Fund Structures for Opportunistic Investing

MAY 22, 2020

On May 22, 2020, Dechert LLP's Financial Services group presented "Fund Structures for Opportunistic Investing," an episode of the firm's COVID-19 Coronavirus Business Impact Broadcast Series. The episode was hosted by Omoz Osayimwese (moderator), a private funds partner in the firm's New York office; Tricia Lee, a private funds partner based in Texas; and Thiha Tun, a private funds partner in the firm's London office.

The presenters discussed structures used by private equity funds to take advantage of investment opportunities in the current environment, and some of the practical and legal considerations involved in forming such vehicles.

HIGHLIGHTS FROM THE EPISODE

Maneuvering Through an Uncertain Market

Market participants experienced in opportunistic investing during the 2008 financial crisis are eager to take advantage of opportunities available in the current economic dislocation. These asset managers, navigating uncertainty surrounding government support programs and operational issues for businesses, might not have clarity as to when opportunities to deploy capital may arise, but want to be prepared to move quickly as opportunities arise. While some market participants have been assembling new pools of capital at a frenetic pace, a substantial number of managers have been sitting on significant dry powder since before the pandemic, giving them the option to invest from their current pools. This is resulting in more demand for than supply of opportunistic funds.

Why Are JVs and Other Club Funds Attractive?

The current environment for opportunistic investing favors flexible vehicles managed by investment teams that can execute deals quickly. There has been a resurgence of vehicles with which investors are familiar from prior crises, although there are more joint ventures being formed now than before, as market participants are looking to leverage the knowledge of sponsors with deep sector expertise. Joint ventures and other club funds marketed to targeted groups of existing clients are also attractive as they can come together quickly. For example, there is often less negotiation of terms when the sponsor and investors already know each other and can refresh previously agreed documents rather than engaging in time-consuming negotiations, and when they can shortcut offering documentation such as by foregoing full private placement memoranda.

Practical and Legal Considerations

While some streamlined investment vehicles may be able to rely on truncated documentation, certain disclosure items, like conflicts of interest, should still be provided. As fund managers introduce one-off vehicles, they will need to be thoughtful about what strategies they already have on the market and the types of strategies they want to bring to market down the line. Sponsors will need to review their asset-allocation policies and whether there are any applicable issues like rights of first refusal or exclusivity. Similarly, investors will need to diligence allocation policies carefully to see if they cause conflicts on their end.