MAPLES GROUP

UPDATE

ELTIF 2.0 – Enhancements and New Opportunities

On 20 March 2023, the revised European Long-Term Investment Funds Regulation (EU) 2023/606[1] ("ELTIF 2.0") was published in the Official Journal of the European Union. It will enter into force on 9 April 2023.

What is ELTIF and why ELTIF 2.0?

The original regulation on European Long-Term Investment Funds[2] ("ELTIFs") was introduced in April 2015. Its aim was to raise and channel capital towards European long-term investments and to stimulate the 'real economy' by establishing a specific unified framework for ELTIFs. On the asset side, compliance with certain types of eligible long-term investments was required; and on the investor side, a European passport (comparable to the AIFMD[3] and UCITS[4] marketing passports) was introduced, thereby providing the ability to distribute these funds to certain retail investors.

Despite this generally promising framework, the original regulation was not as successful as anticipated and, to-date, only 84 ELTIFs have been authorised in four EU member states: Luxembourg (48), France (21), Italy (13) and Spain (2))[5,6].

The challenges of the original regulation were multiple and varied, some of which are listed below:

- The rules on eligible investment assets were too restrictive;
- The general requirements on investments were insufficiently calibrated or inflexible;
- Retail investors did not consider ELTIFs to be attractive due to certain restrictions (e.g. the €10,000 minimum investment requirement, the 10% cap on a financial instrument portfolio not exceeding €500,000, etc.); and
- A number of general marketing and placement-related challenges, including unnecessary market access restrictions and / or dispensable requirements (e.g. the requirement of local facilities in the case of marketing to retail investors in an EU member state).

The foregoing led to an intensive revision process, which included fruitful discussions between the European institutions, local regulators and national industry bodies, and resulted in the recently published ELTIF 2.0.

[1] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32023R0606&from=EN

[2] Regulation (EU) 2015/ 760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds

[3] Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010Text with EEA relevance (europa.eu)

[4] Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (europa.eu)

[5] As at 21 March 2023, otherwise refer to the official Register of authorised ELTIFs at ESMA

[6] For comparative purposes: since the introduction of the reserved alternative investment funds (RAIFs) regime in 2016 and as at 21 March 2023, more than 2,200 Luxembourg RAIFs have been set-up. Refer to the official register of RAIFs

Key ELTIF 2.0 Enhancements

A number of positive enhancements have been made, including:

1. Wider Range of Eligible Assets and Permissible Investments

- Introducing a broad definition of "real assets" allowing for a flexible and large range of qualifying investment strategies. Simultaneously, removing the minimum value requirement of €10 million (or equivalent) for real assets.
- Increasing the market capitalisation threshold for qualifying portfolio undertakings ("QPUs") which are listed (from €500 million to €1.5 billion).
- Including the possibility to invest in FinTech assets, subject to certain conditions.
- Including the possibility to invest in non-EU QPUs. Note however, non-EU QPUs in jurisdictions identified as high-risk for anti-money laundering or listed on the EU list of non-cooperative jurisdictions for tax purposes are prohibited.
- Introducing the possibility to invest in simple, transparent and standardised securitisations ("STS") under Regulation (EU) 2017 / 2402[7] with underlying assets consisting of mortgage-backed securities, commercial, residential and corporate loans, as well as trade receivables.
- Introducing the possibility of conducting minority co-investment in QPUs.

2. Less Prescriptive Investment and Diversification Rules

Investment Rules

- Lowering the mandated minimum investment in eligible investment assets (from 70% to 55%).
- Permitting fund of fund strategies (removing the 20% investment limit and expanding the scope of eligible collective investment undertakings to include not only target ELTIFs, EuVECAs[8] and EuSEFs[9] but also target UCITS and EU AIFs managed by EU AIFMs).
- Permitting master-feeder ELTIFs, provided both are ELTIFs, i.e. one ELTIF invests at least 85% of its assets into another ELTIF. The requirements are now more closely aligned to the general requirements for master-feeder AIFs within the meaning of the AIFMD.
- Increasing borrowing limits (exceeding short term borrowing) from 30% to:
  - 50% of the net asset value of the ELTIF, if marketed to retail investors; and
  - 100% of the net asset value of the ELTIF, if marketed solely to professional investors.

Borrowing arrangements fully covered by outstanding capital commitments are excluded from the foregoing borrowing limits.

- Increasing flexibility with respect to loan-originating ELTIFs, particularly in the context of granting loans to QPUs (maturity rules have been slightly enhanced to "*…maturity that does not exceed the life of the ELTIF*").

[7] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R2402&from=en

[8] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0345&from=EN

[9] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0346&from=EN

Diversification

- Increasing the general diversification requirements for each of the following from 10% of an ELTIF's capital to 20%:
  - instruments issued by / loans granted to any single QPU;
  - any single real asset; and
  - units or shares of any single ELTIF, EuVECA, EuSEF, UCITS or EU AIF managed by an EU AIFM (this is not applicable to feeder ELTIFs).
- Increasing the general diversification requirements for each of the following from 5% of an ELTIF's capital to 10%:
  - any UCITS eligible asset issued by one single body; and
  - the risk exposure to any counterparty with respect to over-the-counter derivative transactions, repurchase agreements or reverse repurchase agreements.
- Up to 20% of an ELTIF's capital may now be invested in STS.

The foregoing diversification rules **do not** apply to ELTIFs reserved solely to professional investors.

3. Retail Investor Access

ELTIF 2.0 distinguishes between ELTIFs solely marketed to professional investors and ELTIFs marketed to retail investors.

Ensuring retail investors, i.e. investors who do not qualify as and cannot / would not like to opt-in as professional investors within the meaning of Annex II of MIFID II[10], could easily and efficiently access ELTIFs was of particular importance throughout the revision process of the original regulation. ELTIF 2.0 therefore removed the €10,000 minimum investment requirement, as well as the 10% cap on financial instrument portfolios not exceeding €500,000 for retail investors.

These changes, together with the removal of the local facilities requirement and other complementary amendments, are significant enhancements which advance the efficient and effective use of the 'retail-distribution' passport and allow for efficient and effective access by retail investors to this private fund product.

4. Open-ended ELTIFs

Even though ELTIFs under ELTIF 2.0 have a limited duration, they may be structured as open-end funds under enhanced redemption rules. The mandatory lock-up during the ramp-up period has been abolished and the lock-up period may now be shorter. More manageable liquidity management requirements have been also been included. In addition, the ability for investors to require the winding up of the ELTIF if their redemption requests have not been satisfied within one year of being made has been removed.

Regulatory technical standards ("RTS") will be developed by ESMA in connection with redemption policies.

Key Dates

ELTIF 2.0 will enter into force on 9 April 2023 and will apply from 10 January 2024.

Existing ELTIFs and / or ELTIFs set-up between 9 April 2023 and 10 January 2024 may choose to opt-in to ELTIF 2.0, provided the competent authority of the ELTIF (e.g. the CSSF in Luxembourg or the CBI in Ireland) is notified. This means that ELTIF 2.0 provides a real opt-in for structures which do not yet exist

[10] **MIFID II**: Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (Text with EEA relevance)

or are not yet authorised as ELTIFs prior to 10 January 2024. Such structures can take advantage of the ELTIF 2.0 regime from their establishment / authorisation date (subject to non-objection of the relevant regulatory authority).

ELTIFs authorised under the original regulation prior to 10 January 2024 are deemed to comply with ELTIF 2.0 until 11 January 2029. Afterwards, they would need to comply with ELTIF 2.0. In case such ELTIFs do not raise additional capital on or after 10 January 2024, they shall be deemed to comply with ELTIF 2.0, also after 11 January 2029.

If you (i) see ELTIF 2.0 as an opportunity, (ii) identify any legal, practical and / or operational challenges with ELTIF 2.0 or (iii) wish to know more about ELTIF 2.0, please reach out to your usual Maples Group contact or any of the contacts below.

Luxembourg

Johan Terblanche
+352 28 55 12 44
johan.terblanche@maples.com

Michelle Barry
+352 28 55 12 47
michelle.barry@maples.com

Manfred Dietrich
+352 28 55 12 10
manfred.dietrich@maples.com

Dublin

Adam Donoghue
+353 1 619 2041
adam.donoghue@maples.com

Eimear O'Dwyer
+353 1 619 2065
eimear.odwyer@maples.com

Stephen Carty
+353 1 619 2023
stephen.carty@maples.com

Aaron Mulcahy
+353 1 619 2104
aaron.mulcahy@maples.com

Peter Stapleton
+353 1 619 2024
peter.stapleton@maples.com