Fee Structuring in Investment Limited Partnerships

INTRODUCTION

The Irish investment limited partnership (the "**ILP**"), now re-shaped as a flexible fund investment vehicle following amendments made to the existing Investment Limited Partnership Act, 1994 (the "**ILP Act**"), is expected to become the fund structure of choice for many international investment managers, particularly those in the private equity and real assets sectors.

In this key features document, we briefly highlight common fee structuring features of an ILP. A more detailed analysis of the ILP is available here.

KEY POINTS

→Management fees and carried interest rates are a matter of negotiation and disclosure in the Limited Partnership Agreement and the ILP offering document;

→Carried interest typically subject to preferred return rate. Preferred return rate also matter of negotiation and disclosure in the ILP offering document;

→Waterfall provisions to be disclosed in offering documents – can provide for various rates negotiated for different categories of ILP;

→Management capital accounts may be established to facilitate the payment of carried interest. The management interests in the ILP may be held via a remote vehicle established in a "good" tax jurisdiction appropriate to the tax domicile of the management team.

What is a typical management fee rate in an ILP?

The annual management fee rate charged in an ILP is often in the region of 1.5% - 2.0% of committed capital, the rate applied usually being reflective of the size of the Limited Partner's ("**LP**") committed capital.

The annual management fee will be paid irrespective of the annual performance of the ILP.

How will carried interest be calculated and paid?

The Investment Manager (as the carried interest holder will also collect performance fees, or carried interest, which will become payable as a percentage of the value appreciation of the ILP in the relevant calculation period. Management capital accounts may be established by the ILP to facilitate this arrangement.

Carried interest distributions will normally be payable only after the ILP generates income in excess of the preferred return. The GP will generally structure and disclose the payment and calculation methodology of the carried interest payment (the "**Waterfall**") providing that the ILP must:

(a) repay investment and management expenses;

(b) return LP's contributed capital; and

(c) pay the accrued preferred return or hurdle rate[1];

before making distributions to the carried interest holders. Effectively, the carried interest holder only receives distributions when the ILP generates an annualised return in excess of the preferred return.

Although a matter of negotiation and disclosure, typically the ILP will provide for a hurdle rate of circa 8%.

Where relevant, the management interests in the ILP may be held via a remote vehicle which may be set up in a good tax country appropriate to the tax domicile of that management team.

How will Clawbacks Operate?

A matter of negotiation with LPs and disclosure in the offering documents, the ILP will generally provide for clawback provisions relating to the carried interest requiring the repayment of any excess carried interest paid to the carried interest holder during the term to ensure that the hurdle rate is met before carried interest is paid.

[1] Being the minimum value appreciation that LPs will receive before the Investment Manager will start to receive carried interest

Once provided for in the Limited Partnership Agreement and worked out operationally with a credit institution, or if it agrees, the Depositary of the ILP, it should also be possible to use escrow accounts for holding carried interest payments (or a portion thereof) until liquidation of the ILP's portfolio.

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