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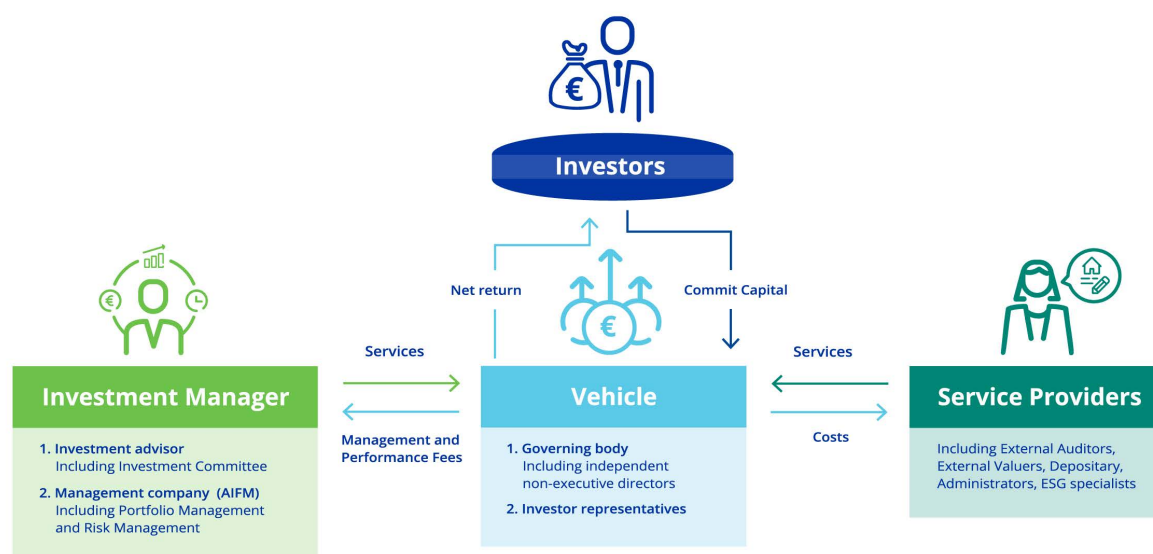
Roles of parties involved in vehicle governance

Real estate investment vehicles generally operate in an environment where the specific roles and responsibilities that support both strategic decision-making as well as day-to-day operations are allocated to a number of different parties, including external service providers. This typically results in a complex governance model, which is reliant on an effective definition and allocation of roles and responsibilities among those concerned.

While these Guidelines do not mandate any specific activity to be undertaken by a specific function, the investment manager together with the governing body of the vehicle should ensure collectively that the governance structure that emerges is appropriate to effectively govern the vehicle in the best interest of investors.

The structure of the governance model and how roles and responsibilities within it are allocated should be explained to investors.

The effectiveness of the structure should be monitored throughout the vehicle's life and amended where necessary. The typical roles in respect of vehicle governance for the functions commonly found in real estate investment vehicles are set out in the diagram below:



Vehicle

The overarching term for any kind of investment structure, including funds, joint ventures, club deals, and separate or single accounts.

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The constitutional documents of the vehicle are key documents, including their annexes, establishing a contractual framework of how the vehicle will operate and the significant legal rights and obligations of the parties entering those agreements related to the vehicle.

The main elements of a vehicle's governance model are legally defined in its key documents and various bodies are empowered to act accordingly. It is also in these legal documents where factors that align interests between the various parties involved are commercially defined, including the investment manager remuneration and performance fee and promote models.

Investors

Investors commit capital to a vehicle in line with their investment strategy with the expectation of investment returns. After performing their own due diligence on a vehicle, the investors commit capital which is subsequently drawn down. The level of control and influence they have over a vehicle is determined by the legal form of that vehicle and its constitutional documents. Investors may be represented by investor representatives forming a body such as an investor advisory committee which is part of the governance structure of the vehicle. Investors monitor the manager's actions and may influence the managers' decisions through these representatives.

Typically, investors need to approve key changes in the vehicle structure such as changes of the investment manager, auditor, and directors in the governing body of the vehicle that represents them. They also typically approve changes of the constitutional documents of the vehicle and any material changes to its strategy and manager remuneration. The level of control and influence investors have in the governance of an investment vehicle is a critical factor.

The threshold of votes required by investors to make material changes to a vehicle structure should be carefully defined and balanced to enable the vehicle to operate effectively and in line with its intended strategy.

Investor representatives

Investor representatives may form various bodies within the governance structure of a vehicle. They may be established to represent all investors in a vehicle, or only investors with the legal right to a seat in such a body due to the amount invested or some other parameter. Many of these representative bodies have no formal legal powers. They act solely as consultative bodies available to the investment manager and the governing body of a vehicle to ascertain the views of investors in certain circumstances.

In certain cases, they may be formally part of the legal decision-making structure for key matters such as vehicle liquidation, material changes in the terms of the constitutional documents or appointments of investment managers and auditors.

Governing body of the vehicle

The composition and nature of the governing body of the vehicle depend on its legal form. It is typically either a corporate type of board or the general partner of a partnership. The governing body of the vehicle provides its substance and is legally responsible for the oversight of the vehicle.

Where applicable, the governing body of the vehicle may include independent non-executive directors whose primary responsibility is to represent the interests of all investors.

The governing body of the vehicle formally appoints and oversees all service providers to the vehicle, including the investment manager. This body also approves the interim and annual reports to the investors, prepared by the manager organisation. The composition and technical skills of the governing body of the vehicle is a critical factor in the overall effectiveness of the governance structure which operates to protect investors' interests.

Investment manager

The investment manager represents the organisation responsible for the overall governance and oversight of a real estate investment vehicle or another type of investment vehicle and may incorporate the investment advisor. The investment manager is ultimately accountable to investors for the overall management of the fund or vehicle. This can be a formal role as defined by applicable regulation (e.g. the AIFMD), or legally such as the role of the general partner in a partnership arrangement. Also known as a fund manager, vehicle manager or investment advisor.

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The investment manager (or “manager organisation”) includes both the regulated management company (AIFM), investment advisor and various operational entities. The AIFM is formally responsible for portfolio and risk management as well as the valuation oversight and compliance functions. The investment advisor typically develops and implements the investment strategy, performs due diligence on assets and manages the investment pipeline.

The investment manager is responsible for organising and operating the underlying vehicle infrastructure, including any outsourced functions, on behalf of the vehicle. The investment manager is appointed by and is accountable to the governing body of the vehicle.

The manager organisation typically includes some form of investment committee composed of qualified individuals who oversee the relevance and quality of the investment pipeline and its allocation across respective investment vehicles. In addition, they review divestment proposals and significant development projects.

Service providers

A number of the operating functions of the investment manager may be outsourced to third party service providers, including the AIFM. These functions may include for instance functions such as accounting and administration, tax and legal compliance and property and asset management.

Other service providers, such as the external auditor, depositary, and valuer are independent of the investment manager and accountable to the governing body of the vehicle and play a role in protecting the interests of the investors. The oversight over the quality and reliability of all service providers is a key responsibility of the governing body of the vehicle together with the investment manager.

Independent non-executive directors

Independent non-executive directors are senior officers, without management responsibilities, who may be appointed on the governing body of an investment vehicle to represent the best interests of all investors, collectively. They should always be independent of the investment manager and bring a breadth and depth of relevant executive experience.

Independent non-executive directors should have the appropriate skills, capacity, and competence to act effectively in the best interests of investors.

The need for independent non-executive directors depends on the structure, organisation, and needs of the respective vehicle. The role and the need for independent non-executive directors might be more limited for smaller vehicles, whereas, for the larger vehicles, independent non-executive directors might form the majority of the governing body of the vehicle or also take up the role of the chairperson, with their term of appointment being a fixed period.

Independent non-executive directors play an important role in scrutinising and approving key matters that are subjective, complex, and material to the outcomes for investors.

Where appointed to perform their duties, independent non-executive directors should have access to sufficient resources, information, and relevant employees pertaining to the management of the vehicle to make informed decisions.

Independent non-executive directors may themselves incur liability in certain jurisdictions through holding their office. They should have the ability to seek separate legal advice and insurance paid for by the vehicle if they consider this advisable or necessary.

The term of appointment of independent non-executive directors should be fixed, but for a period long enough for them to gain appropriate knowledge and to effectively execute their responsibility without losing their independence.

There should be a regular process in place to evaluate any conflicts of interest or threats to the independence of non-executive directors.