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The Revised European Long-Term Investment Funds Regulation

April 2024

The investment landscape is changing at pace, with major themes such as sustainability, deglobalisation and demographic changes motivating investors to seek opportunities in private markets. The revamped European Long-Term Investment Fund ("**ELTIF**") regime has therefore arrived at an opportune time and is likely to prove a highly attractive framework for fund managers providing long-term investment solutions to both retail and professional investors. Matheson LLP is pleased to have advised on the first ELTIFs authorised in Ireland.

The regulation on European Long Term Investment Funds (the "**ELTIF Regulation**") introduced a new type of fund "brand" that allows retail and professional investors to invest in companies and projects that need long-term capital. ELTIFs are European alternative investment funds ("**AIFs**") managed by an EU alternative investment fund manager ("**AIFM**") that meet the criteria set out in the ELTIF Regulation in order to use the "ELTIF" label.

A key impetus for the introduction of the ELTIF was to create a source of funding for infrastructure and other long term projects as an alternative to bank lending or raising capital on the stock exchange, and ultimately to promote European economic growth. Supporting the take up of ELTIFs has been identified by the Commission as a priority work area within the Capital Markets Union ("**CMU**") project. ELTIFs are intended to be particularly attractive to pension funds, large insurance companies and other entities which have longer-term liabilities and accordingly, are seeking to generate long-term returns within a regulated fund structure.

The ELTIF Regulation lays down harmonised EU rules relating to the authorisation, investment policies and operating conditions for ELTIFs. As a regulation, its provisions are directly applicable across member states and therefore no national implementing measures are required.

Structure and Authorisation

ELTIFs are in principle closed-ended investment vehicles and so targeted at investors who are willing to "lock-up" their investment in the long term. Generally speaking, ELTIFs are not permitted to offer investors the ability to redeem their investment before the end of the life of the ELTIF. The end of life is a specific date that should be clearly stipulated in the ELTIF's constitutional document and disclosed to investors. The life of the ELTIF must be consistent with the long-term nature of the ELTIF and shall be sufficient in length to cover the life-cycle of each of the individual assets of the ELTIF. Early redemption rights can, however, be made available in certain circumstances, to incentivise investors who may not be willing to lock their capital up for a long period of time (see further below under Redemption and Disposal of Shares).

The main distinction between the AIFMD and the ELTIF framework is that ELTIFs, unlike AIFs managed by AIFMs, may be marketed to retail investors using a pan-European passport.

The ELTIF Regulation provides that an ELTIF must apply for authorisation to its home member state and as part of its application must submit:

- its constitutional documentation;
- the name of the proposed manager and depositary; and
- where the ELTIF can be marketed to retail investors, a description of the information to be made available to investors.

Where the ELTIF is a master-feeder structure, further information on the master ELTIF and on the structure will be required.

The proposed manager of an ELTIF must also apply to the home member state of the ELTIF for approval to manage the ELTIF. The application for approval of the ELTIF manager must include:

- a written agreement with the depositary;
- information on the delegation arrangements regarding portfolio and risk management and administration; and
- information about the investment strategies, risk profile and other characteristics of AIFs which the EU AIFM is authorised to manage.

Where the home member state of the ELTIF is the same as that of the EU AIFM being appointed as manager, an application for approval of the manager may refer to the documentation submitted for authorisation under the AIFMD.

The ELTIF Regulation provides that the home state regulator has a period of two months during which to consider an application for the authorisation of an ELTIF, such time limit being extended to three months in the case of an internally-managed ELTIF.

The manager of an ELTIF will be responsible for ensuring compliance with the ELTIF Regulation and may be liable for losses or damages resulting from non-compliance under both the ELTIF Regulation and the AIFMD.

Investment Policies and Eligible Assets

The ELTIF Regulation provides that an ELTIF may invest only in: (a) eligible investment assets; and (b) the UCITS eligible assets specified in the UCITS Directive. Eligible assets must represent at least 55% of the ELTIF's net assets.

"Eligible investment assets" are defined as:

- equity or quasi-equity instruments which are issued by a qualifying portfolio undertaking or the parent of qualifying portfolio undertaking which is a majority owner of the qualifying portfolio undertaking;
- debt instruments issued by a qualifying portfolio undertaking;
- loans granted by the ELTIF to a qualifying portfolio undertaking which mature within the life of the ELTIF;

- units or shares of one or several ELTIFs, European Venture Capital Funds (“**EuVECAs**”) and European Social Entrepreneurship Funds (“**EuSEFs**”), UCITS and AIFs, provided that those funds also invest in eligible investments and have not themselves invested more than 10% of their capital in any other investment fund (this limit does not apply to feeder ELTIFs);
- real assets;
- simple, transparent and standardised (“**STS**”) securitisations; and
- green bonds.

A qualifying portfolio undertaking is an undertaking, other than a collective investment undertaking, which:

- is not a financial undertaking unless it is a financial undertaking that is not a financial holding company or a mixed-activity holding company and the financial undertaking has been authorised or registered more recently than five years before the date of the initial investment;
- is unlisted, or is listed with a market capitalisation not exceeding €1.5 billion (€500 million previously); and
- is established in an EU member state, or in a third country provided that the third country is not a high-risk non-cooperative jurisdiction for tax purposes and is not identified as a high risk third country under EU anti-money laundering and countering terrorist financing legislation.

Investment Restrictions

The ELTIF Regulation provides that an ELTIF may not:

- engage in short selling;
- take direct or indirect exposure to commodities, including via financial derivative instruments, certificates representing them, indices based on them or any other means or instrument that would give an exposure to them;
- enter into securities lending, securities borrowing, repurchase transactions, or any other agreement with an equivalent economic effect and posing similar risks, if more than 10% of the assets of the ELTIF are affected;
- use financial derivative instruments (“**FDI**”), except where the use of such instruments solely serves the purpose of hedging the risk inherent in other investments of the ELTIF.

Portfolio Composition and Diversification

The requirement to invest at least 55% of the ELTIF’s capital in eligible investments applies from the date specified in the ELTIF’s constitutional documents, which must be no later than five years after the date of authorisation as an ELTIF, or half the life of the ELTIF, whichever is earlier. The investment limit will cease to apply once the ELTIF starts to sell assets in the lead-up to the closure of the ELTIF, and may be temporarily suspended during the life of ELTIF for up to 12 months.

The ELTIF Regulation distinguishes between retail and professional investors in relation to diversification requirements. The below diversification rules do not apply to ELTIFs reserved solely to professional investors. In relation to retail investors, diversification requirements apply so that the ELTIF may invest no more than:

- 20% (previously 10%) of its capital in instruments issued by, or loans granted to, any single qualifying portfolio undertaking;
- 20% (previously 10%) of its capital directly or indirectly in a single real asset;
- 20% (previously 10%) of its capital in units or shares of any single ELTIF, EuVECA, EuSEF, UCITS or EU AIF managed by an EU AIFM;
- 10% (previously 5%) of capital in UCITS eligible assets where those assets have been issued by any single body.

An ELTIF may now invest up to 20% of its capital in simple, transparent and standardised ("**STS**") securitisations.

The aggregate risk exposure to a counterparty stemming from OTC derivative transactions, repurchase agreements or reverse repurchase agreements may not exceed 10% of the value of the ELTIF's capital.

The 10% limit applicable to investments in UCITS eligible assets may be increased to 25% where bonds are issued by a credit institution which has its registered office in a member state and is subject by law to special public supervision designed to protect bondholders.

Concentration and Borrowing Limits

No more than 30% of the units or shares of a single ELTIF, EuVECA or EuSEF , UCITS or EU AIF managed by an EU AIFM can be acquired by an ELTIF. This limit does not apply where the ELTIF is solely marketed to professional investors, nor to a feeder ELTIF investing in its master ELTIF. Where an ELTIF invests in UCITS eligible assets, the concentration limits in the UCITS Directive apply, except where the ELTIF is marketed solely to professional investors.

The ELTIF Regulation also imposes restrictions on an ELTIF's ability to borrow, with leverage of only 50% of the assets of the ELTIF permitted where the ELTIF is marketed to retail investors. Borrowing up to 100% of net asset value is permitted where the ELTIF is marketed to professional investors.

Borrowing must be contracted in the same currency as the assets to be acquired with the borrowed cash, or in another currency where the currency exposure can be appropriately hedged and it must have a maturity no longer than the life of the ELTIF. The ELTIF's prospectus must disclose whether the ELTIF manager intends to borrow cash as part of its investment strategy and, if so, must expressly disclose the borrowing limits.

Borrowing arrangements will not constitute borrowing where that borrowing is fully covered by investors' capital commitments.

Rectification of Investment Positions

The manager can rectify an investment position, within an appropriate time, in cases where the ELTIF infringes the portfolio composition and diversification requirements or exceeds the leverage limit.

Redemption and Disposal of Shares

As a closed-ended fund, investors in an ELTIF will not ordinarily be permitted to request the redemption of their units or shares before the end of the life of the ELTIF. However, the ELTIF Regulation provides for redemptions before the end of the life of the ELTIF, subject to the following conditions:

- redemptions are not granted before the end of the minimum holding period or before the 55% "eligible investment assets" investment limit becomes applicable;
- at the time of the authorisation of the ELTIF and throughout its life, the manager of the ELTIF can demonstrate that it has in place an appropriate redemption policy and liquidity management tools that are compatible with the long-term investment strategy of the ELTIF;
- the redemption policy of the ELTIF clearly indicates the procedures and conditions for redemptions;
- the redemption policy of the ELTIF ensures that the overall amount of redemptions within any given period is limited to a percentage of those assets of the ELTIF that are UCITS eligible assets; and
- the redemption policy of the ELTIF ensures the fair treatment of investors, with redemption requests being processed on a pro-rata basis if the total amount of requests for redemptions within any given period of time exceed the percentage referred to in the previous bullet point.

While the ELTIF Regulation does contain significant limits on redemptions, it also provides that units or shares of an ELTIF may be listed and traded on a regulated market and may also be transferred to third parties other than the ELTIF manager. Investors may therefore be in a position to dispose of any units or shares, within a reasonable period of time, should they so require. To promote the secondary trading of ELTIF units or shares, the ELTIF Regulation allows managers to provide for the possibility of early exist of ELTIF investors during the life of the ELTIF. An early exit should be possible only where the manager of the ELTIF has put in place a policy for matching potential investors and exit requests.

Disclosure Requirements

The ELTIF Regulation specifies certain information that must be contained in the ELTIF's prospectus, in addition to the disclosures required for EU AIFs under AIFMD and for closed-ended funds under the Prospectus Directive. The disclosure obligations include a requirement to prominently notify investors of the illiquid and closed-ended nature of the ELTIF and the date of the end of the life of the ELTIF, as well as the option to extend the life of the ELTIF, where this has been provided for in its constitutional documents. The prospectus should also state whether the ELTIF is intended to be marketed to retail investors and advise all investors that only a small proportion of their overall investment portfolio should be invested in an ELTIF. The risks related to investing in real assets, including infrastructure, must be disclosed.

The prospectus must also contain information on the level of the different costs borne directly or indirectly by investors, including the cost of establishment, costs related to the acquisition of assets, management and performance related fees, distribution costs and other costs, including an overall ratio of the costs to the capital of the ELTIF.

Marketing to Retail Investors

One of the key benefits of an ELTIF is that it can avail of a pan-European marketing passport, for marketing to both retail and professional investors, in contrast to the marketing of EU AIFs which may only be marketed to professional investors.

When marketing to retail investors, ELTIFs will be subject to the regulation on key information documents for packaged retail investment and insurance products ("**PRIIPs Regulation**") and will therefore be required to provide investors with a Key Information Document ("**KID**") prior to their investment.

There is no minimum investment amount prescribed in the ELTIF Regulation. The manager of an ELTIF may be required to carry out suitability assessments under MiFID II where applicable.

Where the life of an ELTIF that is marketed to retail investors exceeds ten years, the manager or distributor must issue a clear written alert that the ELTIF product may not be suitable for retail investors.

A two-week cooling off period is provided for during which retail investors can cancel their investment in the ELTIF.

Depositary Provisions

An important feature of ELTIFs marketed to retail investors is that the depositary of an ELTIF marketed to retail investors may not discharge itself of liability in the event of a loss of financial instruments held in custody by a delegate, as is permitted where AIFs are marketed to professional investors under the AIFMD. Such a depositary also may not reuse assets of the ELTIF for its own account.

Level 2 Measures

The European Securities and Markets Authority ("ESMA") is mandated under the revised ELTIF Regulation to publish Level 2 measures addressing:

- hedging of derivatives;
- redemption policies;
- the criteria to determine the minimum holding period;
- liquidity management; and
- costs disclosures.

On 19 December 2023, ESMA published its final report on draft RTS under the ELTIF Regulation. The draft RTS were submitted to the Commission for endorsement and final approval. The Commission has advised ESMA of its intention to adopt the RTS with amendments. In its letter to ESMA setting out the reasons for the amendments, the Commission states that the draft RTS do not sufficiently cater for the individual characteristics of different ELTIFs. It states that it is necessary to take a more proportionate approach to the drafting of the RTS, in particular with regard to the calibration of the requirements relating to redemption and liquidity management tools. In the Commission's view, ESMA's proposed liquidity requirements would *"inevitably ill-fit ELTIFs pursuing well-established and legitimate investment strategies, in particular in real estate and infrastructure, and private equity long-term investment funds."*

ESMA has six weeks from the date of the Commission's letter (17 April 2024) to amend the draft RTS on the basis of the Commission's proposed changes and to resubmit the RTS to the Commission. The European Parliament and Council of the EU ("**Council**") will then have a three month "non-objection period" to consider the RTS and, if approved, they will be published in the Official Journal of the EU later this year.

Central Bank of Ireland Implementation

On 11 March 2024, the Central Bank of Ireland ("**Central Bank**") published an updated AIF Rulebook, including a new chapter addressing ELTIF restrictions, supervisory requirements, prospectus requirements, general operational requirements, annual and half-yearly reports and the marketing of ELTIF to retail investors. The Central Bank has also published the relevant ELTIF application forms (available here). The ELTIF is a standalone product that does not need to be authorised as a qualifying alternative investment fund or a retail investor alternative investment fund under the Irish supervisory framework. The ELTIF authorisation process is currently only applicable to closed-ended ELTIFs until such a time as the final RTS is available.

The 24-hour approval process is available to ELTIFs authorised in Ireland offered to professional investors or qualified investors and it is possible to use umbrella structures, with ELTIF and non-ELTIF sub-funds within the same umbrella. It is also possible to establish an ELTIF sub-fund on an existing umbrella Qualifying Investor Alternative Investment Fund ("**QIAIF**") or Retail Investor Alternative Investment Fund ("**RIAIF**") umbrella fund.

Please get in touch with your usual Asset Management and Investment Funds Department contact or any of the contacts listed in this publication should you require further information in relation to the material referred to in this update.

Full details of the Asset Management and Investment Funds Department, together with further updates, articles and briefing notes written by members of the Asset Management and Investment Funds team, can be accessed at www.matheson.com.

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Appendix

Overview of Key Changes in the Revised ELTIF Regulation

	ELTIF 1.0	ELTIF 2.0
Eligible Investment Assets	Equity or quasi-equity instruments which have been: (i) issued by a qualifying portfolio undertaking and acquired by the ELTIF from the qualifying portfolio undertaking or from a third party via the secondary market; (ii) issued by a qualifying portfolio undertaking in exchange for an equity or quasi-equity instrument previously acquired by the ELTIF from the qualifying portfolio undertaking or from a third party via the secondary market; (iii) issued by an undertaking of which the qualifying portfolio undertaking is a majority owned subsidiary, in exchange for an equity or quasi-equity instrument acquired in accordance with points (i) or (ii) by the ELTIF from the qualifying portfolio undertaking or from a third party via the secondary market;	The definition of qualifying portfolio undertaking has been amended so as to raise the threshold of €500 million market capitalisation at the time of the initial investment to €1.5 billion. The definition has also been amended to permit investments in fintechs. Eligible investments may be located in third countries provided the third country is not identified as high-risk third country for money laundering or listed on EU list of non-cooperative jurisdictions for tax purposes. ELTIFs may also conduct minority co-investment in investment opportunities.
	(b) debt instruments issued by a qualifying portfolio undertaking;	
	(c) loans granted by the ELTIF to a qualifying portfolio undertaking with a maturity no longer than the life of the ELTIF;	
	(d) units or shares of one or several other ELTIFs, EuVECAs and EuSEFs provided that those ELTIFs, EuVECAs and EuSEFs have not themselves invested more than 10% of their capital in ELTIFs;	UCITS and EU AIFs managed by EU AIFMs have been added to the list of investment funds in which an ELTIF may invest.

	ELTIF 1.0	ELTIF 2.0
	(e) direct holdings or indirect holdings via qualifying portfolio undertakings of individual real assets with a value of at least €10 million or its equivalent in the currency in which, and at the time when, the expenditure is incurred. "real asset" means an asset that has value due to its substance and properties and may provide returns, including infrastructure and other assets that give rise to economic or social benefit, such as education, counselling, research and development, and including commercial property or housing only where they are integral to, or an ancillary element of, a long-term investment project that contributes to the Union objective of smart, sustainable and inclusive growth	This has been amended to simply "real assets", removing the €10 million threshold "real asset" means an asset that has an intrinsic value due to its substance and properties
	No provision for investment in STS securitisations.	STS securitisations have been added to the list of eligible investment assets.
	No provision for investment in European green bonds.	European green bonds have been added to the list of eligible investment assets.
Portfolio Composition and Diversification	An ELTIF shall invest at least **70%** of its capital in eligible investment assets.	An ELTIF shall invest at least **55%** of its capital in eligible investment assets.

	ELTIF 1.0	ELTIF 2.0
	An ELTIF shall invest no more than: (a) **10%** of its capital in instruments issued by, or loans granted to, any single qualifying portfolio undertaking; (b) **10%** of its capital directly or indirectly in a single real asset; (c) **10%** of its capital in units or shares of any single ELTIF, EuVECA or EuSEF; (d) **5%** of its capital in assets referred to in point (b) of Article 9(1) where those assets have been issued by any single body.	(a) to (c) have been increased from 10% to **20%**. (d) has been increased from 5% to **10%**. These investment limits do not apply where ELTIFs are marketed to professional investors.
	The aggregate risk exposure to a counterparty of the ELTIF stemming from OTC derivative transactions, repurchase agreements, or reverse repurchase agreements shall not exceed **5%** of the value of the capital of the ELTIF.	This has been increased to **10%**. This investment limit does not apply where ELTIFs are marketed to professional investors.
	By way of derogation from points (a) and (b) of paragraph 2, an ELTIF may raise the 10 % limit referred to therein to 20 %, provided that the aggregate value of the assets held by the ELTIF in qualifying portfolio undertakings and in individual real assets in which it invests more than 10 % of its capital does not exceed 40 % of the value of the capital of the ELTIF.	Removed.
Concentration	An ELTIF may acquire no more than **25%** of the units or shares of a single ELTIF, EuVECA, or EuSEF.	This limit has been raised to **30%** and UCITS and EU AIFs managed by EU AIFMs have been added to the list.

	ELTIF 1.0	ELTIF 2.0
Borrowing / Leverage	An ELTIF may borrow cash provided that such borrowing fulfils represents no more than **30%** of the value of the capital of the ELTIF.	An ELTIF may borrow cash provided that it represents no more than **50%** of the net asset value of the ELTIF in the case of ELTIFs that can be marketed to retail investors, and no more than **100%** of the net asset value of the ELTIF in the case of ELTIFs marketed solely to professional investors.
Minimum Investment	*€10,000 minimum investment* Where the financial instrument portfolio of a potential retail investor does not exceed €500,000, the manager of the ELTIF or any distributor, after having performed the suitability test referred to in Article 28(1) and having provided appropriate investment advice, shall ensure, on the basis of the information submitted by the potential retail investor, that the potential retail investor does not invest an aggregate amount exceeding 10 % of that investor's financial instrument portfolio in ELTIFs and that the initial minimum amount invested in one or more ELTIFs is €10,000.	Removed.
Retail Barriers	*Suitability Assessment* The manager of an ELTIF, the units or shares of which are intended to be marketed to retail investors, shall establish and apply a specific internal process for the assessment of that ELTIF before it is marketed or distributed to retail investors.	Removed.

	ELTIF 1.0	ELTIF 2.0
	Investment Advice The units or shares of an ELTIF may be marketed to retail investors on the condition that retail investors are provided with appropriate investment advice from the manager of the ELTIF or the distributor.	Removed.
	Local Facilities The manager of an ELTIF the units or shares of which are intended to be marketed to retail investors shall, in each Member State where it intends to market such units or shares, put in place facilities available for making subscriptions, making payments to unit- or shareholders, repurchasing or redeeming units or shares and making available the information which the ELTIF and the manager of the ELTIF are required to provide.	Removed.
Rectification of Investment Positions	Not provided for.	Provided for.
Master-Feeder Structures	Not provided for.	Provided for.
Wind Down	Investors may request the winding down of an ELTIF if their redemption requests, made in accordance with the ELTIF's redemption policy, have not been satisfied within one year from the date on which they were made.	Removed.

	ELTIF 1.0	ELTIF 2.0
Early Exit	Not provided for.	Provided for.
Objective	to raise and channel capital towards European long-term investments in the real economy, in line with the Union objective of smart, sustainable and inclusive growth	to facilitate the raising and channelling of capital towards long-term investments in the real economy, including towards investments that promote the European Green Deal and other priority areas, in line with the Union objective of smart, sustainable and inclusive growth
Central Public Register	ESMA was required to keep a central public register identifying each ELTIF authorised under the ELTIF Regulation and the manager and competent authority of the ELTIF.	ESMA is required to include more detail in the public register, including LEI, ISIN codes of the ELTIF and each separate share class, member states where the ELTIF is marketed, whether the ELTIF can be marketed to retail investors or can be marketed solely to professional investors, date of authorisation and the date on which marketing commenced.

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