

MPRA

Munich Personal RePEc Archive

Ownership and Control of Foreign Direct Investments in Limited Partnerships

Bogachevsky, George

22 June 2012

Online at <https://mpra.ub.uni-muenchen.de/49105/>
MPRA Paper No. 49105, posted 17 Aug 2013 05:27 UTC

Ownership and Control of Foreign Direct Investments in Limited Partnerships

George M. Bogachevsky, PhD, MBA, MS

Independent researcher

1230 13th street NW apt 701, Washington, DC 20005

Work 202-606-5586

Home 202-588-0309

georgeb@netropolis.net

Keywords:

- Foreign Direct Investment
- Limited Partnership
- Foreign Parent
- Ultimate Beneficial Owner
- Provision of empirical evidence

JEL classifications:

- F21 - International Investment; Long-Term Capital Movements
- F23 - Multinational Firms; International Business
- M41 – Accounting

Abstract:

The financial accounting data about foreign direct investments (FDI), collected, classified, tabulated, and published by the leading statistical institutions of the world, are in part distorted (to the extent that General Partners and Limited Partnerships are involved), and in total contaminated (as distorted data are added to the total pool of data).

The erroneous interpretation of the role of voting control, exercised by General Partners in Limited Partnerships, was accepted without critical analysis by the accounting profession, by the economists, and by the world statistical agencies, and is a cause of repeated systemic errors in financial data about FDI, in resulting economic data, in economic research, and in conclusions based on such data.

The manuscript suggests ways to correct such widespread systemic methodological errors of interpretation and classification of FDI data and offers ways to improve financial reporting and economic statistics about FDI.

Many economists and statisticians around the world, engaged in analysis of foreign direct investments (FDI) and international flows of capital, would be very surprised to discover that the financial accounting data they rely on, collected, classified, tabulated, and published by the leading statistical institutions of the world, are in part distorted (to the extent that General Partners and Limited Partnerships are involved), and in total contaminated (as distorted data are added to the general pool of data).

That happens because the erroneous accounting interpretation by U.S. Financial Accounting Standards Board (FASB) of the role of voting control exercised by General Partners in Limited Partnerships was accepted without critical analysis by the accounting profession and by the world statistical agencies. Such error causes a repeated systemic error in processing of financial accounting data about FDI, in resulting economic data, and thus in economic research and conclusions based on such data.

It seems to be common practice to misunderstand and overestimate the role of voting in Limited Partnerships, and therefore to misunderstand and overestimate the role of General Partners in Limited Partnerships. Current practice requires General Partner to consolidate Limited Partnership and its economic activities into General Partner self, thus recognizing and tracing FDI by way of General Partners as possessing overwhelming voting control over Limited Partnerships.

Such misunderstanding stems from confusion of different roles of legal title to equity and equity title, thus resulting in confusion of:

- a) Different roles of voting control in public corporations and voting control in Limited Partnerships,
- b) What constitutes FDI,
- c) What constitutes a U.S. affiliate (investment target enterprise), a Foreign Parent (FP), and an Ultimate Beneficial Owner (UBO)
- d) Which companies have to file FDI reports and which subsidiaries ought to be consolidated in those reports?

First let us find the roots of mistaken interpretation of the role of General Partners in Limited Partnerships, which led FASB astray in formulating the rules of consolidation by General Partners, and thus led BEA (and OECD) off course in identifying foreign parents and beneficial owners when Limited Partnerships are involved, and erroneously assigning the status of Foreign Parent and/or Ultimate Beneficial Owner to a General Partner(s) of a Limited Partnership.

FASB decrees that physical or legal persons in possession of majority voting in an entity do control such an entity. FASB thus requires such physical or legal persons to consolidate financial accounting data representing economic activities of such entity and its subsidiaries.

Not so far ago, on June 29, 2005, the FASB ratified the EITF consensus on Issue No. 04-5 “Determining Whether a General Partner, or the General Partners as a Group, Controls a Limited Partnership or Similar Entity When the Limited partners Have Certain Rights.” (Deloitte, 2005).

With understanding that “Legally, a general partner in a limited partnership must shoulder broad responsibilities for the operations and liabilities of the entity – even though it may have a relatively small economic interest in the partnership” (Deloitte, 2005), the FASB concluded that, in Deloitte words,

“The issue 04-5 framework is based on this fundamental principle: a general partner in a limited partnership is presumed to control the limited partnership, regardless of the extent of its ownership interest. Consequently, a sole general partner (or, perhaps, a single general partner in a group of general partners) will consolidate the partnership unless the presumption is overcome. ... The presumption is overcome if the limited partners have either

- 1) The substantive ability to dissolve (liquidate) the limited partnership or otherwise remove the general partner without cause (also referred to as substantive kick-out rights), or
- 2) Substantive participating rights.” (Deloitte, 2005).

It seems that FASB confused here several issues of different character and belonging to different facets of management and accounting:

- 1)
 - a. "Control" at public companies, which is represented by possession of voting shares (even there might be more than one class of voting shares representing different levels of influence or "control"),
 - b. With managerial "control" at Limited Partnerships, where voting serves purely legal purpose of generating a legal title for a General Partner while equity investors retain equity title to their investments. Legal title in turn serves managerial purpose of husbanding investors' equity, representing Limited Partnership in business activities;
 - c. In other words FASB confused that
 - i. Shareholders' voting in public companies provides the "power" to exercise general control of equity but not the daily managerial control over activities of the company that most significantly impacts public company's economic performance (recall Enron!), while
 - ii. Partners' voting in Limited Partnerships provides General Partner(s) with legal title enabling daily control over activities of a Limited Partnership that most significantly impacts Limited Partnership's economic performance, but not with the general control of equity title.
- 2)
 - a. Consolidation of a subsidiary, in which a public company-parent owns a majority (more than 50%) of voting stock, into company-parent's books,
 - b. With purely accounting consolidation of a Limited Partnership's equity *by* a General Partner, and not necessarily into General Partner self,
 - c. Requiring instead of consolidation *into the Limited Partnership* self, illogical consolidation *into* a General Partner ("forced consolidation") which serves simply a purpose of

- i. Managing a Limited Partnership with the legal right to conduct a business of a Limited Partnership, representing such Partnership in business relations, and
- ii. Financial reporting and publication of financial statements of a Limited Partnership in the name of a General Partner in a role of “as-if” principal of Limited Partnership. General Partners rarely delude themselves about their real role in a Limited Partnership, in fact acting as agents of equity investors while consolidating all invested equity interests of Limited Partners into a Limited Partnership as an *associated group* for the sole purpose of presenting financial statements.

The BEA rule setters followed FASB erroneous requirement for consolidation of Limited Partnership by a General Partner per “voting control” and introduced most strictly enforced BEA rules which require analysts to identify General Partner(s) as a *parent company* and/or *Ultimate Beneficial Owner*, misdirecting the line of Beneficial Ownership to where none ought to be.

We mention *misdirection* because BEA’s actual purpose is not to *consolidate* for the purposes of accounting and financial reporting but to trace and identify an owner/foreign parent, beneficial owner, and UBO, which does not require “forced” consolidation.

FASB recently acknowledged that “**810-10-25-82...** The general partner is the limited partnership’s decision maker” (FASB, p.49) but continued with requirement that “The general partner shall determine whether it has the ability to use its decision-making authority in a principal or agent capacity” (FASB, p. 49). FASB suggests further: “**810-10-25-87** A general partner shall consider the overall relationship between itself, the limited partnership being managed, and other parties involved with the limited partnership when evaluating whether it is exercising its decision-making authority as a principal or an agent” (FASB, p.50). “If a general partner uses its decision making authority in a principal capacity, it shall consolidate the limited partnership” (FASB, p. 49).

FASB explains “810-10-25-86 An agent is a party that acts on behalf of and for the benefit of another party or parties (the principals(s)) and, therefore, does not control the entity when it exercises its decision-making authority” (FASB, p. 50).

Let us analyze how changes in FASB pronouncements should reflect on BEA practice of identifying foreign parents, beneficial owners, and UBO of entities engaged in FDI in the U.S.

In the ‘Principal versus Agent Analysis’ FASB acknowledges the role of voting in control of financial interest, but with a caveat: “Ownership of a majority voting interest is the usual condition for a controlling financial interest. However, application of the majority voting interest requirement ... may not identify the party with a controlling financial interest because the controlling financial interest may be achieved through arrangements that do not involve voting interests” (FASB, p. 20).

In Limited Partnerships such arrangements can be and most often are achieved by means of partnership agreements, which protect Limited Partners’ equity interests, while voting control by General Partners serves the purpose of providing them with a legal title to such equity in order to enable General Partners’ managing activities.

Of course, in the vast majority of cases a General Partner by partnership agreement has the power to direct the activities of a partnership that most significantly impact the partnership’s economic performance. Yet it is common knowledge that a General Partner possesses only 0.1% to 1% of equity of a Limited Partnership (“seed money”) and does not have the obligation to absorb losses of the VIE or the right to receive benefits from the VIE that could potentially be significant to the partnership.

According to the Roadmap interpretation by Deloitte, under ASC 810-10-15-14(b), for the equity investment of an investment manager or a General Partner to be considered at risk, it must be determined to be *more than “inconsequential”* relative to the value of other investments providing a similar return (Deloitte, 2010, p. 15).

According to the provided by Deloitte example, if the investment manager or a General Partner invests \$1,000 in a \$10 million fund and the minimum investment required for all other participants is \$500,000, the investment manager's or General Partner's investment may be considered inconsequential when compared with the total amount of equity at risk and therefore does not constitute equity at risk under ASC 810-10-15-14(a) and there is no substantive difference between an investment of \$0 and an investment of \$1,000. (Deloitte, 2010, p. 86).

There are no exact measurements as to what amount of General Partner's equity would be considered "consequential", but one can assume that 0.1% to 1% of total equity of Limited Partnership, invested by a General Partner, does not constitute a "consequential" investment, and the General Partner does not stand to absorb much of losses or to receive much of benefits resulting from the activity of a Limited Partnership, even if to consider management fees afforded to a General Partner.

For example, AICPA in its letter of February 14, 2012 stated that "While a general partner may have unlimited liability with respect to the overall operations of the entity, by purpose and design, many partnerships are structured in such a way so that general partners would not incur significant losses above and beyond their partner capital balances invested in the limited partnership" (AICPA, 2012, p. 6).

AICPA continued: "Furthermore, we believe that an examination of the overall purpose and design of the entity, coupled with an analysis of the expected returns of the general partner should be weighed in the determination, and that a traditional general partner interest, taken by itself, should not automatically create principal relationship" (AICPA, 2012, p. 7). "For example, when analyzing the limited partnership investment company structure under the proposed ASU, the general partner often will be considered to be an agent" (AICPA, 2012, p. 8).

It would be doubtful if anybody of sound mind would invest any amount in a Limited Partnership with a General Partner being anything but an agent of the partnership different in any meaningful way from an execu-

tive officer of a public company. The only difference could be that in a public company a shareholder wishing to liquidate an investment would sell his equity in the open market, while in a Limited Partnership Limited Partner could be required to sell his equity share back to the Partnership or to a new Limited Partner approved by the Partnership.

In the same letter AICPA reminds us that “Paragraph BC21 of the proposed ASU indicates that “While redemption rights do not provide an investor with the power to remove a decision maker, investors could theoretically withdraw 100 percent of an entity’s capital (assuming there are no restrictions in place) and effectively —kick out the decision maker. While this scenario may be rare in circumstances with many investors, it might be plausible for an entity that has few investors and, thus, could be seen as increasing the possibility that a decision maker is not a principal in those situations”” (AICPA, 2012, p.3).

“Limited partners in such investment companies often have no substantive rights and are limited in their decisions to those that pertain only to their own partnership interest (that is, they can either decide to make an additional investment or choose to redeem all or a portion of their interest).” (AICPA, 2012, p.8).

One can imagine that if investors could “theoretically” withdraw 100 percent of entity’s capital, it is quite plausible that any one investor could withdraw his share of equity, it being 100 percent or less of entity’s capital. Of course, a Limited Partnership might impose a certain specified in partnership agreement lock-up period for Limited Partner’s equity.

With that in mind, we can conclude that it is unnecessary for us to consider scenarios involving “kick-out” rights, or “participation” rights, whether “substantial” or not, of Limited Partners. We are not interested in examining scenarios of expelling a General Partner in tar and feathers, as well as dissolution and/or re-constitution of Limited Partnership.

We do not even have to scrutinize any of Limited Partnership Agreements, which practically would be next to impossible to obtain, but we could rely instead on assumption – unless invested equity is stolen by a

General Partner (which is a criminal case) or Limited Partnership lost all investments “in ordinary course of business” (in author’s opinion, there is nothing *ordinary* about such a course), a Limited Partner can always withdraw (redeem) investment from the Limited Partnership and reinvest it somewhere else even if the former Limited Partnership provides just a bit smaller return on investment than the next door entity.

Emerging FASB train of thought indicates that a general partner doesn’t “control” a limited partnership but has “power” to influence its business activities that most significantly impact the partnership’s economic performance. According to FASB, a principal (Primary Beneficiary) has to possess both voting power to direct activities of a Limited Partnership and *more than inconsequential* economic interest in such Limited Partnership. It is known that majority of Limited Partnerships have a Limited Partner (Partners) possessing 99% of equity though only 1% of votes, and a General Partner (Partners) possess 99% of votes but only 1 % of equity. Thus we can conclude that in most cases a General Partner is not a principal but an agent of a Limited Partnership.

Just like FASB, BEA and OECD fail to differentiate between roles of voting in public companies and in Limited Partnerships and uncritically follow FASB promulgation though neither BEA nor (even more so) OECD are required or need to do so. Yet while FASB appears to modify its considerations in principal vs. agent analysis, BEA and OECD keep up full steam ahead on course diverging ever more FDI statistics from common sense.

Just like FASB, OECD and BEA overestimate General Partner’s role in a Limited Partnership and confuse different roles of voting in public corporations and in Limited Partnerships, err identifying voting with control, have vague understanding of essence of control, particularly different kinds of it, misperceive voting control as a representation of equity control in Limited Partnerships, and mistakenly extend terminology used in analysis of public corporations to Limited Partnerships.

Let us acknowledge that an all-encompassing term “control” is more complex that FASB, OECD, and BEA realize. It seems that, following FASB promulgations, BEA, as well as OECD, perceives only one kind of control – voting control in public corporations. Such narrow perception glosses over fine details of investment analysis.

There are more kinds of control than one, seemingly perceived by FASB, OECD, and BEA. That leads to attributing control function to only one entity, thus “stripping” other entities of any kind of control they actually have.

In public corporations voting control is the major if not the only way shareholders can secure and maximize monetary benefits of equity beneficial ownership by controlling management set-up and proper management. Rights of shareholders are protected by the number of voting and dividends producing shares they own – here safety indeed is in numbers. The bigger share of public corporation’s capital investor controls, the higher is the level of protection of shareholder’s interests. Although shareholders can vote in blocks, there is no formal agreement between shareholders in public corporations, which would secure particular pattern of voting.

Of course we assume for simplicity that a hypothetical public corporation issues only one class of stock, with each share equivalent to any other share in voting representation. Things become more complicated if publicly traded corporations issue different classes of stock. The OECD reasonably mentions that “While voting power is generally obtained through the purchase of equity, it is possible to have voting power that is not in the same proportion as the equity ownership (for example, ‘golden shares’ have greater voting power than other shares)” (OECD, 2008, p. 23).

The OECD adds later than “In general, ordinary shares are the same as voting power. However, there may be instances that the voting power is not represented by ordinary shares. In such cases, compilers must determine the voting power” (OECD, 2008, p. 48). Important by the way here is the recognition that no matter how exact definition is, inevitably it leaves some cases to compilers, analysts, editors of statistical data to decide upon.

The role of shareholders’ voting control in public corporations is erroneously transferred to the role of Partners’ voting in Limited Partnerships. In a Limited Partnership voting control and equity ownership do not coincide. General Partner has 90% to 99% or even 99.9% of voting control, while having little to no equity investment, other than some “seed” equity in a fund. Limited Partners on the other hand have all or majority of

equity ownership, but little to no voting control over Limited Partnership operations. According to traditional misunderstanding, General Partner, possessing 99% of voting control, is attributed the Foreign Parent and/or UBO status, while equity owners, being beneficial owners and possessing vast majority of equity, are pushed into statistical obscurity.

In Limited Partnerships the purpose of protecting investors' rights and privileges is served mostly by a partnership agreement, much less by voting. Majority voting power of a General Partner in essence represents a power of attorney in an environment where voting control (legal title to Partnership's capital) is separated from equity control (equity title to Partnership's capital) as opposed to public corporations where voting and equity control are mostly one and the same.

For Limited Partnerships there is meaningful distinction between different kinds of control vested with different entities. In spite of this distinction, General Partner is perceived as exercising all and complete control (which it doesn't), and Limited Partners are perceived as exercising no control at all (when in fact they do). Most of General Partners exercise control similar to control allotted to a CEO of a public corporation, where CEO manages daily operations of their company, but shareholders in meetings can vote for change of senior management of a company, though at times with reasonable struggle.

In order to establish what UBO essentially is or is not, let us consider opinions about the legal terms on the topic, offered by the legal profession:

- a) Beneficial owner is the owner of a security registered in another name. For example, investors often leave securities in trust with their brokerage firms. Although the brokerage firm is shown on the issuer's books as the owner of record, the investor is the beneficial owner.
- b) Beneficial owner is one enjoying the benefit of property of which another is the legal owner. In English translation, Beneficial Owner is the one with equity title to a property to which another holds legal title.

It seems that BEA and OECD interpretations of UBO and Ultimate Controlling Parent (UCP) concepts need disambiguation:

- 1) BEA and OECD, it appears, postulate that equity ownership and voting control always coincide;
- 2) BEA and OECD do not distinguish between different combinations of voting control and equity ownership;
- 3) OECD, talking about “controlling parent”, merges together two terms – “control” and “parent”, implying that these two terms only together constitute UCP (and, as the author would suggest, UBO as well).

OECD apparently implies that “parent” not only has voting control over equity, but also owns majority of equity, thus being a “parent”. If our understanding is correct, then, because General Partner in a Limited Partnership has little or no equity (General Partner invests own “seed” money in “advised” fund), we can assume for now that General Partner cannot be a “parent”. As we shall see later, General Partner, besides “seed” equity, also has tactical and some operational control, but rarely strategic control over the equity, and no final, ultimate control over equity. Therefore General Partner cannot be a “controlling parent” and we can conclude that General Partner cannot be UCP.

It also seems that in the perception of BEA and OECD, voting control emerges as equivalent to equity and is therefore equivalent to beneficial ownership. If our interpretation of BEA and OECD perception is correct, for BEA and OECD voting control alone constitutes UBO and UCP, respectively. We suggest that is not so with Limited Partnerships. On the other hand, according to legal terminology in which BEA should be most interested, UBO possesses equity title and majority equity share, but not necessarily legal title and majority voting control of a property.

One configuration involving Limited Partnerships and General Partners is quite common in the investment industry. A “parent”, “umbrella” investment company sets up several investment funds offered as Consolidated Investment Vehicles (CIV) in a form of Limited Partnerships. Each Limited Partnership is managed and

“vote-controlled” by one or several General Partners, physical or legal persons, which are set up and owned or appointed and directed by the “parent” investment company. Investors enter Limited Partnerships-CIV as Limited Partners, bringing equity and getting nominal votes if any.

The assets of such CIV are often called Assets Under Management (AUM). Current FASB promulgations “force a consolidation” of AUM of those CIV by and in the name of the “umbrella” investment company that sets up and owns and/or directs General Partners with the purpose to provide investors with accountability of the “umbrella” company for the invested funds, equity title to which belongs to investors.

Yet such “umbrella” companies distinguish quite well between their own funds and AUM funds. In some cases entities managing AUM even “...expressly disclaim beneficial ownership of any securities owned beneficially or of record by any person or persons other than themselves for purposes of Section 13(d)(3) and Rule 13d-3 of the Securities Exchange Act of 1934 and expressly disclaim beneficial ownership of any such securities except to the extent of their pecuniary interest therein” (Source confidential).

Therefore we can conclude that neither these General Partners, nor the “parent-umbrella” company are beneficial owners to any “*more than inconsequential extent*”. The so called “forced” consolidation, itself questionable, has nothing to do with the purposes of BEA to identify parents-beneficial owners and UBO of international investments. It is investors in the CIV – Limited Partners of the Limited Partnerships – that are beneficial owners and possibly UBO of the investments (foreign or not, direct or not).

If equity interests of Limited Partners in a Limited Partnership are much fragmented and Limited Partners are numerous, the respective Limited *Partnerships* in question themselves will be beneficial owners (UBO) of the invested equity, and Limited Partners’ foreign investments will be indirect. If equity interests of Limited Partners in a particular Limited Partnership are not fragmented, and there are few Limited Partners, and we can identify Limited Partners with “controlling” (or *dominating*) equity interest in a Limited Partnership (regardless of voting control), we can identify such Limited Partners as beneficial owners to the extent of their equity inter-

ests (but not more), and Limited Partners' investment can be foreign and direct, if Limited Partners are domiciled in a country different from Partnership's country of incorporation.

Thus we can see that there was no need for BEA and OECD to dutifully follow FASB suite when FASB in the past required consolidating Limited Partnership *into a General Partner* due to voting "control" of Limited Partnership by a General Partner. There is even less need to follow the erroneous course now that FASB appears to be changing its interpretation.

That is particularly the case when e.g. because of faulty BEA rules of classification one or several General Partners, domiciled e.g. in UK and managing an investment fund incorporated in Cayman Islands and financed by investors from all over the world, are attributed Ultimate Beneficial Ownership of the said multibillion dollar investment fund.

What BEA needs is to identify UBO of FDI via identifying Foreign Parent(s) of such investments. Even if to follow current FASB pronouncement and assume for the sake of an argument that a General Partner, having (a) power to influence activities, (b) equity interest, (c) sharing losses, and (d) collecting benefits at *more than inconsequential level*, has to consolidate a Limited Partnership, the said General Partner would consolidate equity in subsidiaries not into General Partner *self* but into the Limited Partnership with a General Partner as its head (manager/executor/CEO).

One could see semblance between a General Partner and a shipmaster who would say "I went from New York to Odessa" instead of saying "**My ship** went from New York to Odessa". Just like a shipmaster identifies himself with his ship, a General Partner in the accounting sense identifies himself with his Limited Partnership.

Nevertheless a General Partner, representing a Limited Partnership and directing its business activities, is not one and the same with the Limited Partnership, just like a shipmaster is not one and the same with the ship. Just as a shipmaster does not own a ship, a General Partner does not own the Limited Partnership, and

ship's cargo is "consolidated" into the ship's holds, not into shipmaster's belly. This relationship does not change if a General Partner is a legal person as opposed to a physical person.

A General Partner is NOT and cannot be a Beneficial Owner and the more so Primary Beneficiary, using FASB term, unless a General Partner has more than 50% equity share or at the least the biggest equity share of all partners, but Limited Partnership with a General Partner as its agent can be a Beneficial Owner (by the legal and by BEA terminology) though not a Primary Beneficiary (by FASB terminology).

Inconsequentiality of General Partner's economic interests and respective miniscule equity title proves beyond reasonable doubt that a General Partner with its legal title in vast majority of cases is *an agent* of Limited Partnership, acting as "as-if principal" in the interests of Limited Partnership as *an associated group* and therefore in the interests of each Limited Partner as a member of such a group.

Thus FASB pronouncements even in their new reincarnation are not suitable for the purposes of identifying Foreign Parent of a U.S. affiliate created as a result of FDI. For the purpose of identifying Foreign Parent and UBO, BEA has legitimate right and an obligation to abandon FASB required "forced" consolidation and identify beneficial owners and Primary Beneficiary (or in BEA terms UBO) in a way similar to public companies, disregarding voting "power to influence activities" and following trail of equity interest only – that is by equity title and share of equity interest.

Being interested in an owner (Foreign Parent), beneficial owner, and UBO, BEA does not need to follow accounting consolidation trail because, unlike FASB Primary Beneficiary, beneficial owner and UBO can be such without having voting "control" over a Limited Partnership (after all, there is such thing as "voting with one's legs") and even without having "power" to significantly or otherwise influence its *daily* business activities.

Being interested in a Foreign Parent, BEA doesn't need to follow voting control and accounting consolidation track to Primary Beneficiary (UBO). FDI by a Limited Partnership domiciled abroad will have such a Limited Partnership as a Foreign Parent (and not a General Partner with voting control), and Beneficial Ownership

can be identified just like in publicly traded companies, by share of equity ownership, with no regard, in Limited Partners' case, for voting control.

Being interested in UBO, BEA again is interested in equity title track (to a beneficial owner and to UBO) but not in a legal title track held by a General Partner with "voting control". In case of Limited Partnership, equity title track either can be traced to UBO possessing the biggest share of equity, equivalent to majority owner of public company shares, or it stops at a Limited Partnership level, unless the same parent company has both equity and legal title, having set up and controlling a General Partner. Such situation might be best illustrated with a quip by Yogi Berra: "If you see a fork in the road, take it" (both roads in the fork led to Berra's house).

BEA need not be concerned with the legal title belonging to a General Partner, which now according to new FASB considerations in most cases would not be required to consolidate Limited Partnership that the said General Partner manages.

To restate new developments in few words, for BEA FDI statistics purposes:

- General Partner cannot consolidate Limited Partnership because out of two conditions for consolidation and for identification as Primary Beneficiary, General Partner in most cases has only voting control (legal title) but doesn't have *more than inconsequential* equity (equity title), doesn't absorb losses & doesn't receive benefits of Limited Partnership's activities in a way *more than inconsequential*; and
- Limited Partnership can but does not necessarily need to "consolidate" to be considered a parent (foreign or otherwise) or a beneficial owner; and
- Limited Partners cannot be parents, they cannot consolidate investments, but they can be Beneficial Owners and, under certain conditions, Ultimate Beneficial Owners (unless Limited Partners' equity is much fragmented), and due to that are of great interest to BEA in the area of FDI statistics.

Therefore in case of investment industry entity mentioned above, the Limited Partners and/or Limited Partnerships (whatever is the case) will be featured – not even visibly connected – in a thriller of FDI, and not

the “parent-umbrella” company. The “connecting” Limited Partners “parent-umbrella” company and owned and/or directed by it General Partners as mere managers of CIV and AUM and *less than consequential* equity holders will not enter the picture of FDI.

Managed (the term “advised” or “directed” is also used) fund might be domiciled in one country, while General Partner might be domiciled in another country, and Limited Partners might be domiciled in different countries yet. From the point of view of the Balance of Payments it is more important to track where to/from capital and profit flow, than who conducts daily management of capital belonging to others, while investing and earning minimal amount of own money.

In such situation daily managerial control comes from General Partner(s) domicile, but investment money goes from and profits flow to other countries (think balance of *payments*, not balance of *controls*), where UBO of investments (and also Ultimate Controller, though not a “parent”) is domiciled. Because the equity ownership of Limited Partners is protected by partnership agreement, they do not need voting control to protect their equity, and General Partner and Limited Partnership have to return capital investments to Limited Partners.

One could conclude that “control” is not about “calling the shots”, but about ability to dispose of entity’s capital, and that UBO is not a person which decides how to invest Limited Partners’ capital, but a person or entity which controls final destiny of equity, deciding who gets the money (General Partner or Limited Partners) if Limited Partner decides to exit partnership, or who gets the Partnership’s capital in its final distribution.

Even if economists do want to know who “controls” FDI, what economists actually get instead is information about persons or entities who *manage* daily operations of Limited Partnerships (control at managerial, CEO, not equity ownership, level), and who have to care about opinions of Limited Partners. In that case a country of domicile or industry of a General Partner matters little.

Consequently, if the top holder of FDI in a US Affiliate is a Limited Partnership, current practice is to assign UBO status to General Partner or Partners, not to Limited Partners, and not to Limited Partnership. The ground for that requirement is that General Partner by possessing vast majority of votes (99% to 99.9%) “controls” Limited Partnership.

Such requirement is wrong because:

- a) Essential in identifying UBO is ultimate control of investment (possession of equity title to investment as opposed to legal title) and not managerial voting control by a General Partner of daily activities of a Limited Partnership.
- b) UBO status requires not only “control” alone, but both “control and ownership” together (OECD term “Ultimate Controlling Parent”). General Partner usually owns about 0.1% to 1% of equity and hardly can be defined as a “parent” or an “owner”.
- c) Limited Partners and General Partners *act in concert* per Partnership agreement and therefore constitute (just like closely held corporation) an *associated group*, which can and should be legitimate UBO in a Limited Partnership if Limited Partners’ equity is fragmented, unless we can distinctly identify not more than very few Limited Partners holding dominant share of equity of a Limited Partnership, in which case the biggest equity holder could be identified as a UBO.
- d) Erroneous assignment of Foreign Parent and/or UBO status to General Partner, instead of Limited Partnership or Limited Partners, often results in misidentified identity, industry, and country of a Foreign Parent and UBO in many cases where Limited Partnerships are involved.

It appears that, if 10% of voting power (and thus equity ownership) in a public corporation provides sufficient influence on management of such a corporation, then all hope for influence is not lost for a Limited Partner with 1% of votes backed up by 99% of equity ownership. In fact, it is quite perceivable that many Limited

Partners in Limited Partnerships, though lacking 10% of voting power, have nevertheless significant influence over affairs of a Limited Partnership under the cover and protection of a partnership agreement.

Let us consider the BEA definition of UBO: “II Definitions. O. “Ultimate Beneficial Owner (UBO) is that person, proceeding up the ownership chain beginning with and including the foreign parent, that is not more than 50% owned or controlled by another person. Note: Stockholders of a closely or privately held corporation are normally considered to be an associated group and may be a UBO” (BEA, 2012, p. 34).

An associated group, although comprised of two or more persons, is treated in this definition as a single person. BEA’s own definition states: “Associated group means two or more persons who, by the appearance of their actions, by agreement, or by an understanding, exercise their voting privileges in a concerted manner to influence the management of a business enterprise. The following are deemed to be associated groups:

1. Members of the same family;
2. A business enterprise and one or more of its officers or directors;
3. Members of a syndicate or a joint venture;
4. A corporation and its domestic subsidiaries” (BEA, 2012, p. 33).

Thus FDI is considered to exist as long as the combined ownership interest of all foreign members of the group is at least 10 percent, even if no one member owns 10 percent or more. It is obvious that, bound by a formal partnership agreement, a Limited Partnership is indeed such an associated group, acting in concert, and represented by a General Partner, much as shareholders of a public corporation are represented by a CEO (yet CEO is not considered UBO of a public corporation).

Quoting the official motto of the United States, *E Pluribus Unum*, we can suggest that it is indeed such coming together of Limited Partners and General Partner(s), united in a Limited Partnership, that constitutes, creates “trust” (Limited Partnership with its capital, and Limited Partners as beneficiaries of the said trust).

Therefore if equity ownership is fragmented, a Limited Partnership itself is UBO that designates its own members as beneficiaries, but a Limited Partnership passes UBO title to a Limited Partner with majority share of equity if ownership is not fragmented.

A *peculiar reversionary interest* is the return of retained Limited Partnership's capital to Limited Partners. The capital of a Limited Partnership cannot be returned solely to the General Partner, but only to the extent of belonging to General Partner's investment with General Partner's share of retained earnings. Even if General Partner is a corporation, General Partner cannot *reverse* Limited Partnership's capital to self. If one might be forced by a contract (such as partnership agreement) to return capital back to investors under preset conditions (*reversionary interest*), and of course in a case where capital is not lost in the process of business, one is not UBO.

Anytime UBO status in Limited Partnerships is assigned to General Partners instead of Limited Partnerships as associated groups, UBO industry and UBO country are misidentified. Limited Partnerships, serving as conduits for financial investors, often have physical persons as General Partners. Consequently, instead of a meaningful industry of a Limited Partnership, e.g. financial industry, meaningless code for an individual is being used. Instead of a meaningful UBO country, meaningless country of convenience is being used.

Let us imagine situation where sole General Partner lives abroad but manages a Limited Partnership in the US, and all investors are residents of the U.S. Are we missing much on eliminating such a General Partner as "UBO" and "his" quasi-foreign investment if General Partner owns 0.1% ÷ 1% of a Limited Partnership's capital and cannot hold on to the money of such Partnership should Limited Partners decide to withdraw?

Now let us define major features of FDI vis-à-vis Limited Partnership we view as most important and at the same time more or less universal:

a) Source of invested capital must be abroad, not source of General Partner's penniless managerial wisdom, vested with voting control. Unification of legal and equity titles might be abroad or in the U.S., but *source of capital* must be abroad;

b) Ownership or control of 10.01% of voting securities in a public corporation does not even amount to significant influence over the corporation (such influence just begins to bud at 20% to 25%), yet is considered "an evidence" and "a threshold" that makes or breaks FDI. According to OECD, "...direct investment is considered evident when the direct investor owns directly or indirectly at least 10% of the voting power of the direct investment enterprise. In other words, the 10% threshold is the criterion to determine whether (or not) an investor has influence over the management of an enterprise, and, therefore, whether the basis for a direct investment relationship exists or not"(OECD, 2008, p. 23). By the same token, in Limited Partnerships, being called a Limited Partner should already be a matter of significance, and even more so if the said Limited Partner has invested 99% of Partnership's capital. Of course, if there are many Limited Partners, and equity of Limited Partnership is fragmented, each Limited Partner's influence in a Limited Partnership is inversely proportional to the number of Limited Partners and directly proportional to the share of equity of Limited Partnership;

c) because per definitions a target company is allowed to be unincorporated, investment in a Limited Partnership, operating a plant or a warehouse, by a foreign-domiciled Limited Partner would be just as *direct* and "*controlling*" as 10.01% investment in voting shares of a public corporation (the author even thinks that a Limited Partner owning 99.9% of equity in a Limited Partnership has actually more influence over affairs of a Partnership than a shareholder holding on for dear life to 10.01% of voting shares of a public corporation).

Now let us, utilizing considerations above, develop various cases and configurations of FDI and discuss:

- 1) Which investments, involving at some point Limited Partnerships, constitute FDI;
- 2) Which entities have to file reports about FDI;

3) What would be a scope of consolidation of such entities, etc.

It might be curious to add to definitions of a Foreign Direct Investment, quoted throughout this paper, some of definitions found in a brief Internet search.

Let us begin with the official BEA definition of FDI (we have seen it already at the beginning): “Foreign direct investment in the United States means the ownership or control, directly or indirectly, by one foreign person of 10 percent or more of the voting securities of an incorporated U.S. business enterprise or an equivalent interest in an unincorporated U.S. business enterprise, including a branch.”ⁱ

Here the BEA requires only one mandatory feature constituting FDI – ownership or control 10 percent or more of voting securities of an incorporated enterprise or an equivalent interest in an unincorporated enterprise. Foreign person owning or controlling 10.01% of a voting stock of a U.S. company thus is a foreign direct investor. The BEA does not require owning or controlling 50.01% of a voting stock of a target company. If a U.S. entity is not incorporated, equivalent of 10.01% of such interest would do just fine, though in unincorporated entities establishing such *equivalent* might be much ambiguous.

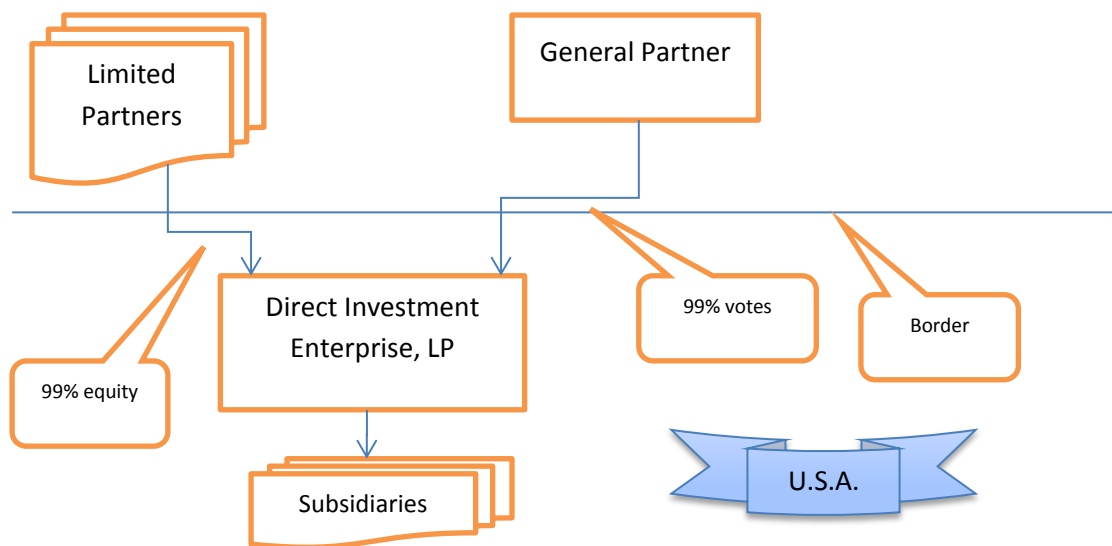
The most demanding and strict is U.S. Department of Agriculture, which states: FDI is the movement of capital across national frontiers in a manner that *grants the investor control over the acquired asset*.ⁱⁱ Other definitions sometimes don’t even mention 10% requirement, some mention participation in management, admit that FDI “often involves stock ownership”, etc.

Now let us attempt to apply broad definitions of FDI to a particular case – FDI involving a Limited Partnership at some place in a flow of foreign investment. To jumpstart our deliberations in the light of all available definitions of FDI, let us nitpick and define features we view as most important and at the same time more or less universal. The author dares to suggest that the major features of FDI vis-à-vis Limited Partnership must be:

- a) the source of *invested capital* must be abroad, not the source of penniless managerial wisdom, vested with voting control (the mean author means General Partners). Unification of legal and equity titles might be abroad or in the U.S., but source of capital must be abroad;

- b) as ownership *or* control of 10.01% of voting securities in a public corporation does not even amount to significant influence over the corporation (such influence just begins to bud at 20% to 25%), yet is considered “an evidence” and “a threshold” that makes or breaks a foreign direct investment,¹ by the same token, in an unincorporated entities, such as Limited Partnerships, being called a Limited Partner is already a matter of significance, and even more so if the said Limited Partner (a “sugar daddy”) has invested 99% of Partnership’s capital. Of course, if there are many Limited Partners and equity of Limited Partnership is fragmented, each Limited Partner’s influence in a Limited Partnership is inversely proportional to the number of Limited Partners;
- c) because per definitions a target company *is allowed to be* unincorporated, investment in a Limited Partnership, operating a plant or a warehouse, by a foreign-domiciled Limited Partner would be just as *direct* and “controlling” as 10.01% investment in voting shares of a public corporation (the author even thinks that a Limited Partner owning 99.9% of equity in a Limited Partnership has actually more influence over affairs of a Partnership than a shareholder holding on for dear life to 10.01% of voting shares of a public corporation).

Let us review some typical diagrams to illustrate our considerations.

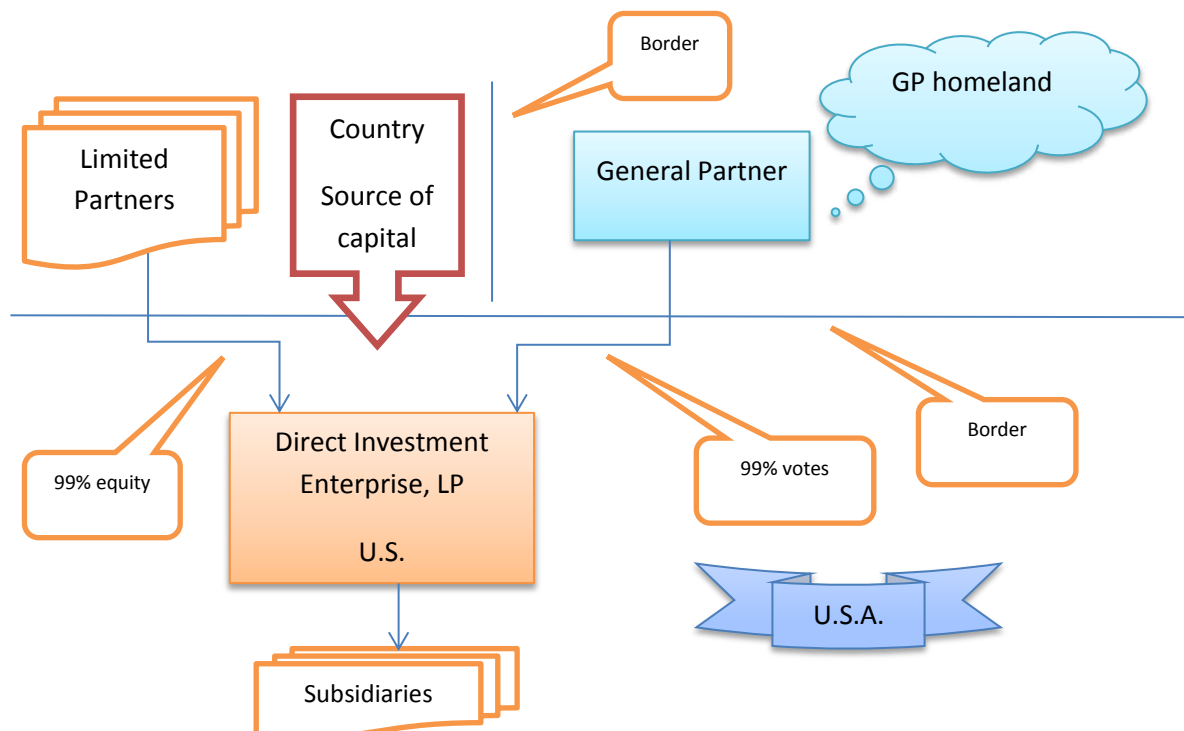


Case 1

¹ “...direct investment is considered evident when the direct investor owns directly or indirectly at least 10% of the voting power of the direct investment enterprise. In other words, the 10% threshold is the criterion to determine whether (or not) an investor has influence over the management of an enterprise, and, therefore, whether the basis for a direct investment relationship exists or not.” – OECD Benchmark Definition of Foreign Direct Investment. Forth Edition 2008, p.23.

It is the author's opinion that case 1:

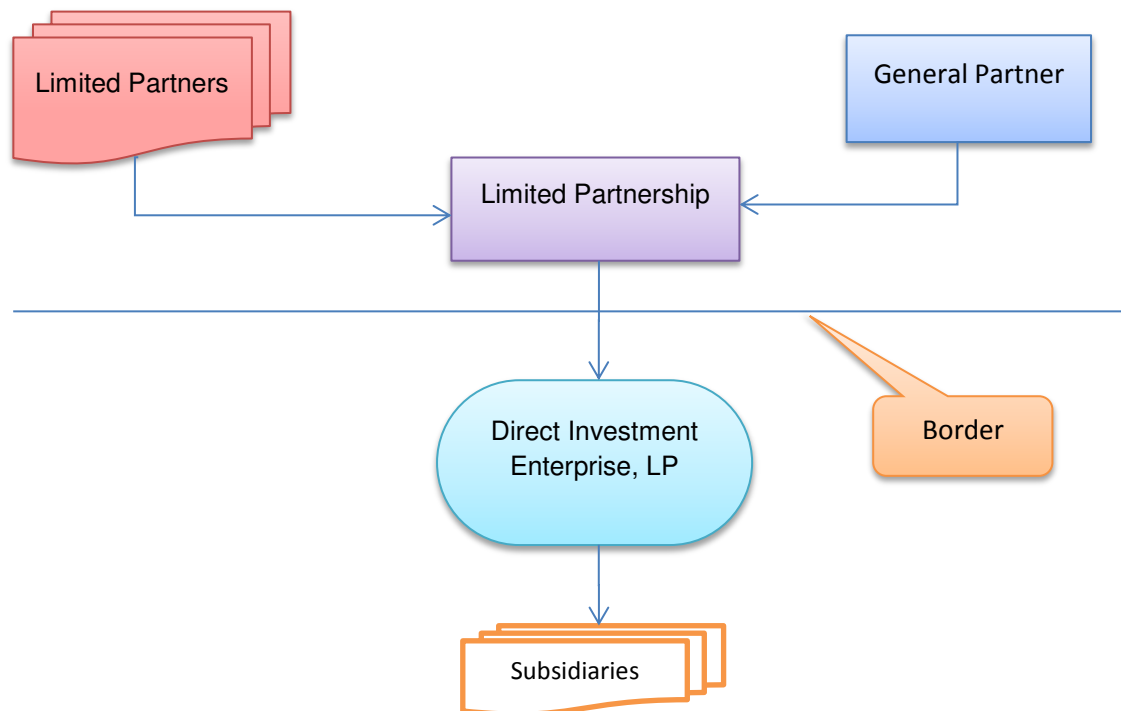
- a) represents a foreign direct investment, since the source (or sources) of capital is domiciled abroad, and there is direct link between the source of foreign capital and target investment enterprise, and (if that is the case)
- b) Limited Partners are the source of foreign investment, and not GP,
- c) Limited Partners, if a Limited Partnership's equity is not fragmented too much (just like in a public corporation), have influence over Limited Partnership and voting GP, and their equity titles are protected by partnership agreement;
- d) FP and UBO is (are) Limited Partners, and not GP;
- e) Industry and country of FP (UBO) are defined by Limited Partners;
- f) In a situation where instead of subsidiaries target enterprise has unconsolidated affiliates, owned at 50% or less (minority investments), or portfolio equity investments, and target enterprise is a holding company without own operations, direct investment becomes a portfolio investment;
- g) It is beyond the author's ability to perceive GP as a FP and/or UBO, because in a common case GP owns from 0.1% to 1% of equity, cannot be considered neither a "parent" nor a "beneficial owner".



Case 2

It stands to reason that case 2, like the previous case 1, represents a foreign direct investment, since:

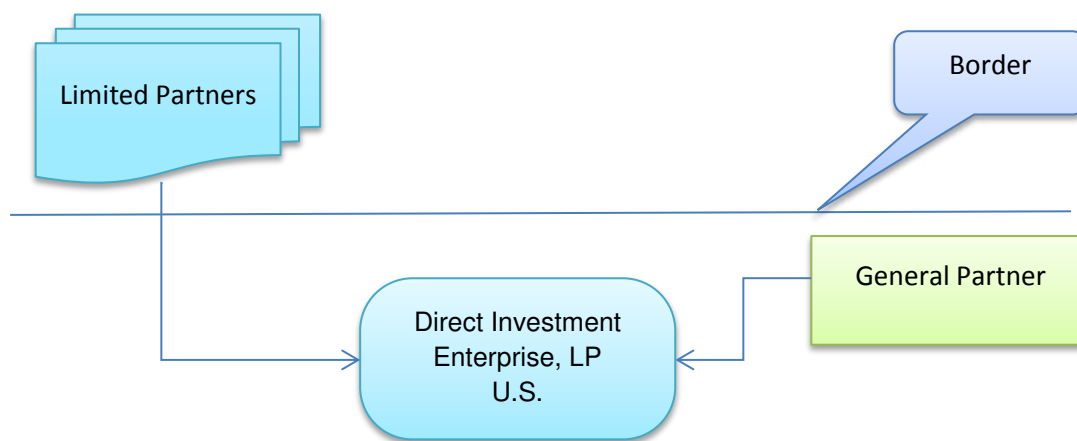
- ✓ the source (or sources) of capital is domiciled abroad, and there is a direct link between the source of foreign capital and target investment enterprise,
- ✓ Limited Partners are the source of foreign investment, and, therefore, Limited Partners are FP and UBO; industry and country of FP (UBO) are defined by Limited Partners;
- ✓ Limited Partners, if Limited Partnership's equity is not fragmented too much (just like in a public corporation), have influence over voting GP, and their equity titles are protected by partnership agreement,
- ✓ in a situation where instead of subsidiaries target enterprise has unconsolidated affiliates, owned at 50% or less (minority investments), or portfolio equity investments, and target enterprise is a holding company without own operations, direct investment becomes a portfolio investment;
- ✓ It is beyond the author's ability to perceive GP as a FP and/or UBO, because in a common case GP owns from 0.1% to 1% of equity, can't be considered neither a "parent" nor a "beneficial owner",
- ✓ Essential to note here is that because Limited Partners' country is not the same as GP's country, ascribing FP/UBO status to GP will misidentify, besides GP industry, also a country of FP/UBO domicile.



Case 3

Case 3 is different and somewhat more complicated than cases 1 and 2. Here the source of invested foreign direct capital is a Limited Partnership, and Limited Partners are indirect investors as members of a Limited

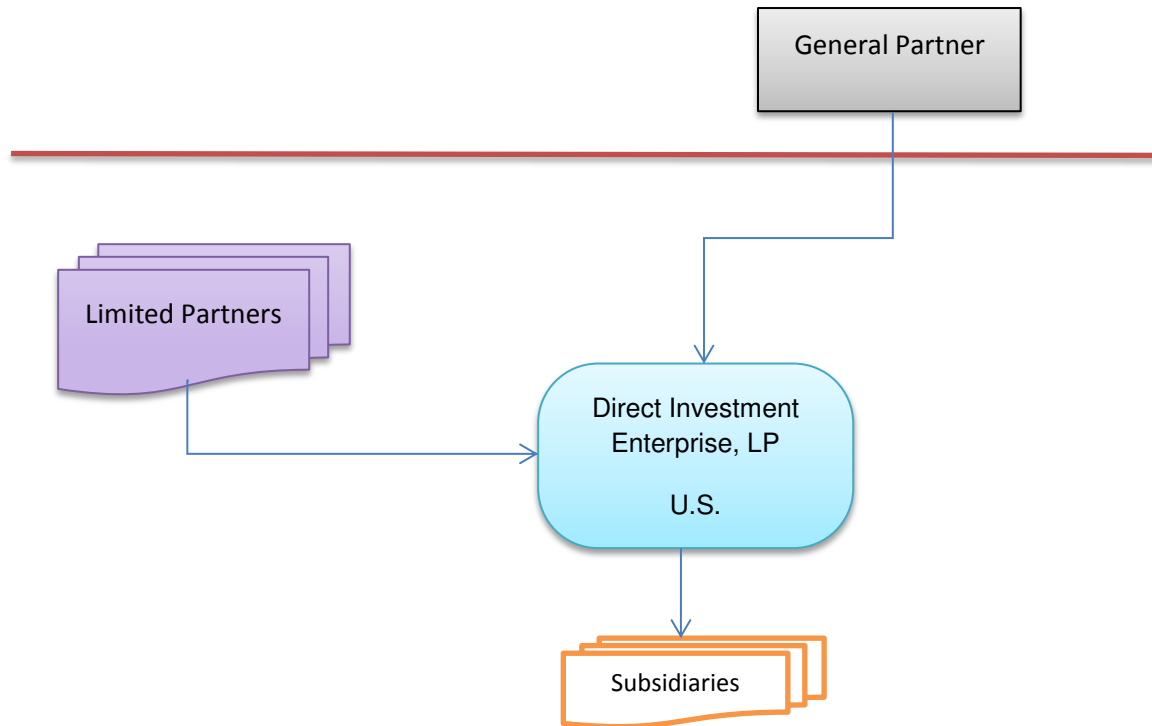
Partnership acting in concert along with General Partner. In case 3 it would be reasonable to conclude that the Limited Partnership, and not the Limited Partners, is the foreign direct investor and a Foreign Parent, acting as a consolidated entity. If it is possible to trace the sources of capital contributed to a Limited Partnership by Limited Partners, and if these sources are few and not fragmented, then Limited Partners could be identified as UBO, and industry and country ascribed accordingly.



Case 4

Case 4, if to follow BEA instructions, does not represent foreign direct investment. “Special consolidation rules ... for U.S. affiliates that are limited partnerships...” suggest that “A U.S. limited partnership whose foreign owners are limited partners should not file a BE-15 report. The foreign limited partners are presumed to have no voting rights in the partnership. Therefore, foreign limited partners are not considered to have a direct foreign investment in a U.S. limited partnership”.ⁱⁱⁱ

Here simple presence of a U.S. domiciled General Partner, with only a Limited Partner domiciled abroad, invalidates definitely foreign and definitely direct investment, sometimes significant, by a foreign parent into a U.S. Limited Partnership on the grounds that Limited Partners “have no voting rights in the partnership”, as if their influence over partnership is limited, similar to a public corporation, to a voting process with no partnership agreement to protect their rights. Here misunderstanding and overestimation of the role and importance of voting in Limited Partnerships leads to distortion of a picture of FDI in a country, misidentification of the foreign direct investors, their country of domicile, and their industry.

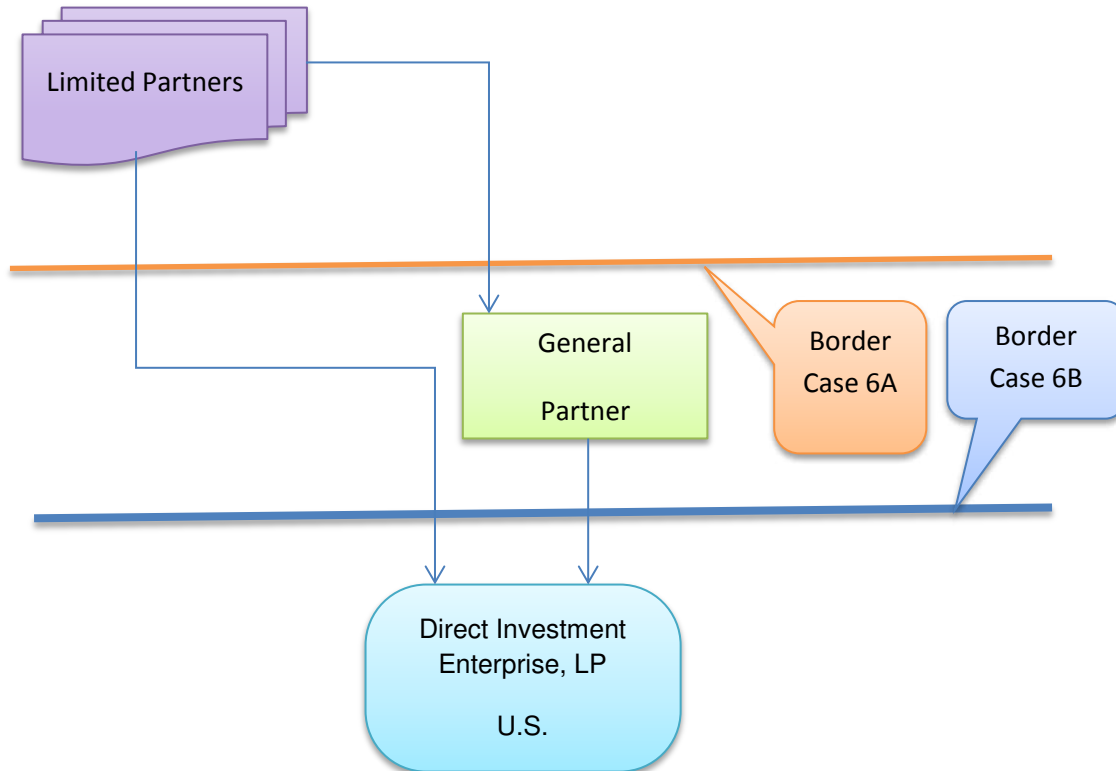


Case 5

Case 5 is of the opposite to case 4 character. The BEA suggests in an example that if: “A U.S. affiliate that is a limited partnership has only one general partner and that general partner is a foreign parent – The foreign parent is presumed to control the partnership... The limited partnership should file a separate BE-15 report. ... Example: Corporation GP, located in Canada, is the sole general partner of Company LP, a limited partnership. GP owns 1 percent of the equity of LP. A limited partner owns the remaining 99 percent of the equity. GP is presumed to control LP and own 100 percent of the voting interest in LP. Since GP is located in Canada, LP should file a separate BE-15 report”.^{iv}

Unlike in case 4, here foreign direct investment is assigned to a General Partner, which, by the essence of a General Partner’s role, does not invest more than 0.1% to 1% of a Limited Partnership’s equity, controls voting within framework of a partnership agreement, and does not control Limited Partnership’s equity final distribution. Despite a lack of investment of any significance, General Partner is assumed to be a “parent” of a Limited Partnership, just because GP happened to have a foreign passport. Limited Partners, on the other hand, having invested 99% of equity, are not even mentioned, and, therefore, Foreign Direct Investment appears out of a top hat like a rabbit no matter whether equity came from abroad or is as an American as apple pie or Betty Boop.

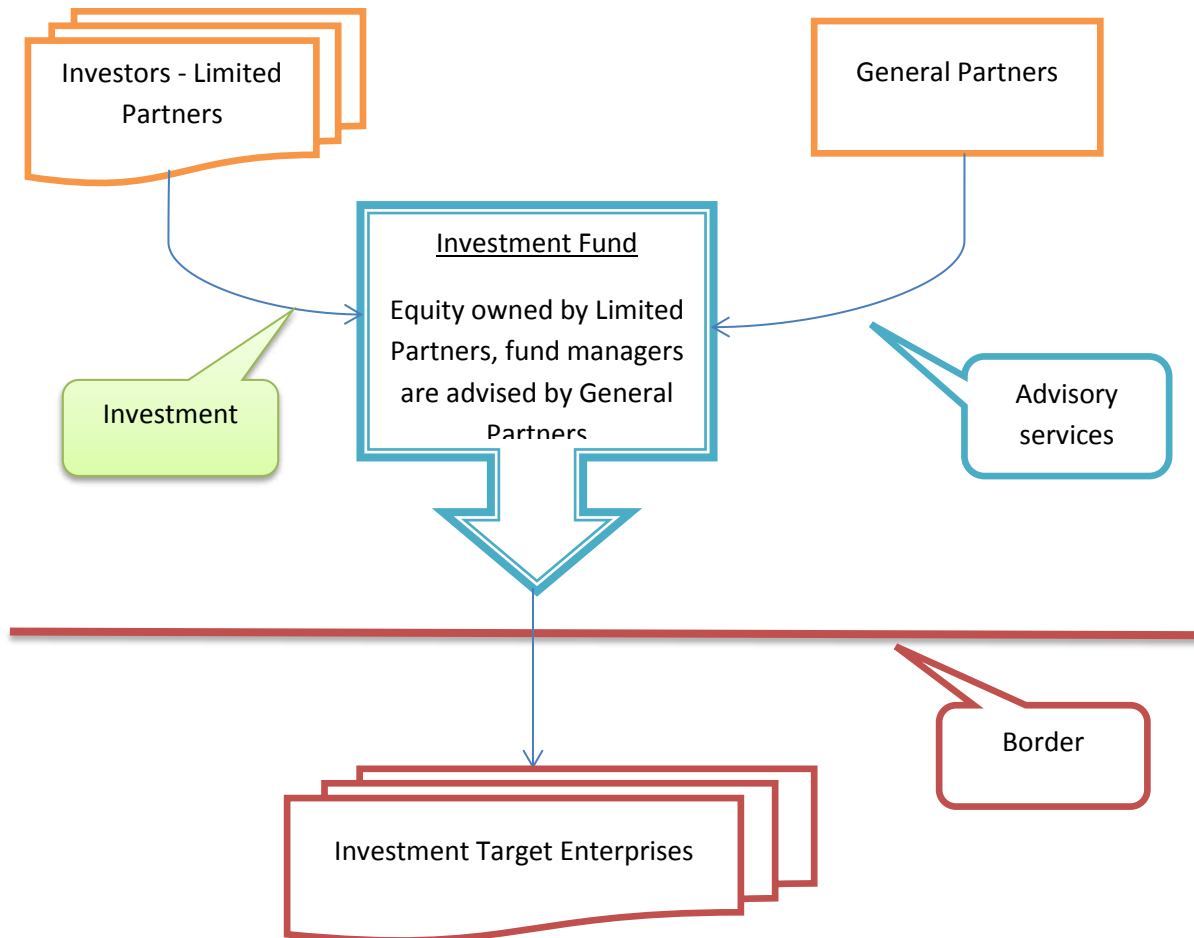
Similar situation happens in case 6 below.



Case 6

In case 6 we have Yogi Berra kind of investment, where both paths lead to the same Limited Partner or Partners, which invested all of equity and also set up a General Partner to control daily operations of a Limited Partnership and, say, cover liability approaches to a direct investor. Yet, in Border case 6B, where a border separates target investment enterprise from both Limited Partner and GP, BEA practices suggest a foreign direct investment, albeit with a GP as a “parent”. If a Limited Partner and GP are domiciled in the same country, only UBO/FP industry might get misidentified if assigned to GP instead of a Limited Partner. Meanwhile, in Border case 6A, where Limited Partners are abroad, while GP and target investment enterprise are domiciled in the same country, we easily might get situation when a foreign direct investment will be thrown away right along with equity ownership by a quite foreign investor – Limited Partner(s), because only GP are allowed to be identified as foreign direct investor, but not Limited Partners.

Now let us review the case where investors are, as the author calls them, financial investors, engaged in portfolio investing.



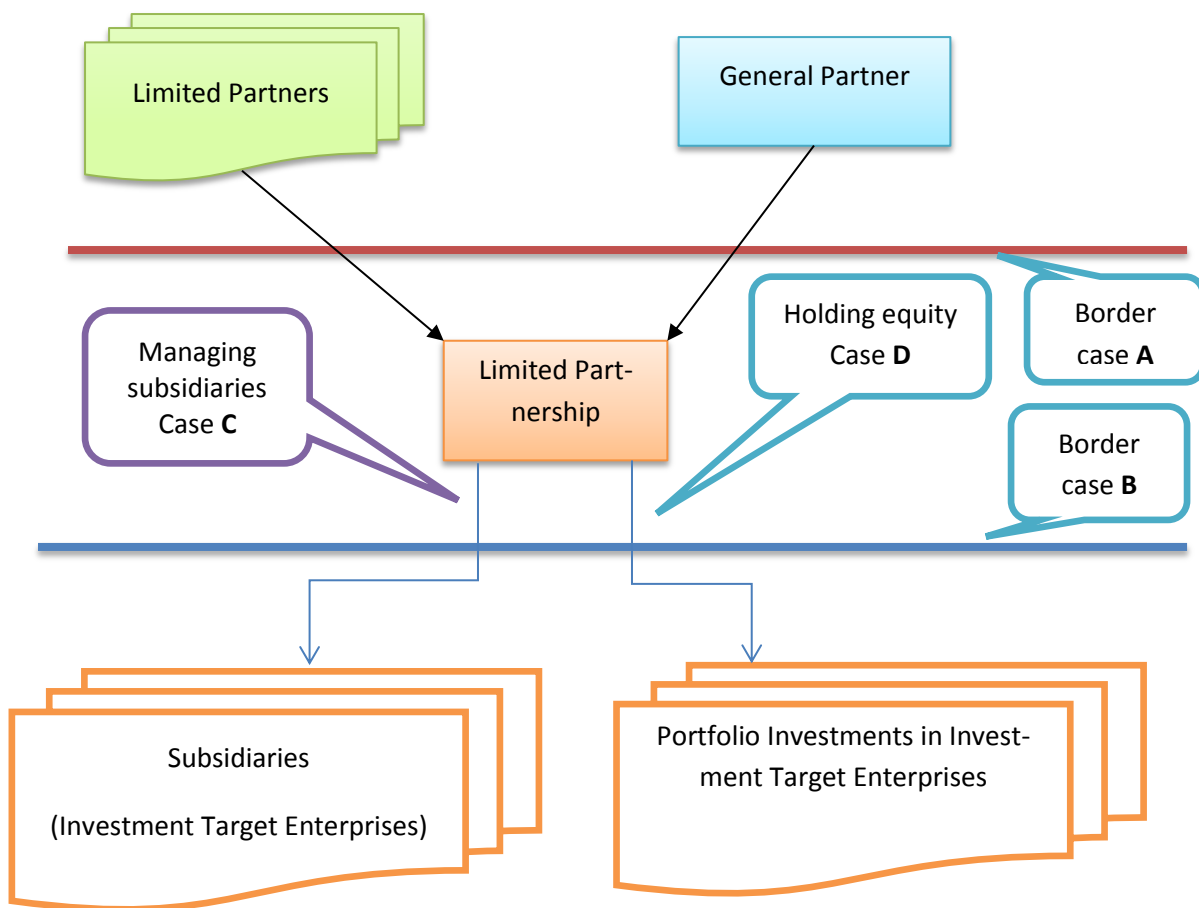
Case 7

In case 7 investors might be admitted in a Limited Partnership, which manages Investment Fund, as Limited Partners, or join investment fund directly by purchasing shares, issued by the fund. In this case Limited Partners can be only portfolio investors, no matter how few of them are in a partnership, and how much influence they have over affairs of partnership. Normally there are more than a few investors in an investment fund, which dilutes their influence over Investment Fund management (unless the shareholders act in concert, as a block).

The source of a foreign direct investment here is the Investment Fund, which therefore is a Foreign Parent and a UBO of Investment Target Enterprises. Investors in Investment Funds do not invest directly in target enterprises, do not have a purpose of managing them, or influence daily activities of management there. Investors' purpose by definition is Investment Fund's returns on invested capital, not a competitive domination of a particular product market.

One more dimension contributing to the analysis of a place of Limited Partnerships in foreign direct investments will be presented in case 8. At issue here is specific flexibility of a Limited Partnership as a type of business organization. Because there are many less limited partners than there are shareholders in a public corporation, Limited Partnership can be set up to pursue any particular kind of business activity, usually narrow, according to partnership agreement.

Some Limited Partnerships are set up to manage directly one or a few business enterprises – subsidiaries – in manufacturing, wholesale trade, service, or finance. Some are organized as pure holding companies (not holding companies that manage like corporate headquarters), which hold equity investments in other companies, or are themselves Limited Partners in other Limited Partnerships.



Case 8

In case 8-**A&C** we assume that Limited Partners and a General Partner are domiciled abroad and a Limited Partnership is the first in the U.S. enterprise – target of a foreign investment, managing majority owned subsidiaries. It stands to argue that foreign investment is direct, because there are no intermediaries between investing Limited Partners and a target enterprise, Limited Partnership in its turn majority or wholly owns and

manages subsidiaries, therefore there is no reason to conclude that the investment by Limited Partners is of a portfolio kind.

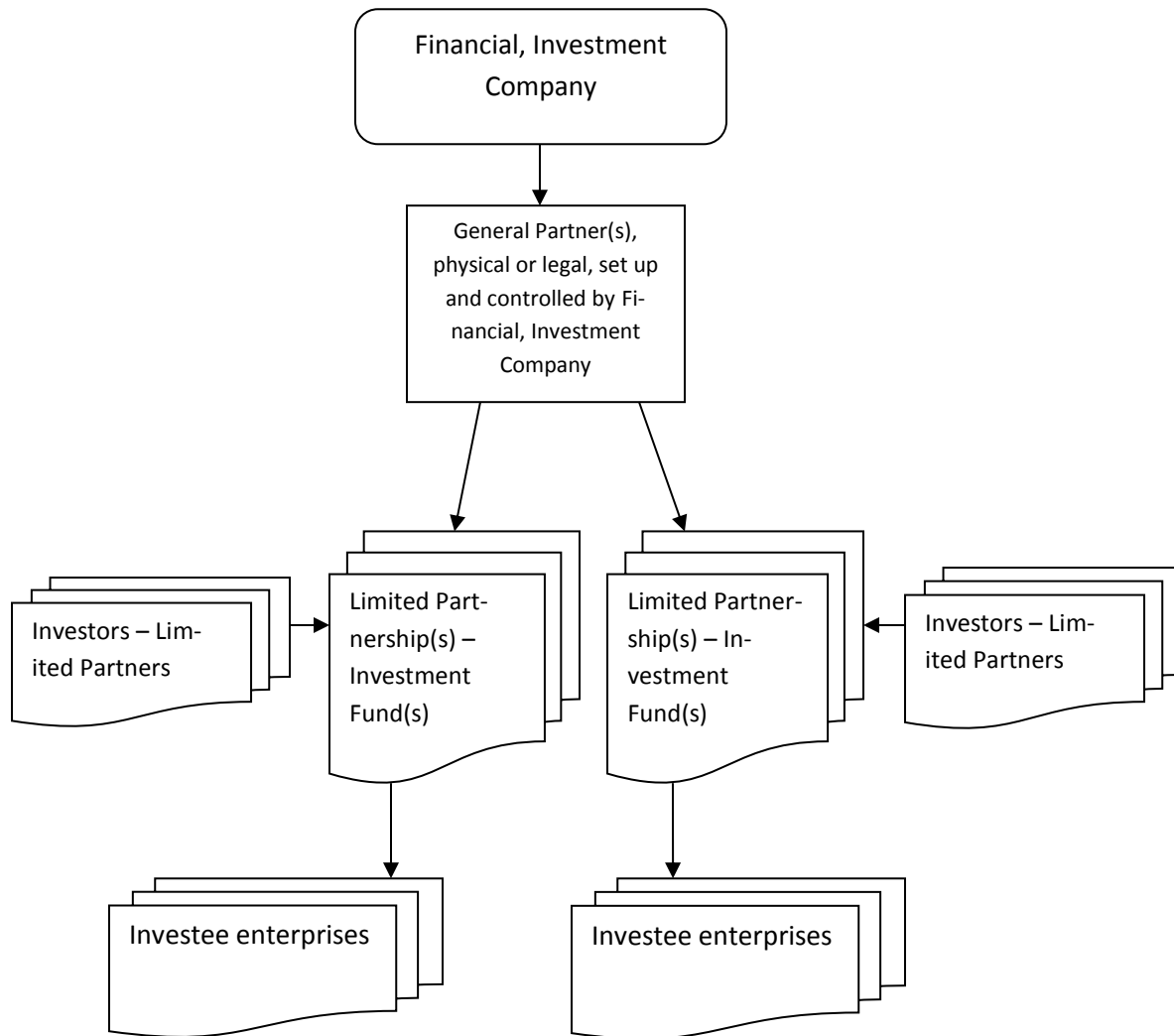
In case 8-**A&D** we also assume that Limited Partners and a General Partner are domiciled abroad and a Limited Partnership is the first in the U.S. enterprise – target of a foreign investment, but instead of majority owned subsidiaries we shall consider equity investments at below 10 percent. In this case the author would suggest that investment is of a portfolio kind, not qualified to be a direct investment.

In case 8-**B&C** we assume that the Limited Partnership itself, as well as Limited Partners and a General Partner, are domiciled abroad. In this case Limited Partners cannot be qualified as direct investors. It is the Limited Partnership that would assume such role. Because of specifics of Limited Partnerships as business organizations, organized under partnership agreements, Limited Partners and a General Partner act in concert, and therefore a Limited Partnership is the direct foreign investor and a source of capital. Such investment is direct and not of a portfolio kind, and subsidiaries, if majority owned, are all and each separate targets of a foreign direct investments, with Limited Partnership managing majority owned subsidiaries.

In case 8-**B&D** we also assume that the Limited Partnership itself, as well as Limited Partners and a General Partner, are domiciled abroad. As in case **B&C**, a Limited Partnership, and not Limited Partners, will assume a role of direct investor, representing all partners acting in concert and being a source of capital for foreign investment. Yet if we assume that investments are at a level of below 10 percent of equity of each U.S. target enterprise, the foreign investment would be qualified as a portfolio investment.

Case 8 becomes even more of a curiosity when a financial, investment company sets up General Partners, as can be illustrated by the case 9 below. The author would prefer for now not to go into all the combinations of all the borders and domiciles of Investment Company, Limited Partnerships as Consolidated Investment Vehicles, General (Managing) Partners, and Limited Partners as investors, and all the possibilities of foreign parenthood, foreign direct and indirect investments, and beneficial ownership.

Usually there are several CIV of specific investment specializations which are “filled up” concurrently or consecutively with Assets Under Management, and in each CIV there might be more or less numerous Limited Partners – investors, domiciled in different countries. Each case of foreign parenthood and beneficial ownership should be analyzed and assessed separately.



Case 9.

CONCLUSIONS:

- 1) In analyzing FDI both *equity title* and *legal title* are important, but equity title is more important
- 2) In case of public corporations:
 - a. control over title to equity, and
 - b. control over voting shares, and
 - c. control over board of directors and management of the corporation, and therefore

- d. control over flows between the source of equity and a target of foreign investments, such as investments, divestments, repatriation of profits, *coincide*
- 3) In case of Limited Partnerships it is not as straightforward:
- a. Limited Partnership's activities are guided, besides voting, by partnership agreement. In fact, in the author's opinion, General Partners' voting prerogatives in a Limited Partnership are overestimated and are nominal, delegating to General Partners "power of attorney" ability to manage daily activities of a Limited Partnership, while Limited Partners' equity title is protected by partnership agreement
 - b. The source of invested foreign capital lies with Limited Partners, or in some cases with Limited Partnerships, but not with General Partners
- 4) In identifying FP and UBO, when Limited Partnerships are involved, important is who makes a *decision to invest private capital* in a U.S. target enterprise – *equity title (ownership of equity)* is more important than *legal title (managerial decision making)*
- 5) Identifying General Partner as FP and/or UBO leads to misidentification of:
- a. sources and directions of capital flows
 - b. origin, direction, and kind of control over equity belonging to a Limited Partner(s)
- 6) When a Limited Partnership is involved in FDI, identification and tracking of both ownership and control depend on
- a. domiciles of main FDI participants in relation to each other
 - b. fragmentation of invested equity – just like in public corporations, influence of an investor in a Limited Partnership is directly proportional, although not as direct and correlational, to the share of each investor in capital, invested by Limited Partnership, and inversely proportional to the number of investors – Limited Partners

- 7) When a Limited Partnership itself is a first in the U.S. target enterprise of FDI, a foreign domiciled Limited Partner, investing directly, can be a FP and/or UBO of invested equity, if share of investment in total equity of Limited Partnership is above 50%
- 8) When a Limited Partnership is the first abroad source of FDI, and
- a. Sources of a Limited Partnership's capital are fragmented, it stands to reason that such Limited Partnership, representing Limited Partners and General Partner(s), acting in concert as an associated group, itself is a FP and/or UBO
 - b. Sources of a Limited Partnership's capital are not fragmented as much, and we can track the lineage of capital and assume significant enough influence of Limited Partners over the affairs of a Limited Partnership (there are few Limited Partners with significant shares of equity in a Limited Partnership), we can assume that while a Limited Partnership is a FP, a Limited Partner with majority equity ownership can be UBO.
- 9) It might seem easier to ascribe FP or UBO status to an effortlessly identifiable General Partner(s). Yet if we follow such an easy path, we codify misidentification of FP and/or UBO industry, country of domicile, and sources and directions of capital flows and strategic control over FDI in the U.S.

References:

- AICPA letter of February 14, 2012 (File Reference: No. 2011-220) (Online) Available at http://www.aicpa.org/advocacy/financialreporting/downloadabledocuments/finrec_comment_letters/finrec_comment_letter_asc_810.pdf [Accessed 3/25/2013]
- 2012 BENCHMARK SURVEY OF FOREIGN DIRECT INVESTMENT IN THE UNITED STATES, FORM BE-12A (Online) Available at http://www.bea.gov/surveys/pdf/BE12A_web.pdf [Accessed 3/25/2013]
- Deloitte, Heads Up, July 21, 2005, Vol. 12, Issue 7. (Online) Available at http://www.deloitte.com/assets/Dcom-UnitedStates/Local%20Assets/Documents/AERS/ASC/us_assur_heads_up_072105.pdf [Accessed 3/25/2013]

- Deloitte, Consolidation of Variable Interest Entities, A Roadmap to Applying the Variable Interest Entities Consolidation Model, 2010 (Online) Available at http://www.deloitte.com/view/en_US/us/7708f721de5fb110VgnVCM100000ba42f00aRCRD.htm [Accessed 3/25/2013]
- FASB. Consolidation (Topic 810), Principal versus Agent Analysis. Proposed Accounting Standards Update. Exposure Draft, Issued November 3, 2011, p. 20. (Online) http://www.fasb.org/cs/ContentServer?site=FASB&c=Document_C&pagename=FASB%2FDocument_C%2FDocumentPage&cid=1176159223847 [Accessed 03/27/2013]
- OECD Benchmark Definition of Foreign Direct Investment. Fourth Edition 2008, (Online) Available at www.oecd.org/dataoecd/26/50/40193734.pdf [Accessed 3/25/2013]

ⁱ BE-15A Fiscal Year 2011 Instructions, page 22.

ⁱⁱ www.ers.usda.gov/briefing/GlobalFoodMarkets/glossary.htm

ⁱⁱⁱ <http://www.bea.gov/surveys/fdiusfaq.htm>

^{iv} <http://www.bea.gov/surveys/fdiusfaq.htm>