes taken and maintain a copy of all consents obtained; detailed voting records should be made available to any LPAC member upon request.
- LPAC members should have in-camera access to the auditor.

#### **Guidance for GPs: mandate**

- LPAC mandate should be clearly disclosed including conflicts of interest, valuation methodology, key person time and attention changes, term extensions, changes to investment strategies and concentration limitations, leverage, affiliated transactions, material ESG incidents, defaults, reduction in fund size, costs of operational advisors, fees, etc.
- GP should not clear own conflicts under any circumstances.
- There should be no “deemed consent” provisions relating to LPAC voting.

#### **Guidance for GPs: composition and structure**

- GP should be able to articulate the rationale for how LPAC members are selected.
- Number of LPAC members should be workable and represent a cross-section by commitment size, type, tax status and quality of relationship with GP.
- No single LP should have veto power.
- Members should have one vote per institution.

#### **Guidance for GPs: meetings, materials and agenda**

- LPAC should meet regularly on a pre-agreed cadence.
- LPAC meetings may be called anytime by a pre-agreed percentage of members.
- Agendas and materials should be provided in advance of meetings.

#### **Guidance for GPs: GP disclosures**

- GPs should not include commercially sensitive information in meeting minutes and should be aware of responsibilities regarding confidential information and public disclosures.
- GPs should advise LPAC when they have engaged external counsel or third-parties to provide advice.
- GPs should notify all LPs of key decisions approved by LPAC.
- GPs should annually disclose to LPAC all fee income paid or payable, and yearly calculations of management fees, carried interest, fund expenses and organizational expenses.

	<p><b>Guidance for GPs: recommended elements of an LPAC meeting agenda</b></p> <ul style="list-style-type: none"> <li>• ILPA provided a list of recommended items that could comprise an LPAC meeting agenda, but stated that LPAC agendas are ultimately in GP’s discretion.</li> </ul> <p><b>Guidance for LPAC members</b></p> <ul style="list-style-type: none"> <li>• Structure and processes: <ul style="list-style-type: none"> <li>• GP or LPAC should appoint a rotating chair (with one-to two-year terms) to serve as an additional point of interface between LPAC and GP.</li> </ul> </li> <li>• Responsibilities and powers: <ul style="list-style-type: none"> <li>• LPAC members should be expected to participate and vote; abstentions should be reserved for conflicts.</li> <li>• LPAC members should have a contractual right to appoint external counsel/expertise at fund’s expense.</li> <li>• LPAs should clearly state expectations for LPAC participation, including penalties for failing comply.</li> </ul> </li> </ul>
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## 4(h). Fund governance: auditor independence and scope of the fund audit

Status: entirely new in the new ILPA Guidelines

- The fund’s auditor should be independent and focused on the best interests of the fund, rather than those of GP.
- GP should form an audit committee comprised of LPs (not just LPAC members) whose mandate could include, among other things, approving the auditor, the scope of agreed-upon procedures, and the performance of any services by the auditor beyond the audit.

## 5(a). Financial disclosures: fees and expenses

Status: entirely new in the new ILPA Guidelines

- Fee and expense policies should be appropriate, reasonable, arm’s-length and fully disclosed to investors.
- Prior to fund initiation the GP should disclose all fees and expenses to be assessed to the LPs, the fund and portfolio companies.
- GPs should disclose each LP’s commitment percentage to assist reconciliation of fees and expenses.
- Disclosure should be on a quarterly basis (ILPA’s fees, expenses and carried interest reporting template is recommended for use).
- GPs should provide the models used for calculating fees, expenses, carried interest and net IRR and be responsive to requests to explain the models.
- All fees not subject to offset should be disclosed to investors.

- Fees received by related parties should be disclosed.
- Annual fund audit should include fee and expense reporting, which should include testing of a representative sample of LP-level expense allocations and waterfall calculations.

## 5(b), (c). Financial disclosures: quarterly and annual reporting

Status: updated and expanded in the new ILPA Guidelines

What's been maintained in the new ILPA Guidelines:	What's been added in the new ILPA Guidelines:
<p><b>Quarterly</b></p> <ul style="list-style-type: none"> <li>• ILPA advises with respect to the types of information that should be included in quarterly reporting to investors (within 45 days of the end of the quarter).</li> </ul> <p><b>Annual</b></p> <ul style="list-style-type: none"> <li>• ILPA advises with respect to the types of information that should be included in annual reporting to investors (within 90 days of year-end).</li> </ul>	<p><b>Annual</b></p> <ul style="list-style-type: none"> <li>• More immediate reporting may be required for material events.</li> <li>• GPs should provide information on salaries, bonuses and dividends paid, and the split between current and previous funds.</li> </ul>

## 5(d). Financial disclosures: capital calls and distributions

Status: unchanged in the new ILPA Guidelines

- Capital call and distributions notices should include information consistent with ILPA standardized reporting format, including exact amount of carried interest and build-up to carry calculation, percentages for each LP and detail in calculation (including offsets) of management fees.
- GP should provide estimates of quarterly projections on capital calls and distributions.

## 5(e). Financial disclosures: subscription lines of credit

Status: entirely new in the new ILPA Guidelines

- In 2017, ILPA issued guidance on the use of subscription LCs to encourage greater transparency, Principles 3.0 expanded on this and recommended that GPs provide quarterly and annual reporting on the use of fund leverage, the terms for any such facilities, and performance information.
- LPs should have the option to opt-out of a facility at the onset of a fund and, further, that GPs should provide LPs with the terms for facilities including anticipated size, proposed limits on duration, parameters around use of proceeds, and disclosures of costs incurred by the fund relating to the use of such facilities.



## 5(f), (g), (h). Financial disclosures: other categories

Status: updated and expanded in the new ILPA Guidelines

What's been maintained in the new ILPA Guidelines:	What's been added in the new ILPA Guidelines:
<p><b>Portfolio company information</b></p> <ul style="list-style-type: none"><li>Fund should provide quarterly reporting on each portfolio company with certain specified information as advised by ILPA.</li></ul>	<p><b>Portfolio company information</b></p> <ul style="list-style-type: none"><li>Commercially sensitive portfolio company information should be provided separately from fund-level reporting.</li><li>Valuation information related to the portfolio companies should be disclosed on a quarterly basis, consistent with ILPA Portfolio Company Metrics Reporting Template.</li></ul> <p><b>Financial and performance reporting</b></p> <ul style="list-style-type: none"><li>Performance information should be provided to LPs on both a gross and net of accrued carried interest basis.</li><li>LPs should have access to detailed cash flows.</li></ul> <p><b>Fund marketing materials</b></p> <ul style="list-style-type: none"><li>Principles 3.0 includes recommendations as to information that should be included in marketing materials.</li></ul>

## 6(a). Notifications and policy disclosures: ESG policies and reporting

Status: entirely new in the new ILPA Guidelines

- GPs should consider maintaining and periodically updating an ESG policy that is provided to all LPs.
- ESG policy should identify procedures and protocols that can be verified and/or documented.
- To the extent that a GP claims to pursue an impact investing strategy, a framework to measure, audit and report on the impacts achieved by the fund should be adopted.

## 6(b). Notifications and policy disclosures: other policy disclosures and notifications

Status: entirely new in the new ILPA Guidelines

- Any policy or event with a significant effect on the fund or LPs should be proactively and explicitly disclosed to all LPs.

- ILPA provides a list of notifications that should be provided to LPs, including the following:
  - amendments to, or breaches of, the LPA;
  - regulatory examinations and disclosures;
  - co-investments;
  - changes in economic ownership or control;
  - economic and risk management notifications; and
  - incidents presenting potential breach of ESG policy or code of conduct.

## 7. LP Disclosures

### Status: entirely new in the new ILPA Guidelines

- LPs should have a sufficient understanding of the nature and identity of other LPs in the fund and GP should provide an updated list of LPs to all LPs, to reflect any changes in LP-base.
- Confidentiality provisions in the LPA should allow LPs within the same fund to discuss issues.
- LPs should acknowledge the responsibility they bear in connection with heightened GP transparency, and all proprietary information provided by GP to the LPs should be protected from public disclosure.

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<sup>1</sup> Available [here](#).

<sup>2</sup> Available [here](#).

*To discuss these issues, please contact the author(s).*

*This publication is a general discussion of certain legal and related developments and should not be relied upon as legal advice. If you require legal advice, we would be pleased to discuss the issues in this publication with you, in the context of your particular circumstances.*

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