

## New Rules for ELTIFs Adopted

The European Council formally adopted a revised framework for European Long Term Investment Funds (“ELTIFs”) on 7 March 2023. ELTIFs are a form of regulated European fund that is designed to facilitate investment into long term investments including infrastructure projects by both institutional and private investors across the European Union (“EU”). The changes approved are expected to greatly increase the popularity of this structure and to come into force in the near future.

### Background

ELTIFs were designed as a collective investment framework to allow investors to invest into companies and projects that need long-term capital. The concept was a means of assisting to provide stable long-term finance to various infrastructure projects, unlisted companies, or listed small and medium-sized enterprises (SMEs) that issue equity or debt instruments for which there is no readily identifiable buyer. By providing finance to such projects, ELTIFs were intended to contribute to the financing of the European Union's real economy and the implementation of its policies as part of the single market capital markets union (CMU) project. ELTIFs are the only type of funds dedicated to long-term investments which can be distributed on a cross-border basis to both professional and retail investors in the EU. However, despite first being legislated for in 2015 only 57 ELTIFs have been registered to date and they are all domiciled in only 4 EU member states. This led to a belief that the applicable regime needed to be revised to be successful.

### Legislative Background

Legislation providing for ELTIFs was originally adopted at the European level in 2015 by means of Regulation (EU) 2015/760 on European long-term investment funds. This was reflected under Irish law by means of the European Union (European long-term investment funds) Regulations 2015. Following growing recognition of the need for this to be adapted and revised, the European Commission first presented a revised framework for ELTIFs on 25 November 2021. The Council adopted this position on 24 May 2022, with negotiations with the European Parliament ending in agreement on 19 November 2022.

On the 15 February 2023 the European Parliament passed the proposed changes. This all led to the approved finalised updates on 7th March 2023.

### Revised Regime

The revised framework broadens the scope of eligible assets and investments, allows more flexible fund rules that include the facilitation of fund-of-fund strategies, reduces certain barriers for retail investors, eases specific rules for ELTIFs distributed solely to professional investors and provides the potential for extra liquidity for ELTIF investors and newly subscribing investors through an optional liquidity window mechanism. In particular the scope of eligible investments has been broadened to permit investments into third countries, whereas previously these were confined to domestic EU projects. The definition of “real asset” has also been revised to broaden the scope of the real asset investment strategies that ELTIF managers can pursue.

Other updates in the revised regulation include increasing the maximum market capitalisation of qualifying portfolio undertakings in which ELTIFs can invest in order to provide ELTIFs with a better liquidity profile and increasing the extent to which leverage is permitted. Specifically, leverage is currently limited to 30 % of the NVA of an ELTIF, but under the new regime this will increase to 50% for ELTIFs marketed towards retail investors and 100% for those marketed towards professional investors.

### Next Steps

The revised ELTIF Regulation will enter into force on the twentieth day following its publication in the Official Journal - likely end March or April 2023.



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