

ASSET MANAGEMENT &
INVESTMENT FUNDS

ELTIF 2.0 and the Central Bank of Ireland's authorisation process

- Issues for fund promoters to consider

The redesigned regulation on European Long-Term Investment Funds (**ELTIF Regulation**), otherwise known as ELTIF 2.0 has applied in all EU member states since 10 January 2024.

By removing many of the regulatory hurdles of the original ELTIF, first created in 2015, the enhanced ELTIF framework has the potential to be a sought-after fund label for fund managers to offer retail and professional investors opportunities to make long-term investments in the real economy.

17 MIN READ

ELTIFs are intended 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 such as digital transition, in line with the European Union objective of smart, sustainable, and inclusive growth.

For the first time, the Central Bank of Ireland (CBI) can authorise an ELTIF under domestic fund legislation through a new chapter in the AIF Rulebook which provides for a single dedicated ELTIF product authorisation. Irish ELTIFs have all the benefits of an alternative investment fund (AIF) authorised in Ireland, including 24-hour authorisation for ELTIFs which are offered to only professional or qualifying investors. Irish ELTIFs also benefit from the well understood Irish tax regime applicable to Irish regulated funds.

In this briefing we provide an overview of key features of ELTIFs under the enhanced regime, differentiating between ELTIFs marketed to retail investors and ELTIFs marketed to professional investors. We also take a closer look at ESMA's draft regulatory technical standards (RTS), and the Central Bank of Ireland's (CBI) dedicated ELTIF Chapter of the AIF Rulebook (AIF Rulebook) which has been the subject of an expedited consultation process (CP155). The CBI has now published its updated AIF Rulebook and application forms enabling the CBI to authorise Irish ELTIFs.

ELTIF regime

The ELTIF Regulation establishes uniform EU rules on the authorisation, investment policies and operating conditions of EU AIFs that are marketed as ELTIFs. Unlike UCITS, ELTIFs allow for the acquisition of long-term illiquid assets.

ELTIFs can be structured as closed-ended funds with a limited duration which is compatible with the life cycles of each of the individual assets of the ELTIF, corresponding to the illiquidity profile of the assets and the ELTIF's investment objective. Alternatively, to incentivise retail investment, ELTIFs can be structured as open-ended funds, offering early redemption rights to investors. Further broadening retail access, a UCITS may invest in units or shares of an ELTIF, to the extent that the ELTIF's units or shares are eligible under the UCITS Directive.

Unlike AIFs, ELTIFs benefit from a marketing passport that extends to retail investors.

Irish ELTIFs are subject to the ELTIF Regulation, the AIF Rulebook, and other relevant CBI Guidance and will undergo a distinct CBI authorisation process.

The ELTIF must have a management company that is authorised as an alternative fund manager (**AIFM**) under the Alternative Investment Managers Directive (**AIFMD**) and includes AIFMs passporting in from another EU jurisdiction. The ELTIF's AIFM will be responsible for ensuring compliance with the ELTIF Regulation and can be held liable for losses or damages resulting from non-compliance with the ELTIF Regulation and AIFMD.

Fund structures

Irish ELTIFs can be established as:

- ICAVs
- investment companies with fixed or variable share capital
- unit trusts
- common contractual funds
- investment limited partnerships (**ILP**)

The ICAV is the preferred corporate vehicle for funds domiciled in Ireland and the improved Irish ILP structure is also well suited for ELTIFs.

It will be possible to use umbrella structures to establish Irish ELTIF sub-funds. An umbrella fund is a collective investment scheme which is divided into a number of sub-funds with segregated liability between those sub-funds. Each sub-fund is treated as a separate collective investment scheme with a separate pool of assets and may pursue different investment objectives and policies. The AIF Rulebook facilitates existing or new Retail Investment Alternative Investment Funds (**RIAIFs**) and Qualified Investor Alternative Investor Funds (**QIAIFs**) to incorporate retail or professional only ELTIFs and non-ELTIF sub-funds respectively.

Both single funds and sub-funds may also establish different classes of shares or units within a fund or sub-fund.

Service providers and directors

Entity	Regulatory regime
AIFM	The ELTIF must appoint an AIFM, authorised as an EU AIFM, subject to the AIFMD. Ireland has a range of third-party service providers who will act as AIFMs.
Depository	ELTIFs established in Ireland will be required to appoint an Irish based depository which has been approved by the CBI to act as depository of Irish authorised ELTIFs for the safekeeping of the ELTIF's assets. All of the leading global depositories have operations in Ireland. The CBI has also issued "depository lite" guidance for depositories of real assets of closed-ended funds.
Administrator	The administrator is usually authorised by the CBI, but it is possible for a non-Irish AIFM to provide administration services on a cross-border basis.
Investment manager	Appointing an investment manager is an option and not a requirement. The investment manager is not required to be located in Ireland. Where an investment manager is authorised in another EU member state in accordance with the requirements of MiFID, it may passport its services into Ireland. Non-EU investment managers will be required to complete a CBI application for approval to act as investment manager.
Directors	A minimum of two directors of an ELTIF structured as an ICAV or investment company and a minimum of two directors of an AIFM must be Irish residents. Other directors may be appointed. Each director will be required to be pre-approved by the CBI and must comply with the CBI's fitness and probity regime and individual accountability framework conduct standards.

Authorisation

To authorise an ELTIF in Ireland, an ELTIF must apply to the CBI for authorisation. The application must include:

- its constitution
- the name of the proposed manager and depositary
- where the ELTIF will be marketed to retail investors, a description of the information made available to investors, including for dealing with complaints
- information on the master-feeder structure, where applicable

Only an EU AIFM authorised under AIFMD may apply to the competent authority of the ELTIF for approval to manage an ELTIF. If the AIFM has the same competent authority as the ELTIF, the approval should refer to the documents submitted for its authorisation under the AIFMD.

An AIFM authorised in a different EU member state to the ELTIF must provide:

- the written agreement with the depositary

- information on delegation agreements relating to portfolio and risk management and administration
- information on investment strategies, risk profile and other characteristics of AIFs that the AIFM is authorised to manage

In accordance with the ELTIF Regulation, the CBI should inform applicants within two months whether authorisation as an ELTIF has been granted (three months for an internally managed ELTIF).

CBI 24-hour authorisation

The QIAIF 24-hour authorisation framework will be available for ELTIFs which are offered only to professional investors as defined in the EU ELTIF Regulation or those offered to qualifying investors as defined in the AIF Rulebook.

A “professional investor” means an investor who is a professional client, or may on request, be treated as a professional client in accordance with Annex II of Directive 2014/65/EU (**MiFD II**).

A “retail investor” means an investor who is not a professional investor.

A “qualifying investor” means an investor who:

- is a professional client within the meaning of Annex II of MiFID, or
- receives an appraisal from an EU credit institution, a MiFID firm or a UCITS management company that the investor has the appropriate expertise, experience and knowledge to adequately understand the investment in the Qualifying Investor AIF, or
- certifies that they are an informed investor by providing the following:
 - » confirmation (in writing) that the investor has such knowledge of and experience in financial and business matters as would enable the investor to properly evaluate the merits and risks of the prospective investment, or
 - » confirmation (in writing) that the investor’s business involves, whether for its own account or the account of others, the management, acquisition or disposal of property of the same kind as the property of the QIAF.

Permitted investments

An ELTIF can only invest in

- a. eligible investment assets (Eligible Investment Assets)
- b. assets referred to in Article 50(1) of the UCITS Directive (**Other Permitted Assets**)

An ELTIF is not permitted to undertake:

- a. short selling of assets
- b. direct or indirect exposure to commodities
- c. securities lending, securities borrowing, repurchase transactions, or equivalent, if more than 10% of the assets of the ELTIF are affected
- d. using financial derivative instruments, except for hedging purposes

Eligible Investment Assets

- a. equity or quasi-equity instruments which have been:
 - i. issued by a qualifying portfolio undertaking (**QPU**) and acquired by the ELTIF from that QPU or from a third party via the secondary market
 - ii. issued by a QPU in exchange for an equity or quasi-equity instrument previously acquired by the ELTIF from that QPU or from a third party via the secondary market
 - iii. issued by an undertaking in which a QPU holds a capital participation in exchange for an equity or quasi-equity instrument acquired by the ELTIF in accordance with (i) or (ii)
- b. debt instruments issued by a QPU
- c. loans granted by the ELTIF to a QPU with a maturity that does not exceed the life of the ELTIF
- d. units or shares of one or several other ELTIFs, EuVECAs, EuSEFs, UCITS and EU AIFs managed by EU AIFMs provided that they invest in ELTIF eligible investments and have not themselves invested more than 10% of their assets in any other collective investment undertaking (limit does not apply to feeder ELTIFs)
- e. real assets, broadly defined as an asset that has an intrinsic value because of its substance and properties (further explained below)
- f. simple, transparent, and standardised securitisations (**STS**) where the underlying exposures correspond to residential mortgage loans, commercial mortgage loans, corporate loans as well as trade receivables and other specified underlying exposures
- g. green bonds issued pursuant to the EU Green Bond Regulation, by a QPU.

Qualifying purchasing undertaking (QPU)

A QPU is an issuer that at the time of investment must meet the following requirements:

1. it is not a financial undertaking (a credit institution, an investment firm, an insurance or re-insurance undertaking, a financial holding company, a mixed-activity holding company, a UCITS management company or an AIFM), unless:
 - » it is a financial undertaking that is not a financial holding company or a mixed-activity holding company, and
 - » that financial undertaking has been authorised or registered more recently than five years before the date of the initial investment

however, a QPU may be a financial undertaking that exclusively finances QPUs or real estate assets

2. it is an undertaking which:
 - » is not admitted to trading on a regulated market or on a multilateral trading facility, or

- » is admitted to trading on a regulated market or on a multilateral trading facility and has a market capitalisation of no more than €1.5bn

3. it is established in a Member State, or in a third country, provided that third country is not a high-risk country for AML/CFT purposes or on the EU list of non-cooperative jurisdictions for tax purposes.

Real assets

Real assets include immovable property, such as communication, environment, energy or transport infrastructure, social infrastructure, including retirement homes or hospitals, as well as infrastructure for education, health and welfare support or industrial facilities, installations, and other assets, including intellectual property, vessels, equipment, machinery, aircraft or rolling stock. They also include investments in commercial property, facilities or installations for education, counselling, research, development, including infrastructure and other assets that give rise to economic or social benefit, sports, or housing, including housing for senior residents or social housing. They also comprise investments in water, forest, building and mineral rights. Assets such as works of art, manuscripts, wine stocks or jewellery are not eligible as they do not yield a predictable cash flow.

Portfolio composition and diversification

ELTIFs must invest at least 55% of capital in Eligible Investment Assets.

The rules below do not apply to ELTIFs marketed solely to professional investors.

1. An ELTIF shall invest no more than:
 - » 20% of its capital in instruments issued by, or loans granted to, any single QPU
 - » 20% of its capital in a single real asset
 - » 20% of its capital in units or shares of any single ELTIF, EuVECA, EuSEF, UCITS or EU AIF managed by an EU AIFM (unless an ELTIF is a feeder ELTIF)
 - » 10% of its capital in assets referred to in Article 50(1) of the UCITS Directive, where those assets are issued by any single body (increased to 25% for covered bonds)
2. The aggregate value of STS in an ELTIF portfolio shall not exceed 20% of the value of the capital of the ELTIF.
3. The aggregate risk exposure to a counterparty of the ELTIF from OTC derivative transactions, repurchase agreements, or reverse repurchase agreements shall not exceed 10% of the value of the capital of the ELTIF.

4. Companies included in the same group for the purposes of consolidated accounts, shall be regarded as a single QPU or a single body for the purpose of calculating the above limits.

5. An ELTIF may acquire no more than 30% of the units or shares of a single ELTIF, EuVECA, EuSEF, UCITS or EU AIF managed by an EU AIFM (unless it's a feeder ELTIF investing in its master ELTIF).

6. The concentration limits set out in Article 56(2) of the UCITS Directive apply to Other Permitted Assets.

The portfolio composition and diversification requirements apply by the date specified in the rules or instrument of incorporation of the ELTIF. They cease to apply when the ELTIF starts to sell assets in order to redeem investors' units or shares after the end of the life of the ELTIF and will be temporarily suspended where the ELTIF raises additional capital or reduces existing capital, so long as such suspension lasts no longer than 12 months.

Where a QPU admitted to trading on a regulated market or on a multilateral trading facility no longer complies with the market capitalisation limit of €1.5bn, the investment can continue to be counted for the purpose

of calculating the 55% minimum invested in Eligible Investment Assets, for a maximum of three years.

Borrowing of cash

An ELTIF may borrow cash and encumber assets to implement its borrowing strategy, provided:

- a. 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
- b. it serves the purpose of making investments or providing liquidity, including to pay costs and expenses, provided that the holdings in cash or cash equivalent of the ELTIF are not sufficient to make the investment concerned
- c. it is contracted in the same currency as the assets to be acquired with the borrowed cash, or in another currency where currency exposure has been appropriately hedged
- d. it has a maturity no longer than the life of the ELTIF.

Borrowing arrangements fully covered by investors' capital commitments will not be subject to the above conditions.

The AIFM is required to specify in the prospectus whether the ELTIF intends to borrow cash as part of its investment strategy, and if so, include borrowing limits. Borrowing limits will apply from the date specified in the rules or instruments of incorporation of the ELTIF and no later than three years after marketing of the ELTIF commenced.

The borrowing limits will be temporarily suspended where the ELTIF raises additional capital or reduces its existing capital. The suspension will be limited in time to the period strictly necessary taking due account of the interests of investors and, in any case, no longer than 12 months.

Redemptions

ELTIFs can be established with or without redemption rights before the end of the life of the ELTIF, according to the ELTIF's investment strategy, so you can have limited liquidity or closed-ended ELTIFs. To offer redemptions, the following conditions must be fulfilled:

- a. the ELTIF must have a minimum holding period which is specified in the constitution of the ELTIF (not applicable for feeder ELTIFs investing in master ELTIFs)
- b. redemptions cannot be granted before the end of the minimum holding period or before the portfolio composition and diversification rules apply
- c. at the time of authorisation and throughout the life of the ELTIF, the ELTIF must have an appropriate redemption policy and liquidity management tools (**LMTs**) compatible with its long-term investment strategy
- d. the redemption policy must clearly indicate the procedures and conditions for redemptions
- e. the redemption policy must ensure that redemptions are limited to a percentage of Other Permitted Assets
- f. the redemption policy must ensure that investors are treated fairly, and redemptions are granted on a pro rata basis if the requests exceed the above percentage limit

Secondary market

While an ELTIF is not required to offer redemption rights before the end of its life, units or shares of an ELTIF may be admitted to trading on a regulated market or on a multilateral trading facility or transferred to third parties. This is intended to promote secondary markets as a venue for retail investors for buying and selling units or shares of ELTIFs.

Euronext Dublin is an internally recognised and regulated exchange upon which many funds' shares and units are listed. Many fund sponsors seek to have their fund's units or shares listed on a recognised stock exchange for marketing purposes, primarily to satisfy the requirements of many institutional investors who may have limits on the number of unlisted securities in which they are permitted to invest. A&L Goodbody's listing company, A&L Listing Limited is authorised by Euronext Dublin as a sponsoring broker for investment funds.

In addition, an ELTIF may provide for full or partial matching of transfer requests of units or shares by existing investors with transfer requests by potential investors, provided that appropriate policies and procedures are in place, and subject to the requirements of the RTS.

Disclosure obligations

As with all funds, the prospectus must describe the investment objectives and the categories of assets in which the fund may invest. It must also include information on how the investment objectives and strategy qualify the fund as long-term in nature and the jurisdictions in which the ELTIF may invest. The disclosure obligations include a requirement to prominently inform investors about the illiquid nature of the ELTIF, about the end of the life of the ELTIF, as well as the option to extend the life of the ELTIF, where this is provided for in its constitution, and the conditions thereof. 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 the ELTIF. Borrowing limits, where applicable, should be disclosed. The prospectus should also include information on redemption rights, the frequency and timing of distribution of proceeds, if any, during the life of the ELTIF and conditions for the transfer of units or shares to third parties other than the AIFM.

The prospectus should contain risk disclosures, including the risks related to investing in real assets, including infrastructure. The prospectus should prominently inform investors of the level of the different costs borne directly or indirectly by the investors. The common definitions, calculation methodologies and presentation formats of the costs and overall cost ratio will be included in RTS.

EU AIFs are also required to comply with AIFMD transparency requirements and closed-ended ELTIFs must publish a prospectus in accordance with the Prospectus Directive.

An ELTIF must publish an audited annual report for each financial year (and half-yearly for ELTIFs established as a unit trust or common contractual fund), with the information specified in the AIFM Regulations, the ELTIF Regulations and the ELTIF Chapter of the CBI Rulebook.

Master feeder ELTIFs

An ELTIF can be approved to invest at least 85% of its assets in units or shares of

another ELTIF. Both the master feeder and feeder fund must be ELTIFs. Master feeder funds are subject to additional requirements and disclosures.

Cross-border marketing

The ELTIF Regulation contains a passporting regime, so that an AIFM can market ELTIFs to retail and professional investors in the EEA, subject to the notification process in the AIFMD. Irish AIFMs proposing to market Irish ELTIFs to retail or professional investors in another Member State should submit the notification to the CBI. The procedure for selling ELTIFs outside of the EEA is country specific.

Marketing to retail investors

When an ELTIF is marketed to retail investors, it is mandatory to publish a key investor document in accordance with the packaged retail investment and insurance products Regulation (PRIIPs Regulation).

Where an ELTIF is marketed to retail investors, the depositary provisions of

the UCITS Directive apply rather than the AIFMD in relation to the eligible entities that are permitted to act as depositaries, the 'no discharge of liability' rule and the reuse of assets.

ELTIF 2.0 removed the requirement on AIFMs to carry out suitability tests of retail investors which duplicated the suitability requirements of MiFID II (which will still apply) and removed the requirement of a minimum investment of €10,000 and the 10% exposure threshold for retail investors whose financial portfolios are below €500,000.

Where the life of an ELTIF exceeds 10 years, the ELTIF's distributor (or AIFM when directly offering or placing units or shares of an ELTIF) should indicate clearly in writing that the fund may not be suitable for those retail investors unable to sustain such a long-term and illiquid commitment. Retail investors should also be alerted to the risk that where the ELTIF provides for matching of units or shares, this doesn't guarantee that the investor will be able to exit or redeem.

Neither the suitability test or above information requirements apply where the retail investor is a member of senior staff,

or a portfolio manager, director, officer, or an agent or employee of the AIFM, or of an affiliate of the AIFM, and has sufficient knowledge about the ELTIF.

Retail investors will be able, during the subscription period and for two weeks after the signature of the initial commitment or subscription agreement, to cancel their subscription and have their money returned.

Supervision of ELTIFs

The CBI will be responsible for supervising compliance with the obligations set out in the constitution of the ELTIF, and the obligations set out in the prospectus.

The ELTIF Chapter of the CBI's AIF Rulebook details the CBI's supervisory requirements in relation to ELTIFs and the service providers to ELTIFs. The CBI also publishes guidance documents from time to time which are intended to assist in the interpretation of its requirements.

The depositary and other service providers of an ELTIF may not be replaced without the CBI's approval. The CBI must be informed of any proposed amendments to the prospectus, constitutional document

or material agreements. The CBI must also be informed of any material breach of investment fund related legislation, the requirements imposed on the ELTIF by the CBI or provisions of its prospectus.

An AIFM must regularly report to its home regulator in a form which is prescribed in AIFMD. AIFMs that are authorised by the CBI will have prudential reporting obligations that have been mandated in the AIF Rulebook.

Level 2 measures

On 19 December 2023, ESMA published its [final report](#) containing draft RTS that specify the way that certain ELTIF 2.0 requirements apply.

Key elements of the draft RTS include:

- the circumstances in which the use of financial derivative instruments solely serves hedging purposes
- the circumstances in which the life of an ELTIF is compatible with the life-cycles of each of the individual assets, and features of the redemption policy
- criteria to determine the minimum holding period

- redemption policies and liquidity management tools
- the matching mechanism
- calculation and disclosure of costs

On 6 March 2024, the European Commission communicated to ESMA its intention to adopt the draft RTS with amendments. The Commission explains in its accompanying letter to ESMA, that a more proportionate approach should be taken to the drafting of the RTS, in particular, with regard to the calibration of the requirements relating to redemptions and LMTs, and which take into account the individualised situation of the ELTIF. This is a welcome development, addressing industry concerns that the RTS, as initially presented, could discourage the use of ELTIFs marketed to retail investors, defeating the purpose of the ELTIF regulatory reform. ESMA now has six weeks to submit the amended draft RTS to the Commission on the basis of the Commission's proposed amendments. If ESMA does not submit amended draft RTS within this timeframe, or the draft RTS are not consistent with the Commission's proposals, the Commission may adopt the RTS with the amendments it considers relevant or reject the RTS. The RTS will then continue through the legislative process.

Future developments

The Commission is obliged to conduct a general review of the ELTIF Regulation by 10 April 2030 and to review the sustainability aspects of ELTIFs by 11 January 2026. The latter includes consideration of an optional designation of "ELTIF marketed as environmentally sustainable" or "green ELTIF" including whether these designations should be reserved to ELTIFs with sustainable investment as their objective (Article 9 SFDR) or other sustainability criteria.

For more information please contact your usual ALG contact or get in touch with any member of our [Asset Management & Investment Funds team](#).

Key contacts



Stephen Carson
Partner
+353 1 649 2165
scarson@algoodbody.com



Michael Barr
Partner
+353 1 649 2327
mbarr@algoodbody.com



Kerill O'Shaughnessy
Partner
+353 1 649 2422
koshughnessy@algoodbody.com



Lorena Dunne
Partner
+353 1 649 2142
lodunne@algoodbody.com



Chris Bergin
Partner
+353 1 649 2021
cbergin@algoodbody.com



Yvonne McGonigle
Senior Knowledge Lawyer
+353 1 649 2734
ymcgonigle@algoodbody.com



Nollaig Greene
Senior Knowledge Lawyer
+353 1 649 2359
ngreene@algoodbody.com

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