



ashurst

Ashurst's Fund Finance Practice

2023

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Introduction

LEADERS IN FUND FINANCE

Fund finance experts

We are ranked Tier 1 for Fund Finance in Legal 500, 2023 with three partners named as leading individuals and one next generation partner.

Ashurst has developed and grown an internationally recognised fund finance team. Our lawyers regularly act on market leading deals. We have helped to shape the market as it stands today, particularly in Europe, and have one of the largest teams of lawyers with fund finance expertise.

Fund sector expertise

Our fund finance expertise is backed up by our leading funds formation team. We have been at the forefront of the international funds sector since the 1980s. We deliver integrated advice covering all aspects of fund formation, from tax structuring to negotiating commercial terms, advising on leverage and bridge financing, implementing carried interest and co-investment schemes, and secondary transactions and management spin-outs.

Why clients choose us

- **A truly dedicated practice** – a partner led team skilled in all areas of fund finance
- **Industry experts** – borrower and lender clients know that by coming to us they will get advice from experts with true industry knowledge
- **Relationship driven** – keeping our teams focused on the client, we seek to build a genuine partnership and become your trusted advisor for the long term
- **Well connected** – throughout the market with institutional relationships with lenders and funds across Europe, Asia, Australia and the US
- **Able to deliver** – with a deep bench of partners and associates who are well versed in the specifics and nuances of fund finance deals
- **Technical excellence** – complete understanding of the different fund structures and intricacies and challenges inherent in lending to all types of fund entity
- **Experience counts** – we know the pressure points for funds and banks, spot them early and find solutions



“Our trusted and primary partner for fund finance advice. Responsive and well-resourced to manage often multiple ongoing projects. Goes beyond just a transactional relationship to one of ongoing support... Very deep bench too.”

LEGAL 500 UK 2023: FUND FINANCE



Band 1 Fund Finance Practice

LEGAL 500 UK 2023



Most Innovative Law Firm in Europe

FT INNOVATIVE LAWYERS AWARDS 2022



Innovation in Multi-Disciplinary Teams

FT INNOVATIVE LAWYERS AWARDS 2022



Most Innovative Firm of the Year

BRITISH LEGAL TECHNOLOGY AWARDS 2019 & 2020



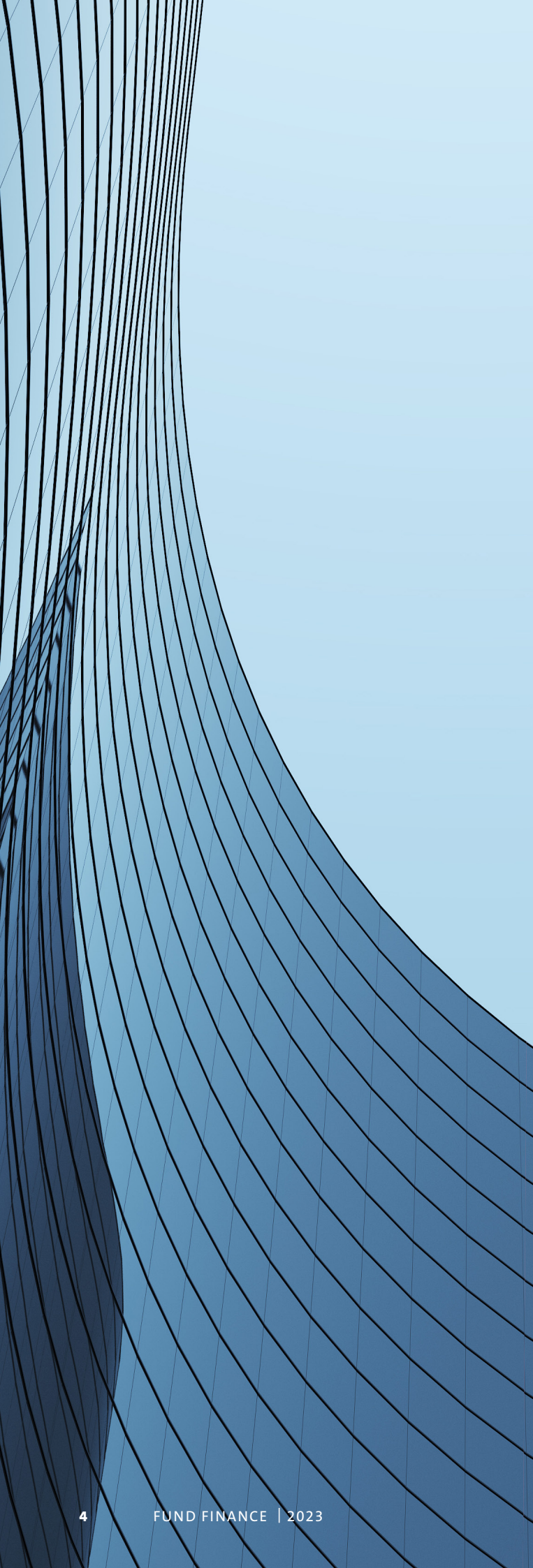
Funds Team of the Year

THE LAWYER AWARDS 2020



Law Firm of the Year – Europe

PRIVATE DEBT INVESTORS AWARDS 2019



How our fund finance experts can help you

UNDERSTANDING THE MOST COMPLEX STRUCTURE

Structuring fund level financing is complex. Our clients need lawyers who are both technically excellent and who have a deep understanding of fund structures. Our in-depth knowledge of funds and years of experience mean we get right to the point and as the fund finance market matures, we continue to consolidate our position as one of the leading fund finance firms.

We also receive instructions on the borrower side from funds ranging from debt, private equity and real estate funds to infrastructure funds and funds of funds.

Working with our market leading fund formation, tax and securitisation practices, we advise lenders and borrowers on a wide variety of financing solutions including:

- NAV and NAV pref facilities
- Sustainability-linked loans
- Asset backed and securitised facilities
- Equity backed facilities
- Capital call / subscription finance facilities
- GP facilities
- Co-investment facilities
- Limited partner financings
- Hybrid facilities
- Pre-close bridge facilities
- Loan portfolio facilities
- SMA facilities

Fund finance experience

SUB-LINES/GP FACILITIES

SUBSCRIPTION CREDIT FACILITY

Advised on subscription finance facility of up to \$3 billion provided to the latest flagship infrastructure fund of a leading European investment manager.

SUBSCRIPTION CREDIT FACILITY

Advised on subscription finance facilities of up to €7 billion provided to the latest flagship private equity fund of a global investment manager.

BRIDGE TO CLOSE

Advised on a €1 billion equity bridge to first close for a major PE sponsor.

DIRECT LENDING FINANCING

Advised on an umbrella subscription credit arrangement to the direct lending funds of a private debt fund.

ESG LINKED EQUITY BRIDGE FACILITY

Advised on a multi-bank bridge facility agreement made available to a leading European debt fund, utilising both levered and unlevered strategies and ESG margin features.

INFRASTRUCTURE FINANCING WITH ESG

Advised on a US\$1 billion subscription credit finance facility to a leading infrastructure fund with an innovative ESG component.

ASSET BACKED SECURITISATION

Advised on asset backed facilities provided by a French-bank lender to an Irish securitisation vehicle.

CREDIT FUND (NON-PERFORMING LOANS) FINANCING

Advised on approximately €400 million subscription facilities to a credit fund specialising in non-performing loans.

PRIVATE EQUITY FINANCING WITH ESG

Advised on a multi-billion dollar subscription financing for a private equity fund, which was the first European ESG linked fund financing.

REAL ESTATE FUND FINANCING

Advised on €300 million subscription line facilities made available to a real estate fund.

DIRECT LENDING FINANCING

Advised on a set of four linked facility agreements with an aggregate commitment size of €1.5 billion made available to a leading direct lending fund.

PRIVATE EQUITY FINANCING

Advised on two umbrella facility agreements put in place for a large Swiss private equity fund.

NAV/ASSET BACKED FACILITIES

PRIVATE EQUITY NAV / NAV PREF FINANCINGS

Advised on multiple NAV pref financings to top-tier PE sponsors.

PRIVATE EQUITY GLOBAL TECHNOLOGY FUND

Advised on a NAV financing to a global tech fund in connection with “series” investing.

SECONDARIES NAV FINANCING

Advised on a secured NAV financing to a major secondaries firm of up to US\$2.5 billion.

PRIVATE EQUITY NAV FINANCING

Advised on a NAV facility to a PE sponsor, to pay a distribution to LPs. Key feature was advising on an intercreditor arrangement with a sub-line lender.

PRIVATE EQUITY NAV FINANCING

Advised on NAV facilities provided to a large European sponsor, secured against a mixture of underlying investments including private equity and listed and unlisted debt instruments.

PRIVATE EQUITY BRIDGES TO FIRST CLOSE

Advised on various bridges to first fund close for top-tier PE sponsors, featuring NAV based triggers.

ASSET BACKED SECURITISATION

Advised on asset backed facilities provided by a French-bank lender to an Irish securitisation vehicle.

DEBT FUND NAV FINANCING

Advised on NAV facilities provided to a European debt fund.

LBO / PIK FACILITY FINANCING

Advised on a PIK Facility backed by NAV covenant and LP commitments from a major global PE fund, as part of a wider LBO acquisition financing structure.

DEBT FUND FINANCING

Advised on the asset-backed, securitised facilities to a European debt fund.

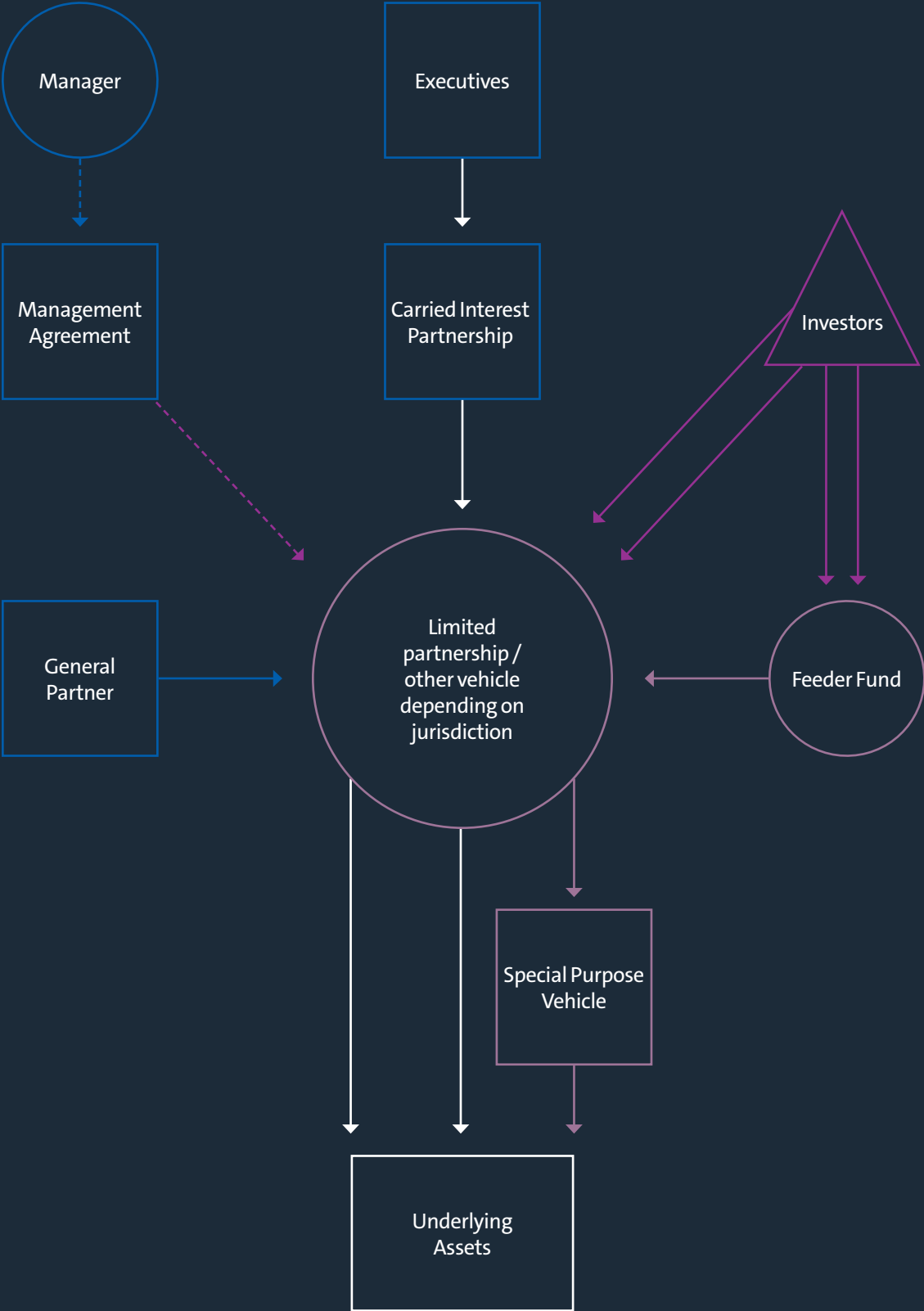
PRIVATE EQUITY AND HEDGE FUND ASSETS FINANCING

Advised on US\$250 million asset backed facilities for a family office of a leading Asian fund manager, secured against a portfolio of private equity and hedge fund assets.

ASSET BACKED FACILITIES / HYBRID FACILITIES

Advising on various hybrid financings (investor capital-call bridge and asset-backed facilities), including a financing provided by a French-bank lender to a Luxembourg sovereign-wealth-fund-owned borrower.

Fund finance structure



Facility terms

MAIN CHARACTERISTICS

Type

Usually a multi-currency revolving credit facility that may include utilisations by way of letters of credit and guarantees

Committed/Uncommitted

This often depends on the internal policy of the lender, their cost of capital and treatment of these facilities for capital allocation purposes. Most banks tend to lend on a committed basis

Borrower

The fund or a SPV owned by the fund

Guarantor/ Cascading Security Provider

The fund if the SPV is the Borrower, or possibly a feeder fund

Purpose

- To finance the investments contemplated by the fund or any other costs (such as abort costs)
- To bridge capital calls
- To draw down from investors at regular intervals to allow them to manage their cash flow
- Improve IRR
- Improve the fund's ability to complete acquisitions/ on-lend quickly as the drawdown period under these facilities is shorter than the drawdown period from investors

Availability Period

As from the signing date of the Facility Agreement until one month prior to the Termination Date

Maximum Amount

To be determined on the basis of the size of the fund/ investments (see below)

Interest at the Borrower's option

- Interest period: 1, 2, 3, or 6 months or any other period as agreed with the lender
- Interests to be paid at the end of each interest period or capitalised but with cashless rollovers limited as per relevant constitutional documents

Final Termination Date

1 to 3 years if the facility is a revolving facility

Early Repayment/Drawstop

The facility will include the usual early repayment events (voluntary, illegality, exceeding borrower base). Change of control of the Manager/GP or Key Man Events may also be repayment/drawstop events

MAXIMUM AVAILABLE AMOUNT

Maximum Available Amount can be computed as being:

- A percentage of available Investor/Qualifying Commitment (e.g. 80% of Investor Commitments of AAA rated Investors)
- Subject to a haircut: Investors with > 20% of aggregate Investor Commitments will be notionally reduced to 20% and the relevant advance rate applied

Specific Financial Covenants / Borrowing Base:

- Financial Indebtedness to Qualifying Investor Undrawn Commitments 1 to 1.1/1.5
- The Facility will have to be covered at all times by [x] of the unfunded commitments of the LPs
- Financial Indebtedness to aggregate of Net Asset Value and Qualifying Investor Undrawn Commitments 1 to 2.00/2.50

Qualifying Investors will include:

Investors which are financial institutions, corporate or public pensions plans or other credit worthy investors as determined by the Lender

Investors subsequently approved as meeting rating agency requirements set-out in the facility agreement (investors being AAA rated for instance) or at the sole discretion of the Lender

Usually sole discretion for inclusion in the borrowing base

Initial investors approved by the Lender and provided no Exclusion Event occurred. Exclusion Events usually (but often subject to intense negotiation) include the following events (at the sole discretion of Lender or opinion of Lender (acting reasonably)):

- the credit worthiness of the relevant investor has materially declined or no longer meet rating requirement (if rated) or no longer meeting bank's internal rating
- occurrence of an insolvency event affecting the investor
- the investor becomes a Defaulting Investor (perhaps with grace period)
- the investor becomes an Excused Investor (excluding the relevant amount)
- the investor becomes a withdrawing Investor

REPS, WARRANTIES AND COVENANTS

Usual LMA reps and warranties/undertakings as well as specific ones:

- Usual LMA reps and warranties/undertakings as well as specific ones
- Obligation for the Manager/GP to call a minimum amount from the investors on an agreed frequency
- All information in connection with investor commitments (e.g. any failure to pay, Exclusion Events, Key Man Events, Excused Investors) and, subject to the security package, all information necessary to allow the Lender to issue drawdown notices (e.g. amount of undrawn commitments by investor, address details)
- No distributions by the fund while amounts are outstanding under the facility (but can distribute and then drawdown) and/or if an Event of Default has occurred
- Mandatory prepayment following a Change of Control of the Manager/GP
- Limited or no borrowing during a Suspension Period (Key Main Event)
- Negative pledge
- Undertaking of the Manager/GP to:
 - direct investors to pay their commitments in a bank account over which the lender has security
 - pursue defaulting investors and to request payment of the shortfall by the other non-defaulting investors (but not to forfeit an investor)
 - not to permit a transfer of Investor Commitment / Qualifying Investor Commitment (if it would result in a financial covenant breach)



“The team is well versed in complex transactions with security considerations in multiple jurisdictions. The team will not stop at nothing to get the transaction completed, including employing a global team to be available to work on a transaction 24/7. The team is also very diverse.”

LEGAL 500 UK 2023: FUND FINANCE

EVENTS OF DEFAULT

Usual lma type events of defaults as well as specific events of default such as:

- Removal of the Manager/GP (or ceasing to be sole Manager/GP)
- Insolvency affecting the Manager/GP
- Termination of the Fund
- Certain thresholds are not being complied with:
 - **Cancellation threshold:** a proportion of undrawn commitments of investors are cancelled
 - **Insolvency threshold:** a proportion of Investors become insolvent
 - **Defaulting Investor threshold:** a proportion of Investors fail to comply with their obligations to fund their undrawn commitments
 - **Transfer threshold:** a proportion of the Investors' undrawn commitment is transferred to a third party
 - **Excused Investor threshold:** a proportion of Investors are excused from complying with a drawdown notice sent by the general partner
- In each case, usually somewhere between 5 and 20% and sometimes aggregated



Security package

SECURITY PACKAGE – WHICH?

English law

Most
Beneficial

INVESTOR LETTERS

These are letters from each investor direct to the lender and vary in content and degree but the investor generally acknowledges the lender's security, agrees to pay into a specific bank account and waives its rights of set-off as well as making direct representations and covenants to the lender.

Investor Letters are not common in the European market except where there are a limited number of investors.

PLEDGE / ASSIGNMENT OF UNDRAWN COMMITMENTS

The Fund grants to the lender a pledge/assignment of all undrawn commitments of its investors.

Under English law, notification to the investors is required (but not an acknowledgement or consent) to perfect the assignment but the necessity of giving notice varies depending on each jurisdiction. For example, notice to investors is required in Scotland for the security to be valid but is not required under Jersey law.

PLEDGE/CHARGE BY THE FUND OVER THE BANK ACCOUNT

Pledge/Charge over the bank account into which commitments are paid by the investors.

POWER OF ATTORNEY

Power of attorney is granted by the Manager/GP to the lender to call the undrawn commitments of the investors. It is crucial that this power of attorney survives insolvency but beware of the shortcomings.

NO SECURITY & NEGATIVE PLEDGE

Not market standard in Europe.

Least
Beneficial

SECURITY PACKAGE – HOW?

1

FEEDERS

Ideally, any feeder provides a guaranty and security that is the same as the fund. However, often only cascading security is possible.

2

CO-INVEST STRUCTURES / PARALLEL PARTNERSHIPS

Cross-collateralisation may not be possible, so a credit decision is required on each partnership.

3

PUT OPTIONS / EQUITY COMMITMENT LETTERS

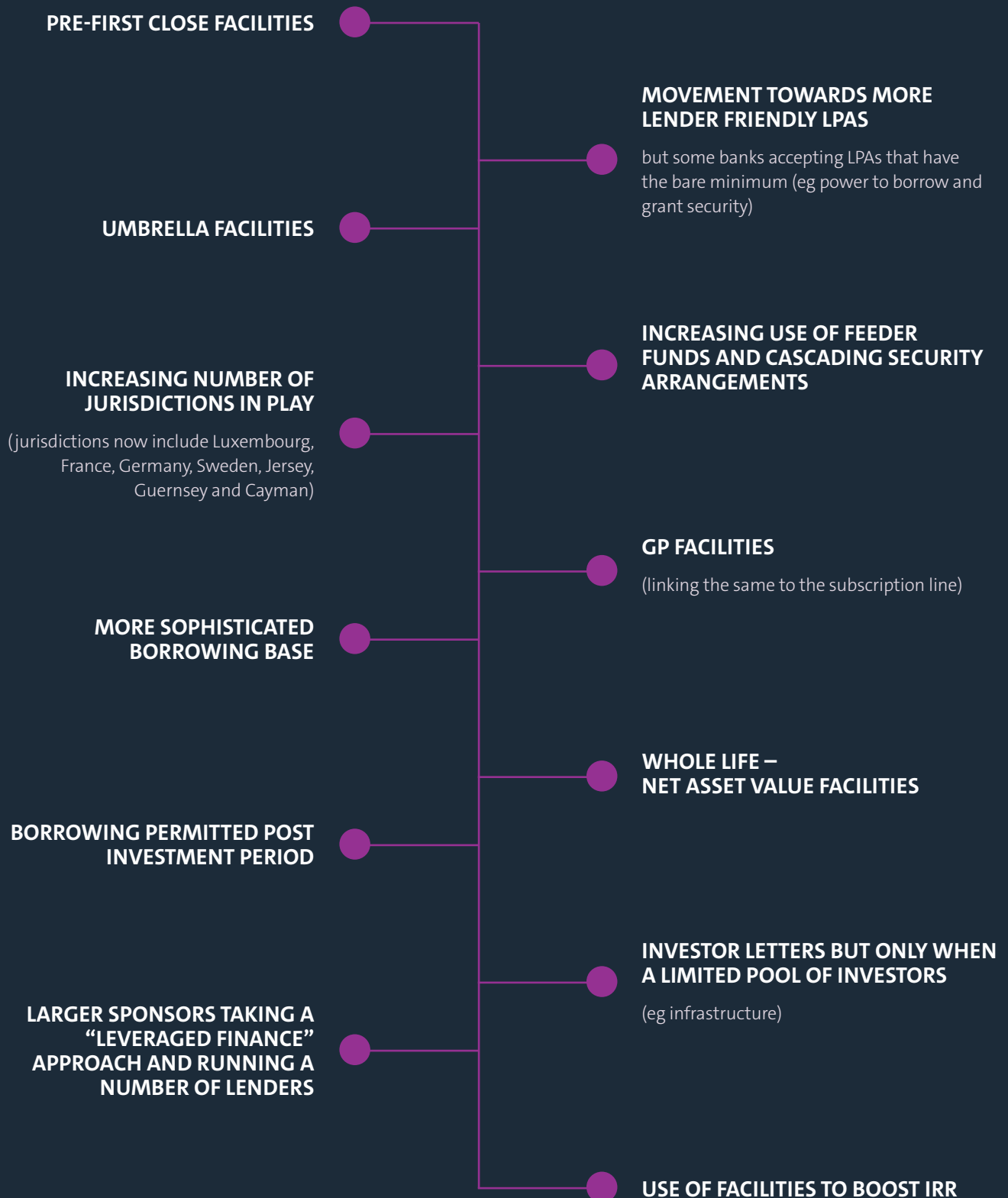
Put options and equity commitment letters can be used when the fund is not able to directly borrow or provide a guarantee.

INVESTOR COMMITMENTS

The credit decision is ultimately based on commitments of investors to subscribe for equity or quasi-equity (usually an obligation to provide a loan) when called upon to do so by a general partner or manager. Accordingly, it is key to understand how this commitment works and ensure the obligation to subscribe is enforceable. Matters to consider include:

- Borrowing limits (amounts and time periods)
- The period during which investor commitments can be called generally (the “Investment Period”) and limitations on calling for the same post Investment Period
- Express subordination of distributions to Investors
- Side letters
- The ability to call on other investors if there is a short fall
- Express waiver of any set-off rights
- Defaulting Investor provisions (usually: right to forfeit, sell and/or enforce)
- Foreign jurisdictions and enforceability
- Why have there been so few examples of defaulting investors? (skin in the game; better to sell than default)

Market trends



Commercial trends

TERMS GENERALLY

- The fundraising market continues to be tough but there is a lot of variation with some GPs finding it very easy to raise and others finding it much tougher. This is leading to a lot of variation in market terms.
- Terms in general are becoming more detailed, as investors seek to hone in on certain areas that were previously left fairly broad (e.g. allocation of fees, Keyman/GP Removal processes, dealing with conflicts, default etc.)

BORROWING POWERS

- GPs more aware of finance options available and seeking flexibility in LPA, Investors also more aware of GPs use of fund finance.
- This is leading to more focus on the financing provisions of the LPA – GPs seeking to maintain flexibility, investors making sure that financing is not used inappropriately, minimise investor letters etc.
- Side letter requests that cover financing terms are also becoming more prevalent.

GP COMMITMENT

- Continuing pressure on increasing the GP Commitment.
- 1% used to be standard, but investors are now focusing more on what they believe the GP can afford.
- Changes to UK tax (“disguised fee income” rules) mean that opportunities for internal leverage are becoming more complicated.

SIDE LETTERS

- Side letters – becoming significantly more important and voluminous.
- The LPA itself only tells half the story!
- Watch out for MFN clauses.

OVERCALL PROVISIO FOR SHORTFALL

- Increasingly find a percentage restriction on the amount that may be called from non-defaulting/excused investors.

Global key contacts

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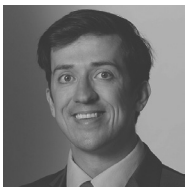
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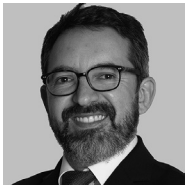
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