

ELTIFs – the UK prepares for launch

The European Long-Term Investment Funds Regulation (ELTIFs Regulation), which is intended to increase the amount of long-term, non-bank finance available to companies and projects in the European Union, will apply in all member states from 9 December 2015.

The UK has recently taken steps to prepare for the introduction of ELTIFs, with the publication by the FCA on 3 September 2015 of a consultation paper on the changes to the FCA Handbook which are necessary for ELTIFs to operate effectively.

This briefing focuses on the main changes to the Investment Funds Sourcebook that will affect the AIFMs and depositaries of ELTIFs and outlines the legislative steps that are necessary to introduce the ELTIFs regime in the UK by the December 2015 deadline.

ELTIFs

ELTIFs are a new type of fund that will invest in long-term assets, such as infrastructure projects. They are intended to operate cross-border, in a similar way to UCITS, providing a framework for long-term investment from both institutional and retail investors.

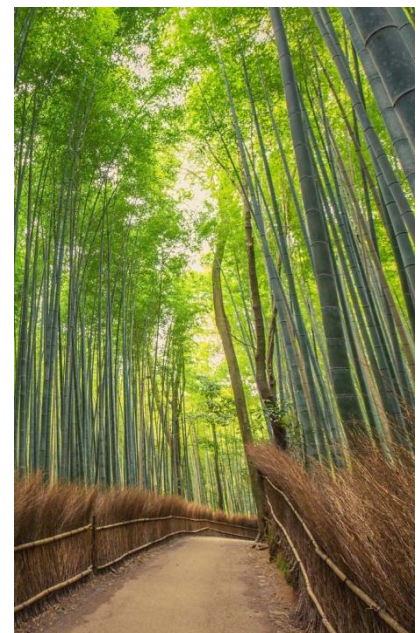
The rules underpinning the new regime are set out in the ELTIFs Regulation, which will be directly applicable across the EU. The rules cover several key areas, including authorisation, liability, investment and redemption policies, transparency and marketing.¹ Notably, ELTIFs will operate *within* the AIFMD regime,

which means that the manager of an ELTIF must be authorised as a full-scope AIFM and comply with AIFMD requirements, as well as those set out in the ELTIFs Regulation. In addition, the ELTIFs themselves must be authorised by the relevant competent authority, which, in the case of the UK, is the FCA.

As ELTIFs are intended to appeal to both institutional and retail investors, AIFMD managers of ELTIFs will be able to market to retail investors provided they meet the requirements for this in the ELTIFs Regulation. Depositaries AIFs targeted at retail investors will also have to comply with the specific requirements in the ELTIFs Regulation.

FCA Consultation

As the new rules are in the form of a regulation, the ELTIFs regime is directly applicable in all member states under EU law. However,



although no implementing legislation is required, changes to UK primary and secondary legislation, as well as consequential changes to the FCA Handbook, are necessary in order for

¹ For further information on the ELTIFs regulation see our client briefing [The European Long-Term Investment Funds Regulation January 2015](#)

the ELTIFs regime to operate effectively. It is the proposed changes to the FCA Handbook, which affect the glossary of definitions, fees, conduct of business, supervision, dispute resolutions, compensation and the investment funds sourcebook which are the subject of the current consultation, which closes on 5 October 2015. This shorter than usual consultation period has been set so that the FCA can get the necessary rules and guidance in place by 9 December 2015, when the ELTIFs regime becomes applicable.

The proposed changes to the FCA Handbook will affect AIFMs and depositories, in particular:

- UK AIFMs considering the launch of an ELTIF in the UK or another member state
- EU AIFMs which intend to manage and market ELTIFs in the UK
- UK depositories of AIFs and UCITS providing services to UK ELTIFs
- Advisers and distributors of ELTIFs

Changes to FUND affecting AIFMs and Depositories of ELTIFs

There are proposed changes to the Investment Fund Sourcebook (FUND) which will affect AIFMs and depositories of ELTIFs. The main changes are contained in a new section - FUND 4.2.

ELTIFs and Authorised Funds

An authorised fund, as defined in the Handbook Glossary, is an open ended collective investment scheme authorised by the FCA in accordance with part XVII of FSMA. Although ELTIFs are funds, and they will be authorised by the FCA, they are not

authorised under FSMA, so will generally fall outside the definition of an authorised fund, except in relation to certain rules and guidance on Fees and Compensation.

As the ELTIFs requirements are set out in the ELTIFs regulation rather than the FCA rules, this avoids all the requirements for an authorised AIF applying to an AIFM or a depository of an ELTIF, although they will still need to obtain permission to manage or act for an *authorised* AIF.

Permissions

Guidance in FUND 4.2 explains how the ELTIFs Regulation will affect Part 4A permissions for AIFMs and depositories. A full-scope UK AIFM of an ELTIF will need to have Part 4A permission to act as a manager of an *authorised* AIF, and a depository of an ELTIF will need to have Part 4A permission to act as a trustee or depository of an *authorised* AIF. This is because the requirements of AIFMs and depositories of an ELTIF are more like those for authorised AIFs than other types of AIFs. This means that AIFMs who do not currently have permission to manage an authorised AIF, or a depository which is not permitted to act for authorised AIFs, will have to vary their permissions.

Marketing

To market ELTIFs in its home member state the AIFM must comply with Article 31 of the AIFMD. Article 32 of the AIFMD applies to cross-border marketing. An AIFM is required to notify its competent authority if it intends to market in its home member state or in a host member state and, in both cases if the AIFM intends to market ELTIFs, additional information must be provided to the competent authority to comply with Article 31(4) of the

ELTIFs Regulation. This additional information includes the prospectus of the ELTIF, the Key Information Document, if the ELTIF is to be marketed to retail investors, and information on the 'facilities' referred to in Article 26 of the ELTIF Regulation e.g. for making subscriptions or redeeming units or shares in the fund. This information is to be submitted using the form in FUND 4 Annex 1R.

Depository requirements

The ELTIFs Regulation requires a depository to be appointed in accordance with the AIFMD, which means that depositories of ELTIFs will have to comply with both the requirements of the AIFMD and the ELTIFs Regulation. If the ELTIF is to be marketed to retail clients, the depository has to comply with specific requirements, set out in Article 29 of the ELTIFs Regulation, which are stricter than the AIFMD requirements for the appointment of a depository and the re-use of collateral. FUND 4.2.7.R disappplies the less onerous corresponding AIFMD provisions.

Transitional provisions relating to depositories

There is no equivalent transitional provision in the ELTIFs Regulation to that in the AIFMD which allows a UK authorised AIF to have a depository based in another EU jurisdiction until 22 July 2017. For this reason, the FCA is not intending to extend this transitional provision to depositories of ELTIFs, which means that depositories of a UK ELTIF must be authorised in the UK. However, it is possible that other member states will take a different view, and for a UK depository to be appointed as the depository of an EU ELTIF. For this reason, the FCA is intending to amend the transitional provisions to

take account of this possibility. In addition, the transitional provisions are amended to ensure that FUND 3.11.24R on the re-use of assets does not apply to the UK depositary of an EU ELTIF.

Next Steps

The consultation closes on 5 October 2015. A summary of feedback and the FCA response to it will be published before the ELTIFs Regulation takes effect.

The UK Treasury is expected to issue draft legislation and/or a consultation paper on the changes that need to be made to primary and secondary legislation. No date has been specified but this is expected before December 2015.

At the European level, the European Commission must adopt delegated acts in relation to several aspects of the ELTIFs Regulation. ESMA is required to submit draft regulatory technical standards to the European Commission; a consultation on those standards is ongoing and closes on 14 October 2015.

The ELTIFs Regulation takes effect on 9 December 2015.

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