

FUND FINANCE FRIDAY

ILPA's Model LPA on Fund Finance

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ILPA this week published a model limited partnership agreement that lives up to its stated mission of providing a starting point for an Investor-friendly fundraise. The model LPA is available on ILPA's website [here](#). Below are our observations on the very light provisions in the model LPA covering fund finance.

Overcall Limitations. There is a percentage of prior call overcall limitation for both defaults and excuses set at “[50]%” of the original call. No overcalls for management fees are permitted. § 6.6.6; § 6.7.3.5.

Debt Section. The debt section is insufficiently robust to be bankable by many lending institutions in the United States. All debt is prohibited other than on “a short-term basis for periods of less than six months to finance investments pending receipt by the Fund of Drawdowns.” There is no clarification on letters of credit, although there is a footnote at the end to the effect of “[t]o be tailored on a fund-by-fund basis.” Debt is limited to [15]% of Commitments with no consideration of the prospective increase in fund size between the first and final investor close. The pledge language is incomplete, neglecting authorization to pledge the Commitments and the collateral account. The language is ambiguous as to derivatives and other financial structures and could be more clear as to the authorization to call capital to repay debt after the investment period. § 7.2.

No Setoff, Counterclaim or Defense. It is missing.

Third- Party Beneficiaries. Subscription lenders are completely neglected in the third-party beneficiary section. § 20.11.

Third-Party Contributors. ILPA published a list of the participating attorneys and firms on its LPA task force. None of the preeminent law firms we see on the fund formation side in the United States appear to have been involved. Nor were any of the primary fund finance law firms involved. To our knowledge, ILPA did not request any feedback from the Fund Finance Association prior to publishing its model LPA.