WORK STILL IN PROGRESS

Real estate funds find they are still walking through a building site when it comes to the AIFMD environment, finds Alix Robertson.

BY COINCIDENCE OF their asset class, real estate fund managers are closer to the principals or architecture than any other investor, so it is fitting that they are among the first investors with a close-up view of the new landscape created by the Alternative Investment Fund Managers Directive (AIFMD). What they see has its pleasing symmetries here and there, but they can also see evidence of the rushed job that many accused the directive of being.

Ahmed Makele, senior director and head of UK compliance at real estate investment management firm CBRE Global Investors, says carrying the AIFMD "badge" has a benefit for the firm, indicating good controls and high levels of transparency. However, meeting the requirements of the directive has not been straightforward. Regional variations, additional costs and the heavy burden

BRICK WALL: Although the directive became part of UK law in July 2013, some feel they are still walking through a construction site.

of regulatory reporting pose significant challenges.

"What we're finding is that, although in theory, the AIFMD is about harmonisation and everybody following common rules, there are still differences amongst member states," he says.

"There are some countries that still haven't implemented the directive, and in some places where they have, they are interpreting it in different ways."

It is not that these rough edges were not foreseen by real estate managers. But although the directive became part of UK law in July 2013, some may feel they are still walking through a construction site. Makele has being working to guide CBRE, which has $92.8 billion (€72.7 billion) of assets under management, through the AIFMD process since it became law. He oversees two of CBRE's UK-based business units that applied for AIFMD licences earlier this year. The firm made other applications in the Netherlands and Luxembourg. One of the UK business units is global, acting as an investment manager in Singapore, America, and the Netherlands, with headquarters in the UK. This unit and its seven funds received its licence in May, while the second business unit, focused on investing in the UK, was granted an AIFMD licence in July.

» LARGE FUNDS, LARGE INSTITUTIONAL INVESTORS, HAVE ALREADY DONE DUE DILIGENCE… SO TRYING TO EXPLAIN THE VALUE-ADD CAN BE DIFFICULT. «

Tim Thornton, Mitsubishi UFJ Fund Services

Makele says one of the main benefits of the AIFMD will be the marketing passport that comes with the licence. This allows a business to "passport" funds to investors all across Europe. But in countries that have not implemented the AIFMD, such as Norway, Portugal, Poland, Iceland, Slovenia, Romania and Lithuania, managers cannot take advantage of the passport, even though they may have qualified for a licence.

On the other hand, Makele points out that some countries have not only adopted the directive, but chosen to "gold plate" it, by imposing additional rules. In France or Germany, for example, the appointment of a native clearing agent to help with the marketing process is required before funds from elsewhere can be sold. Local definitions of particular requirements also vary; what one country considers to be "marketing" may well be disputed in another.

Matthew Hazell, previously of the UK Financial Services Authority – the regulator superceded by the Financial Conduct Authority – and now a director at compliance consultancy Newgate Compliance, says the different regulators should possibly be liaising more closely on this issue.

He says: "There is still uncertainty how member states are prepared to apply the passport and whether, for example, a UK alternative investment fund manager which is passporting into a European Economic Area state will be able to provide services other than marketing, as they were before under the Markets in Financial Instruments Directive (Mifid).

"This creates uncertainty about whether firms are acting ultra vires and a consistent approach should be agreed so this can work effectively," he adds.

PROBLEMATIC

The regional differences are also problematic for service providers assisting fund managers with the requirements of the AIFMD.

Hugh Stevens, head of private equity and real estate solutions for BNP Paribas Securities Services, says the real estate sector was already changing before the directive was introduced. What was quite a domestically driven investment business in the past has been expanding into new locations, due to competition for investment capital and investment assets.

"We know of one real estate investment manager who has 11 different operating models in 11 different European countries; they're all segregated for domestic funds."

This move towards working across different locations, which ›

comes from both the trend towards cross-border funds in the real estate sector and the passport function of the AIFMD, is influencing some firms' choices when it comes to appointing a depositary, a further requirement of the directive.

EXPANDING

The AIFMD requires many regulated alternative funds in Europe to have a depositary carry out three roles: cash monitoring, oversight and safekeeping of assets. For funds appointing a depositary for the first time, the choice may be difficult.

Stevens says, for real estate funds, expanding across borders makes the bigger picture important when choosing a depositary: "The investors are in one country, the fund is domiciled in another and the properties are spread across a number of countries. Then the fund itself needs a regional provider; a local operating model no longer will suffice."

Tim Thornton, managing director, global client delivery, for Mitsubishi UFJ Fund Services, which provides depositary services through a sister company in Luxembourg, says: "You have inconsistencies in different jurisdictions between the rules on service providers, so some jurisdictions insist on the depositary being in the same jurisdiction as the manager of the fund, others say you can use a depositary in another European Union jurisdiction so long as there are reciprocal arrangements between the two."

Price and ease of implementation are the primary drivers for this aspect of the AIFMD, he adds.

"There's obviously an additional layer of oversight provided by the depositary, but a lot of it will already be in place. Large funds, large institutional investors, have already done due diligence… so trying to explain the value-add can be difficult."

Stuart Pinnington, group head of corporate services for Jersey-based service provider JTC Group, says for his clients, cost combined with reputation are the important factors when appointing a depositary.

"If the brand of the provider is reputable and the manager needs this function and hasn't had a depositary before, they'll go to the market, see what the price is, and if the service provider looks credible, they are given the business," he says. Mark Mannion, BNY Mellon's head of business development and relationship management in Europe, the Middle East and Africa for alternative investment services, says the role of the depositary in safeguarding assets effectively could ultimately play an important part in determining how investors view the success of the directive.

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Christophe Baurand, Lyxor Asset Management

NEXT HURDLE

While firms that have qualified for a licence under the directive are getting to grips with the main changes for alternative funds across Europe, the next hurdle is on the horizon, as regulatory reporting deadlines are approaching. Melvin Jayawardana, European markets manager at Confluence, a data management company, says: "As the asset manager, there were all the rules and regulations that you had to put in place within your whole organisation as well as applying for your licence; probably one of the last things people thought of was the reporting."

The sheer volume of reporting, which can include up to 3,000 data points and have managers answering over 300 questions a time, is leading some firms to outsource tasks that are especially time consuming or could benefit from specialised technology.

Joe Henkel, head of European solutions for SEI Investments Company, says: "I think in general, the regulatory side has brought these real estate managers into a light where they're having to provide services that some can't provide themselves."

Makele, at CBRE Global Investors, says "What we're finding is that the new rules haven't absolutely pinned down how that reporting to the regulator is going to work. No returns have been made yet, (although the first returns are due end of this month) so again, there's still a little bit of a lack of clarity there.

ORIGINAL AIMS

"In one or two areas there's still some work to be done by the authorities, which we will watch out for."

At Lyxor Asset Management, Christophe Baurand, head of alternative investments, is optimistic that the original aims of the AIFMD will be achieved.

"There's a big hope behind it… AIFMD fills the void because there was certainly a need for a more regulated environment, for a more transparent and risk controlled approach, especially for institutions.

"Even though this piece of regulation is a bit cumbersome and also probably costly, I'm pretty sure that it will make easier access to institutions, which before would have been a little bit hesitant to invest." fe