

March 21, 2023



Re: Fund Formation

Dear Investor,

It was great speaking with you regarding a fund formation and the other legal matters we discussed. As we discussed, please find enclosed details outlining the steps of a fund formation. The various legal needs for a fund formation depend on the specifics of the states of fundraising, fund size, terms of the deal, structure of the fund, sophistication level of the investors and more as this is a highly regulated area of business.

Please let me know if you have any questions as you review the attached information. We can also provide you with more information as our discussions progress. Please feel free to schedule a time for a call so that we can discuss this further and next steps. You can apply to work with us [here](#), which will provide access to our calendar to schedule a time that works best for you. Please let us know if you need anything else! We look forward to discussing this further.

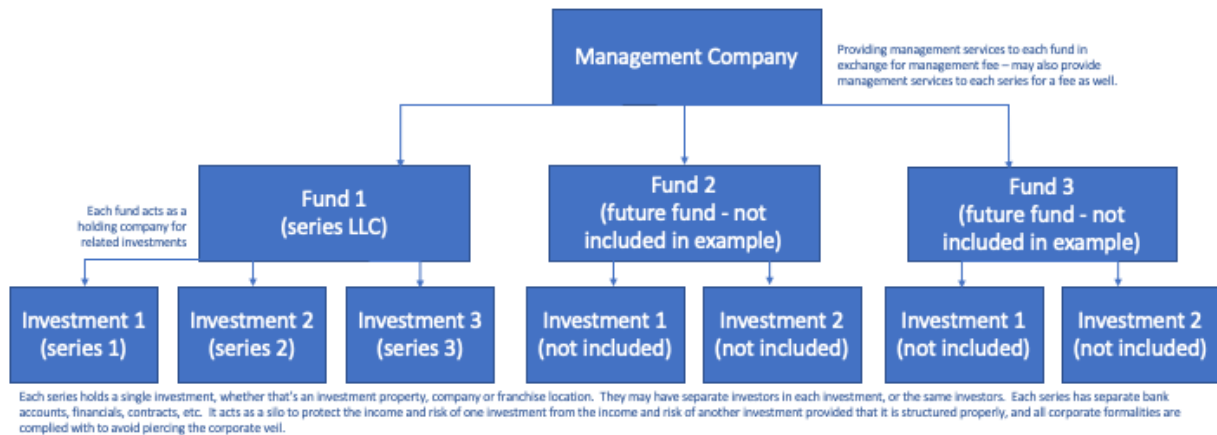
All the best,

Laura DiFrancesco, Esq.
Founder & CEO
Dean Street Law LLC

Outline of Fund Formation

Based on Pennsylvania and Delaware Law

Please note that this outline is based on the following assumptions for a private equity fund with the corporate structure shown below:



- 4-5 members of management company
- Only fundraising and operating in Pennsylvania
- Entities formed in Delaware
- \$15 million in fundraising from a single institutional investor (please note that involving non-accredited investors substantially increases the amount of legal compliance, registrations and filings required)
- One fund (series limited liability company) and one series with future series to be completed in future projects
- Lease or purchase of property
- Management agreement between management company and fund, as well as management company and each series

These steps would be similar for a real estate investment fund, which may include additional series in the initial startup phase. Based on this information, I have prepared an outline of the minimum amount of legal work I would expect such a project would entail, as further detailed below.

Part One: Management Company Formation

- Consult with tax advisor
- State & US name search availability
- Prepare management company formation documents
 - Limited liability company agreement
 - Certificate of Formation
 - Relevant consents, authorizations and form of meeting or consent to use for authorizing future acts of the company, and any other ancillary documents necessary
- File Certificate of Formation with the Secretary of State of the State of Delaware

- Prepare EIN Authorization
- File EIN
- File qualification to do business in Pennsylvania

Part Two: Fundraising

- Prepare a private placement memorandum (PPM). The Securities Act's requirements with respect to the information that must be included in a PPM depends on the sophistication of the investors to whom the fund is being marketed and whether such investors are accredited. Under the Securities Act, a PPM isn't required for accredited investors, but it is still customary. The compliance requirements become significant for nonaccredited investors. The PPM will include a lot of business marketing materials, so we would provide the structure of the PPM and work collaboratively to prepare the PPM in accordance with compliance requirements.
- Regulatory marketing filings (see Fundraising Compliance)
- Assist with any legal due diligence and disclosures necessary

Part Three: Fundraising & Regulatory Compliance

- Review any marketing materials for legal compliance
 - Please note that the fund can only be marketed privately, and not publicly, to avoid additional compliance requirements. We would be happy to provide further details on this requirement if needed.
- Prepare an investor questionnaire to be completed by all potential investors so that we can review compliance requirements on an ongoing basis
- Determine appropriate SEC filing exemption to the extent applicable, which would likely be under Rule 506(b) of Regulation D which permits an offering of interests to an unlimited number of "accredited investors" (as defined in Rule 501(a) of Regulation D) and up to 35 non-accredited sophisticated investors but prohibits the use of a "general solicitation" (such as, for example, an advertisement, speaking to the press or at seminars or conferences, communications on a publicly accessible website, cold-calling, etc.)
- Prepare and file SEC exemption documentation to the extent applicable, which must be updated annually. Otherwise, prepare SEC filings.
- Prepare and file a notice of sale of unregistered securities, which must be filed with the SEC for each fundraising event, assuming an exemption is met.
- Determine appropriate Investment Company Act exemption so that the fund doesn't need to register as an investment company, which includes numerous compliance requirements. This would generally be under either:
 - Section 3(c)(1) which excludes a private equity fund from the definition of an investment company if:
 - it is not making a public offering of its interests; and
 - it is beneficially owned by not more than 100 persons. (15 U.S.C. § 80a-3(c)(1))
 - Or Section 3(c)(7) which excludes a private equity fund from the definition of investment company if:
 - it does not make a public offering of its interests; and

- it is beneficially owned exclusively by qualified purchasers (generally, a person owning at least \$5 million or more of investments, or an entity with at least \$25 million or more of investments). (15 U.S.C. § 80a-3(c)(7))

Whether the management company or fund may need to meet additional registration requirements will depend on the (i) amount of assets under management, (ii) number of funds managed, (iii) number of investors in such fund(s), and more. There are numerous regulatory bodies and regulations that will need to be analyzed on an ongoing basis, including, without limitation, the Investment Advisers Act, Dodd-Frank Act, SEC, CFTC, the Securities Act, the JOBS Act, and state registration requirements.

Prepare and file notice of sale of securities in all states in which securities are sold in order to comply with blue sky laws.

Part Four: Fund Formation

- Consult with tax advisor
- Discuss and prepare documentation of initial terms to present to investors
- State & US name search availability
- Prepare and negotiate term sheet with investors and their counsel
- Prepare initial draft of series limited liability company fund formation documents
 - Series limited liability company agreement
 - Initial series agreement
 - Certificate of Formation
 - Relevant consents, authorizations and form of meeting or consent to use for authorizing future acts of the company, and any other ancillary documents necessary
- Negotiate fund formation documents with investors and their counsel
- Finalize series limited liability company fund formation documents
- File Certificate of Formation with the Secretary of State of the State of Delaware
- Prepare ancillary documents for fund closing, such as necessary consents, authorizations, officer's certificates, etc. if necessary
- Manage fund closing
- Prepare EIN Authorization
- File EIN
- File qualification to do business in Pennsylvania
- Prepare management agreement between fund and management company
 - The economic and legal structure will need to comply with the exemptions set forth in the Investment Advisers Act and Investment Company Act
 - You may also want a management agreement between the individual series and the management company depending on the economic structure

Part Five: Establish Investments

Please note this will differ drastically depending on the type of investments. For this example, each series is a separate business location for a franchise.

- Review franchise agreement
- Prepare lease or agreement of sale for acquisition of real estate
- Prepare employment agreement for manager

- The manager may hold equity of an individual series for their location to incentivize the manager, or you could include a phantom equity compensation structure in an employment agreement rather than providing an equity position so that any change in management doesn't impact the ownership structure
- I would recommend drafting customary contracts for the business (such as waivers of liability, terms and conditions of services, independent contractor agreements, website contracts, etc.), but these may be provided by the franchisor, so I have not further detailed them.

Please note that the following variables, among others, increase legal time and cost required in fund formation:

- Number of investors
- Negotiation power and requests of investors
- Inclusion of foreign investors
- States in which fundraising occurs
- Changes to fund structure or scope of work
- Amount of funds included in fundraising
- Timeline of project, including starts and stops of work
- Cooperation of all parties involved
- Number of individual series and customization of each
- Complexity and customization of documents
- Allocation of negotiation between business and legal team
- Number of closings, etc.

In addition, I want to note that the SEC is currently reviewing several proposed rules that will significantly impact compliance requirements for private equity and real estate funds. This is developing and may impact the formation of the fund depending on the timing of closing and their further development.