

Aatma Capital
Nurturing Relationships



Legal Agreements involved in constituting an AIF

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Research Credits

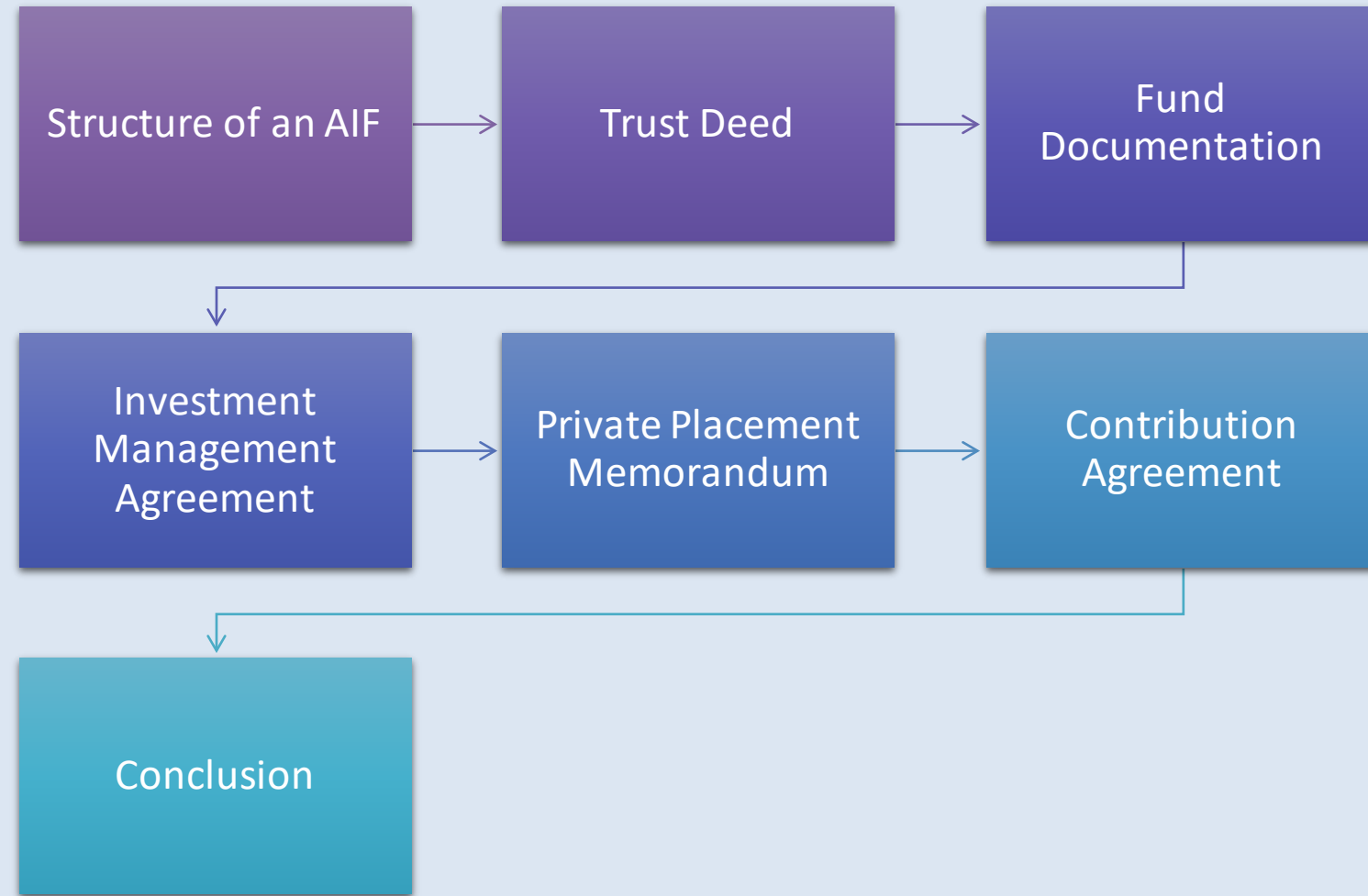


Iswariya BS
Subash

Legends Used

AOA	Articles of Association
AIF	Alternative Investment Fund
CA	Contribution Agreement
IAAIF	Indian Association of Alternative Investment Fund
IFSC	International Financial Service Centre
IM	Investment Manager
IMA	Investment Management Agreement
MOA	Memorandum of Association
PPM	Private Placement Memorandum
LLP	Limited Liability Partnership
SEBI	Securities and Exchange Board of India

Presentation Schema



Structure of an AIF

Structure adopted by AIFs

Predominantly AIFs in India are setup as Trusts (irrevocable and determinate) to take advantage of reduced compliance and regulatory procedures and reduced setup costs.

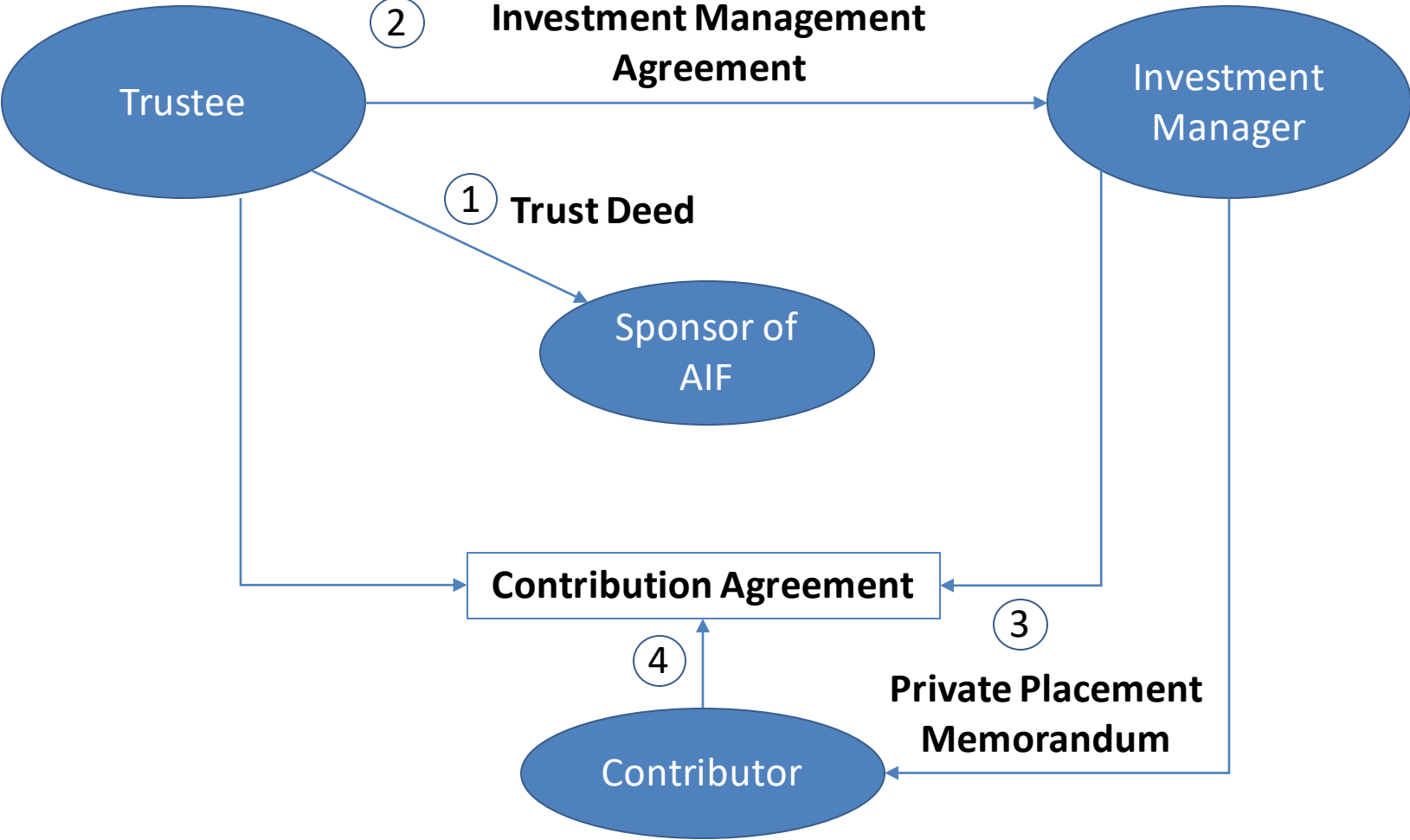
The sponsor of the Trust contributes an initial amount to the corpus of the fund which will be enhanced by the contributions from the investors and accretions thereto.

Form of AIFs registered with SEBI

Form	Percentage
Trust	97%
LLP	2%
Company	1%
Total AIFs	100%

Source: IAAIF

Structure of an AIF (in form of a trust)



Should the Trust be registered?

Yes, though it is not compulsory to register private trusts, AIF regulation mandates to register Trusts under Registration Act, 1908

Section 17 of the Registration Act, 1908 has specified mandatory documents for registration

Trust deed being a non-testamentary instrument, signed by the author of the trust / the trustee has to be registered

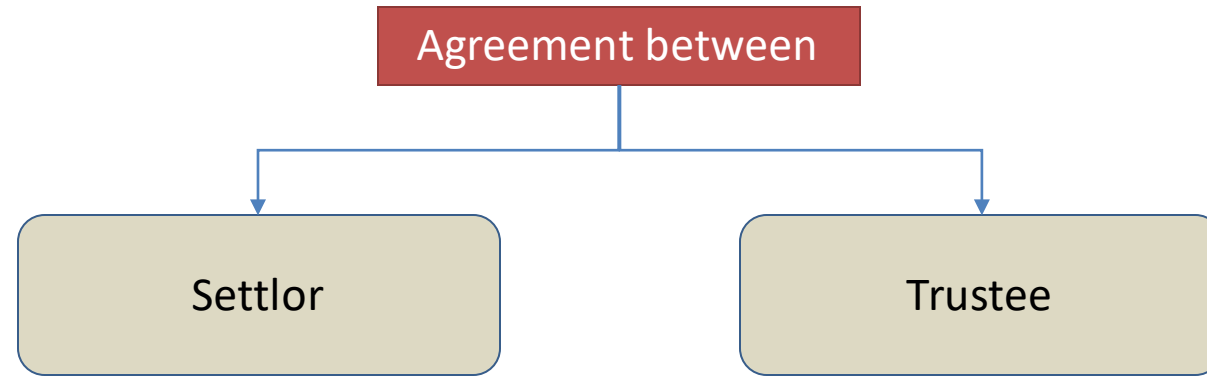
And the trust deed can be lawfully provided wherever required as lawful evidence of trust and title to property

Documents required for registering the Trust:

- Duly stamped Trust deed
- ID proof of the Trustee and Sponsor

Trust Deed

Salient Features of Trust Deed



Purpose

The deed by which the Settlor appoints the Trustee to act as such for the Trust and Scheme

Settlor will pay an irrevocable initial settlement to the Trustee under this deed to be held as Trust Property and the same is acknowledged by Trustee

The powers, duties and liabilities of the Trustee will be detailed in Trust deed.

The Trustee will hold the assets of the Trust for the benefit of the unit holders

Significant Clauses in Trust Deed

Scheme of the Trust

- The details of Scheme for which the Trustee is responsible will be listed out

Power to enter into agreements

- Trust Deed authorises Trustee to enter into IMA with the IM and also to appoint IM
- And to enter CA with the Contributors

Term and Termination of Scheme

- Tenure of the Scheme and the possibilities under which the Scheme will be terminated will be laid down in the Trust deed

Prohibition to provide invitation to public

- Trust is prohibited from making any invitation or subscription to public to subscribe to its securities, since AIF is a privately pooled investment vehicle

Distribution of income of Scheme

- The manner and authority to distribute the income of the scheme to the Contributors will be briefed

Issue, Transfer and Redemption of Units

- Issue, Transfer and Redemption of Units will be as per provisions laid in CA

Decisions of the Trustee

- Any decision taken by the Trustee which are in line with the terms of deed will be treated as valid

Delegation of powers

- The powers given to the Trustee by this deed can be delegated to the IM by executing an IMA

Key terms

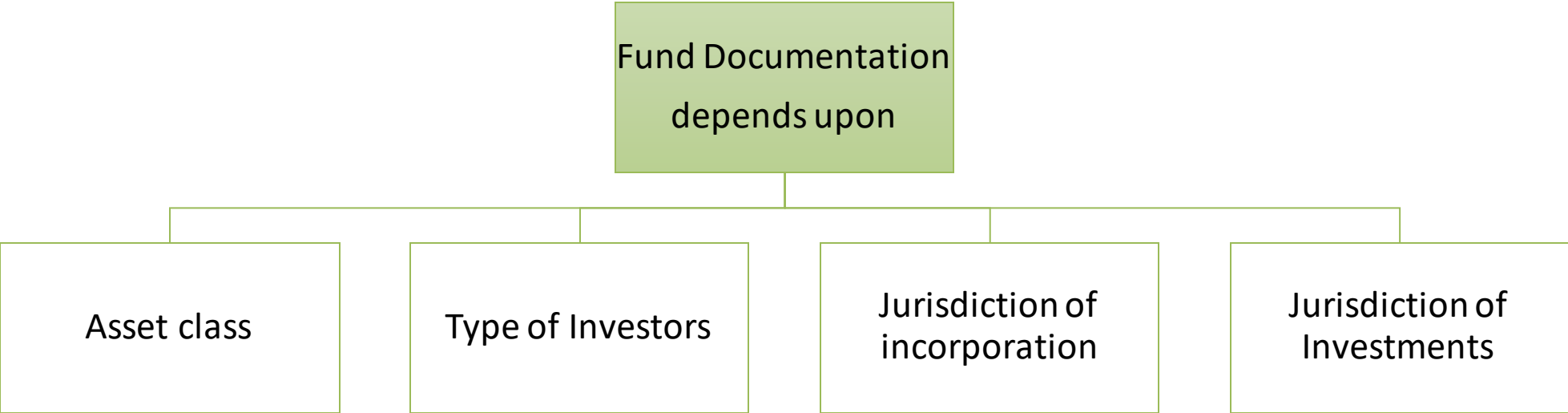
- All the terms of the fund intended to be binding on the fund to be incorporated

Term and Discharge of Trustee

- Tenure of the trustee and events triggered for discharge / removal of trustee will be laid down in the Trust deed

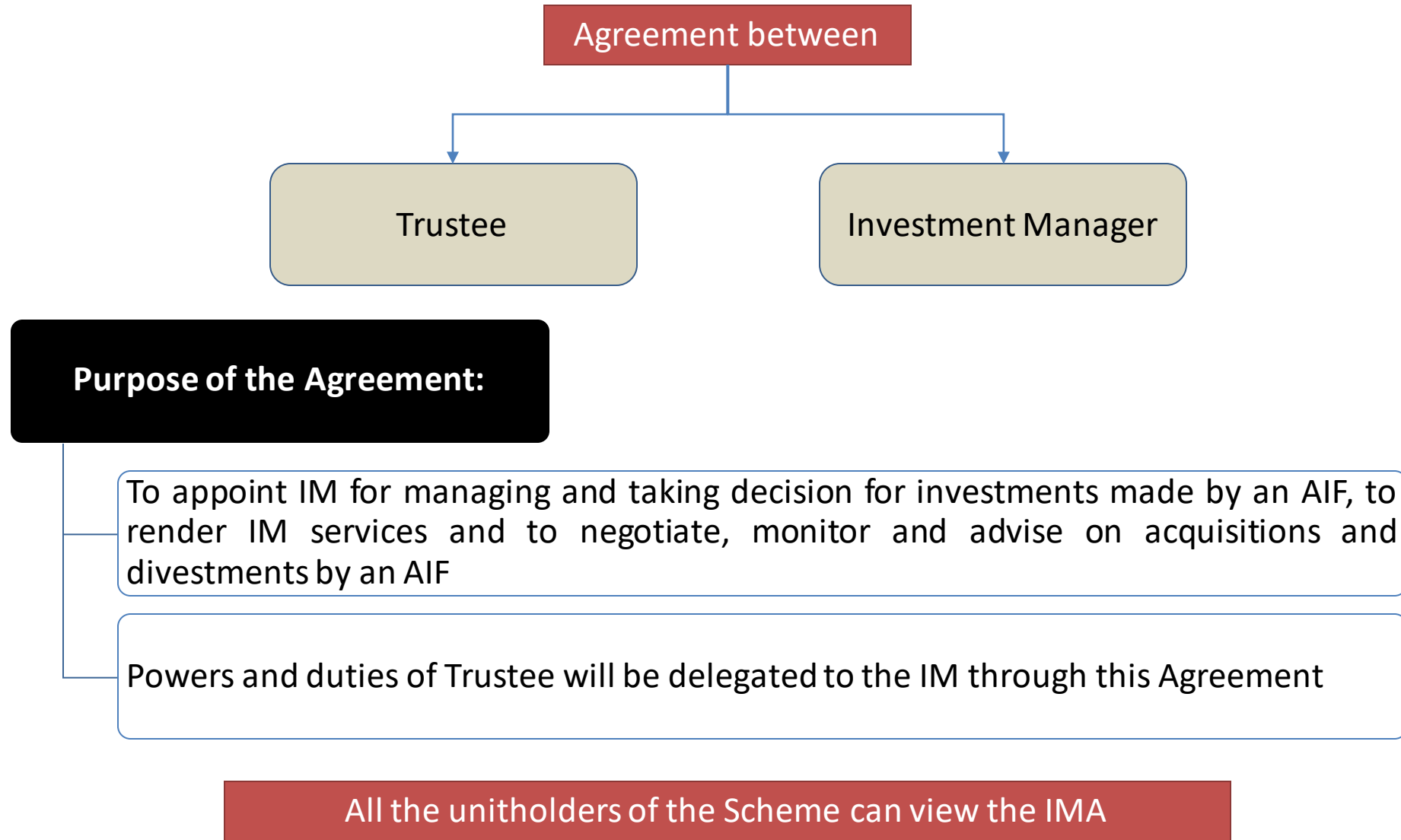
Fund Documentation

Fund Documentation



Investment Management Agreement

Salient Features - IMA



Significant Clauses - IMA

Redeeming of units and accepting of additional Contributor: Power to redeem and accept additional Contribution during the period of the Scheme as per the terms laid down in the CA

Appointment of Custodians: For safekeeping of securities

Reinvestment of proceeds of portfolio investment into other portfolio investment as per the terms laid down in the CA

Merging of various Schemes which are floated by the IM with the consent of the unitholders

Segregation of Assets and Liabilities of the Scheme from other Assets and Liabilities of the Trust / other schemes to have exclusive benefit in such Assets and Liabilities by the respective Scheme unitholders

Contd.

Consequences under which **IM will be removed** has to be clearly listed in the IMA

Management fee payable to IM and frequency of payment to be defined

Issue of **Co-investment opportunities** by the IM at the time of launching new schemes

Clawback mechanism – Where the IM fails to deliver the promised rate of return (aka the hurdle rate) he shall compensate the investors by foregoing a part of his management fee.

Carried Interest – Paid to the IM where he has delivered returns more than the hurdle rate of return promised to investors.



Contd.

Valuation of Investment and Calculation of NAV has to be clearly laid down in the respective Scheme documents by the IM

Consequences under which the investors will be **indemnified** by IM has to be explained in detail

Guidelines of investments to be briefed in IMA. Inter alia covers sector specific restrictions, if any, along with information on sectoral and geographical allocation of funds

Right to appoint member on investment committee and advisory board

Private Placement Memorandum

Salient Features – PPM

Purpose

To convey the investor about the details of fund, scheme, terms of the scheme, investment objective and strategy

It contains all material information which are necessary for the investor to take investment decision and

the details of sector, geographical and security allocation of the Scheme will be briefed in PPM

Step taken by SEBI: To ensure minimum standard disclosure, SEBI has introduced a template for PPM w.e.f. 1st March, 2020

Important Information in PPM

Target Investors

- Potential Investors which the Scheme targets would be specified

Indicative timelines of the Scheme

- The timelines include Initial closing, duration of investment period, any extension to such investment period, subsequent closings and final closing

Capital Commitments

- Aggregate amount agreed by the contributors to be contributed to the Scheme of the Fund

Defaulting Contributors

- Contributors who fail to contribute capital within the time prescribed

Transfer, withdrawal and transmission of Units

- The terms of transfer and withdrawal shall be as per the respective contribution agreements

Expenses and fees to the Scheme

- In general, a cap is fixed on the Scheme expenses, over and above which the investment manager has to bear the expenses.

Hurdle rate of return

- Minimum internal rate of return that is promised to the investors

Distribution Waterfall

- Manner of distribution of proceeds is determined based on the beneficial interest of unitholders

Contributor's giveback

- Amount to be paid by contributors on a pro-rata basis to meet scheme obligations and liabilities

Side letters

- Side letters are executed with contributors to agree on certain special terms

Contd...

Information about litigation

- Disciplinary history of sponsor, manager, trustee and others engaged with them during the preceding 5 years has to be disclosed in the PPM

Winding up

- Consequences leading to winding up and the manner of distribution by IM.

Key person of the Scheme / Key Investment team

- Composition of the team and the services provided by them. The details of their clients may also be mentioned.

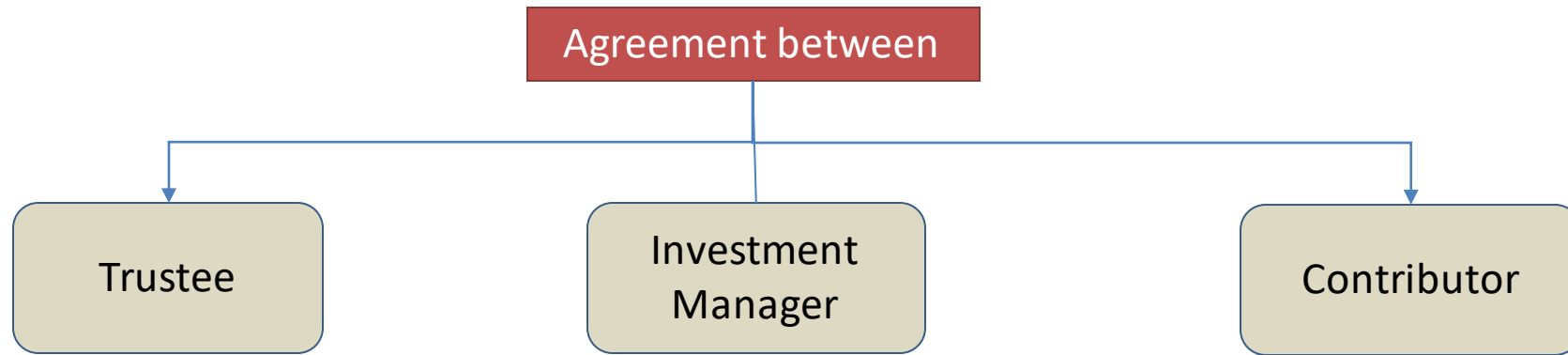
Conflict of interest policy

- Manner in which issue arising between the parties to the agreement will be sorted out.

Caveat: PPM will not be binding on anyone. However, the IMA and Contribution agreements will be binding on the agreed parties.

Contribution Agreement

Salient Features – CA



Purpose: Last agreement entered into by the Investor to confirm the commercials before making investment

Points to be noted:

- The Trustee and IM can execute different CA with each investor based on the side letters entered with them
- By executing the side letters, the terms and conditions of the CA will be changed
- IM can enter into side letters with the investors without any other person / contributor's consent
- CA is customised as per the discussions with each Contributor. Thus, it will be kept confidential and parties other than the executed party may not have a right to view the same

Conclusion

Legal Agreements will play a major role in constituting an AIF

As the procedure for carrying on the Scheme, terms and conditions under which the parties need to act are laid down in the Agreements, the same has to be drafted clearly without any ambiguity

Agreements have to be in compliance with SEBI laws and IFSC laws, if the AIF is constituted in IFSC.

All the foreseeing possibilities shall be detailed in the Agreements, to avoid issues in future



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