Corporate Sponsorship of Private Funds: A Focus on the Infrastructure Sector

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In our **March 2021 webinar**, Skadden co-hosted a cross-disciplinary discussion on corporate sponsored funds (CSFs) with a focus on their particular relevance to the infrastructure sector, including their capacity to align investor and sponsor interests. We note below some of the key themes that emerged from that discussion. These observations continue the conversation on CSFs that we started with our July 2020 webinar, and we look forward to continuing our dialogue with you.

Infrastructure CSFs can deliver coherent and connected alignment mechanisms. All private capital structures require a range of alignment mechanisms. In the context of infrastructure CSFs, these mechanisms may include (i) the provision of services by corporate sponsors that are critical to value creation and protection; (ii) long-term hold horizons that are shared by sponsors, investors and infrastructure assets; and (iii) upstream access to infrastructure projects.

Macro and socioeconomic factors have contributed to a renewed interest in infrastructure. As governments seek to plot a recovery from the global pandemic, investment in infrastructure, particularly sustainable infrastructure, has become a key public policy initiative in numerous jurisdictions. Corporate entities already operating in the infrastructure space offer specific expertise that a CSF can harness to create a potentially attractive prospect for private capital investors.

Infrastructure CSFs and associated arrangements can be structured to reflect the typical holding period of infrastructure assets. Infrastructure investment is typically driven by the generation of a steady cash yield, rather than capital growth, which should be repatriated over the life of the investment. The CSF and its holding structure should therefore seek to maintain, to the extent possible, a tax-neutral position for investors. Further, when establishing performance compensation structures, a typical carried interest-type arrangement based on capital growth may need to be replaced with more sophisticated incentive structures, such as a shadow carry scheme (*e.g.*, a synthetic arrangement structured to provide an incentive return based on value increase rather than receipt of actual proceeds).

A CSF's service providers should reflect the operational complexity of infrastructure investments. Proven market solutions have developed to meet the complex operational needs of a CSF, including assistance with the reporting and compliance facing investors and other stakeholders, such as lenders. Further, a CSF often seeks capacity to make investments across different jurisdictions or geographies, and the reporting and compliance functions should be able to adapt accordingly.

CSFs can be established in a range of jurisdictions according to investor and sponsor needs. The favorable jurisdictions for infrastructure investments often align with the range of jurisdictions which have the most evolved limited partnership laws, in line with the broader trend in the private capital markets and which are familiar to institutional investors.