



THE VOICE OF  
PRIVATE CAPITAL  
VENTURE CAPITAL  
PRIVATE EQUITY  
INFRASTRUCTURE  
LONG TERM INVESTORS

Edition: 2017

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# GUIDANCE FOR PLACEMENT ADVISERS

## ON THE APPLICATION OF THE CODE OF CONDUCT

PART OF THE INVEST EUROPE  
PROFESSIONAL STANDARDS HANDBOOK

## **Acknowledgements**

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Invest Europe is the association representing Europe's private equity, venture capital and infrastructure sectors, as well as their investors.

Our members take a long-term approach to investing in privately-held companies, from start-ups to established firms. They inject not only capital but dynamism, innovation and expertise. This commitment helps deliver strong and sustainable growth, resulting in healthy returns for Europe's leading pension funds and insurers, to the benefit of the millions of European citizens who depend on them.

Invest Europe aims to make a constructive contribution to policy affecting private capital investment in Europe. We provide information to the public on our members' role in the economy. Our research provides the most authoritative source of data on trends and developments in our industry.

Invest Europe is the guardian of the industry's professional standards, demanding accountability, good governance and transparency from our members.

Invest Europe is a non-profit organisation with 25 employees in Brussels, Belgium.

For more information about Invest Europe, please visit **[www.investeurope.eu](http://www.investeurope.eu)**.

### **Contact**

For more information on our Professional Standards, please contact us at **[professionalstandards@investeurope.eu](mailto:professionalstandards@investeurope.eu)** and we will respond to your enquiry promptly.

# PREAMBLE

Invest Europe promotes the highest ethical and professional standards within the private equity, venture capital and infrastructure industry<sup>1</sup>. Its Professional Standards Handbook brings together the key elements of governance, transparency and accountability that are expected of industry participants. The Handbook provides accessible, practical and clear guidance on the principles that should govern professional conduct and the relationships between all those engaged in the industry. It is available **here**.

This Guidance forms part of Invest Europe's Professional Standards Handbook. It provides specific guidance and recommendations on best practices to member firms of Invest Europe the business of which encompasses acting as a placement or fundraising adviser (referred to throughout this Guidance as "Firms" or "Placement Advisers") to ensure adherence to the Invest Europe Code of Conduct.

<sup>1</sup> For the purposes of this Guidance, "private equity" and "industry" are used as generic terms to refer to and to encompass venture capital, infrastructure and private equity.

# CODE OF CONDUCT

The Code provides that Invest Europe members:

1.

**Act with integrity**

2.

**Keep their promises**

3.

**Disclose conflicts of interest**

4.

**Act in fairness**

5.

**Maintain confidentiality**

6.

**Do no harm to the industry**

**Compliance with the Code is MANDATORY** for all Invest Europe members and it is expected that the member procure that its affiliates working with it will also adhere to the Code.

Issues of non-compliance are dealt with through the Invest Europe Professional Standards Committee on behalf of the Board of Directors of Invest Europe. In the event of a proven serious case of misconduct by a member, Invest Europe can impose sanctions on the specific member that ultimately can result in expulsion of that member from Invest Europe.

**Complaints about Invest Europe member firms should be addressed to:**

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# GUIDANCE FOR PLACEMENT ADVISERS

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The role of the placement adviser has developed significantly over time and is seen as an important and positive component within the industry. They play an increasingly important role in successful capital raisings for, inter alia, alternative assets, including private equity, venture capital and infrastructure.

In this document, Placement Advisers are defined as Invest Europe member firms to the extent that they are engaged in fundraising advisory services for which they are remunerated.

Invest Europe first resolved to introduce a specific document for Placement Advisers in 2009 (a) to reflect the established institutionalisation of the placement and fundraising business model; (b) to highlight the importance of such role in alternative asset fundraising; (c) to maintain and publish benchmarks in the practices of placement advisers for the benefit of all member firms; (d) to encourage the furtherance and continued support of strong ethical principles in this segment of the market by placement advisers and those that engage them; (e) to emphasise the necessity of adherence to high standards of compliance and regulation wherever a member firm operates; and (f) to set out requirements as to transparency and accountability of dealings with its clients (referred to throughout as "Clients").

This version was completed in 2017. Invest Europe will continue to monitor and update as appropriate the Guidance, including as part of its regular review of the full Handbook.

Invest Europe recommends that Firms make this Guidance available to all Clients at the outset of any new mandate.

# GUIDANCE

## 1. REGULATION AND AUTHORISATION

### 1.1

To the extent required by local laws, a Firm must be registered and/or authorised in each jurisdiction in which it undertakes activities.

### 1.2

A Firm should, on request, disclose to its Clients its regulatory status and any restrictions on its ability to act for the Client in any particular geography or capacity.

### 1.3

A Firm's representatives should possess the licences or certifications to the extent required by legal, governmental, regulatory or self-regulatory organisations to which the placement adviser or its representatives are subject for the performance of regulated activities, including, as required, the more stringent certifications for those acting in a supervisory capacity.

### 1.4

A Firm should operate in an environment with established compliance and supervisory procedures appropriate to the scope and geographical reach of its business.

### 1.5

Subject to the terms of its engagement and approval by the Client's legal counsel, a Firm should assist its Clients in developing a marketing plan which complies with applicable marketing regulations such as the Alternative Investment Fund Managers Directive (and applicable implementing legislation across the EEA) and Regulations D and S of the Securities Act of 1933, by offering its experience of applicable markets and marketing regulations.

## 2. CONDUCT OF BUSINESS (GENERALLY AND WITH CLIENTS)

### Conduct Generally

#### 2.1

A Firm conducting placement or fundraising advisory services must be in the routine and dedicated business of acting as a placement adviser.

#### 2.2

A Firm is expected to maintain high standards of probity, integrity and professionalism in the conduct of its business and not to do anything which would bring the industry into disrepute.

#### 2.3

Employees of a Firm should be appropriately qualified, authorised and supervised commensurate with the capacity in which they are employed, the jurisdictions in which they operate and their seniority in the Firm.

#### 2.4

A Firm should maintain professional relationships with a meaningful number of investors that seek to invest in alternative assets, and typically (unless limited in scope by geography or similar) should be retained to raise capital from all or a significant sub-set of such investors.

#### 2.5

A Firm should not make or offer to make any payment or provide any benefit to induce a third party to enter into contractual negotiations or do business with a Client. The standard for what is improper is captured in applicable law or regulation or available investor policy and may include inducements such as disproportionate hospitality.

#### 2.6

A Firm should keep records of the performance of its duties for a minimum period of five years (or such longer period required by applicable law).

#### 2.7

A Firm should establish and implement written policies and procedures to identify and mitigate conflicts of interest appropriate to the scope of its business. A Firm should make available its policy upon request by its Clients.

## 2. CONDUCT OF BUSINESS (GENERALLY AND WITH CLIENTS)

### Conduct with Clients

#### 2.8

A Firm should enter into a written contract with a Client specifying the nature of the relationship, scope and term of the service, regulatory status, reporting obligations and the fee arrangement, and confirming the Firm will adopt and adhere to the Code of Conduct and this Guidance, to the extent applicable.

#### 2.9

A Firm should perform reasonable and appropriate due diligence in respect of a Client commensurate with the scope of its engagement and its regulatory obligations. Such diligence should ensure that the Firm and its employees have adequate knowledge and understanding of the Client and the product to fulfil the assignment.

#### 2.10

A Firm should take appropriate steps where required, which may include delegation to a third party, to identify an investor's professional status, domicile (and/or registered office) and source of funds for Know Your Customer and anti-money laundering purposes and compliance with applicable marketing regulations. A clear understanding between the Firm and the Client on the responsibility borne by the Firm for these procedures and whether they are being undertaken for the Client should be set out in the terms of the engagement, including where the Firm is not undertaking any such activities for the Client.

#### 2.11

Prior to undertaking any assignment, a Firm should consider, discuss with and disclose to its client or potential client any conflicts of interest arising from other activities or assignments of the Firm.

#### 2.12

When requested, a Firm should provide strategic and other advice to Clients on an impartial basis, taking into account their expertise, market awareness and what it considers to be the most favourable course of action for the Client given the then prevailing circumstances.

#### 2.13

In a situation such as an oversubscription, where there is a choice between admitting to the fund an investor for which a fee would be payable to the Firm or an investor for which no fee would be payable, a Firm should identify the conflict to the Client for it to decide on its preferred action.

#### 2.14

A Firm should report to its Clients as to its activities in accordance with the client agreement and its regulatory obligations in a way which is clear, complete, fair and not misleading.

## 3. TRANSPARENCY AND DISCLOSURE

### 3.1

A Firm should disclose, either upon the request of a processing or existing investor who is subject to appropriate confidentiality obligations or to the extent (if at all) required by applicable law, regulation or internal policy, a summary of the fee arrangement the Firm has agreed with a prospective or existing Client or its manager in respect of such investor's investment in such Client or its funds (if any). The Firm should disclose to a prospective or existing Client any other payments received or made by it in connection with its activities on behalf of that Client.

### 3.2

A Firm should put in place a policy with respect to the making of political donations by the Firm or any related person, and make the policy available to Clients and their investors at their request.

### 3.3

Any Firm engaging any former employee of a government pension plan or anyone in the decision-making chain of command regarding an investment by such government pension plan in a Private Investment Fund must make full disclosure of such engagement to its prospective and existing Clients and Clients' investors and such person must agree not to solicit such government pension plan if and to the extent required by applicable law or regulation.

### 3.4

Where a sub-placement adviser is appointed by the Firm, the Firm shall take reasonable steps to procure that: (i) such appointment is disclosed to the Client and (as appropriate) to the Client's prospective and existing investors; and (ii) the sub-adviser undertakes to comply with the Code of Conduct and this Guidance to the extent applicable, failing which, the Firm must cease to act for the Client or terminate the appointment of the sub-placement adviser.

### 3.5

The role of the Firm and, subject to the opinion of the Client's legal counsel, any sub-placement adviser should be disclosed in marketing materials issued in connection with the Client's fundraising.

### 3.6

A Firm should exercise a proper standard of care and use its best efforts to identify to the Client and include in all marketing materials any disclosures required under relevant marketing regulations.

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