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Key Features of the ELTIF 2.0 Framework

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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. The recently amended ELTIF framework provides for more flexible investment rules and removes barriers to retail participation, increasing the attractiveness of the framework in facilitating investment by both professional and retail investors in private assets.

The Central Bank of Ireland ("**Central Bank**") has introduced a new standalone chapter in its AIF Rulebook and has been open to applications for authorisation of closed-ended ELTIFs from 11 March 2024. The Central Bank has not gold-plated the ELTIF Regulation and the ELTIF chapter sets out the domestic supervisory and reporting requirements application to Irish-domiciled ELTIFs. Matheson LLP is pleased to have advised on the first ELTIFs authorised in Ireland.

The key features of the ELTIF are set out in the table below.

Eligible Investments **An ELTIF can invest in:** **(a) Eligible Investment Assets** **and** **(b) UCITS eligible investments**	**Equity, Debt and Loans issued or granted by Qualifying Portfolio Undertakings** ■ Equity or quasi-equity instruments which have been: ■ 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; ■ 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; ■ 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 the two bullet points above by the ELTIF from the qualifying portfolio undertaking or from a third party via the secondary market; ■ debt instruments issued by a qualifying portfolio undertaking; and ■ loans granted by the ELTIF to a qualifying portfolio undertaking with a maturity no longer than the life of the ELTIF. Under the revised ELTIF 2.0 framework, 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. **Investment Funds** Units or shares of one or several other ELTIFs, EuVECAs, EuSEFs, UCITS and EU AIFs managed by EU AIFMs provided that those investment funds have not themselves invested more than 10% of their capital in ELTIFs. **Real Assets** Direct holdings or indirect holdings via qualifying portfolio undertakings of individual real assets. "Real asset" means an asset that has an intrinsic value due to its substance and properties. **Simple, Transparent and Standardised Securitisations ("STS")** **European Green Bonds** issued by a qualifying portfolio undertaking.

Investment Restrictions	▪ Short selling ▪ Taking direct or indirect exposure to commodities ▪ Securities lending, securities borrowing or repurchase transactions, if more than 10% of the assets of the ELTIF are affected ▪ Using financial derivative instruments, except for hedging purposes
Portfolio Composition and Diversification	An ELTIF shall invest at least 55% of its capital in eligible investment assets. An ELTIF shall invest no more than: ▪ **20%** of its capital in instruments issued by, or loans granted to, any single qualifying portfolio undertaking; ▪ **20%** of its capital directly or indirectly in a single real asset; ▪ **20%** of its capital in units or shares of any single ELTIF, EuVECA or EuSEF; ▪ **10%** of its capital in assets referred to in point (b) of Article 9(1) where those assets have been issued by any single body. The aggregate value of STS in an ELTIF must not exceed **20%** of the value of the capital of the ELTIF. The aggregate risk exposure to a counterparty of the ELTIF stemming from OTC derivative transactions, repurchase agreements, or reverse repurchase agreements shall not exceed **10%** of the value of the capital of the ELTIF. An ELTIF may acquire no more than **30%** of the units or shares of a single ELTIF, EuVECA, EuSEF, UCITS and EU AIFs managed by EU AIFMs. These investment limits do not apply where ELTIFs are marketed to professional investors.
Borrowing / Leverage	An ELTIF may borrow cash provided that such borrowing fulfils 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.
Closed Ended / Open Ended	ELTIFs will generally be structured as closed-ended funds. All ELTIFs must have a limited duration but may offer redemption facilities in prescribed circumstances.

Umbrella Structures	It is possible to establish an Irish-domiciled ELTIF as an umbrella fund, where the individual sub-funds can accommodate different investment strategies. 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.
Marketing	An Irish ELTIF can be marketed anywhere within the European Economic Area ("**EEA**") to retail and / or professional investors.
Central Bank Authorisation	Where an ELTIF is marketed solely to professional investors (as defined in the Markets in Financial Instruments Directive) or to qualified investors (as defined in the Central Bank's AIF Rulebook), it can avail of the Central Bank 24-hour approval process. Where the ELTIF is marketed to retail investors, the Central Bank will review the draft prospectus and issue comments prior to the formal authorisation application being submitted.

Next Steps

The European Securities and Markets Authority ("**ESMA**") is mandated under ELTIF 2.0 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 ELTIF 2.0. 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.

A more detailed briefing note on ELTIF 2.0 is available here.

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