

Chapter 4

European AIF regimes

4.1 Application

4.1.1

G The application of this chapter is summarised in the following table; the detailed application is provided in each section.

| Type of firm | Applicable sections |
|--|---------------------|
| <i>Full-scope UK AIFM of a UK ELTIF.</i> | FUND 4.2 (ELTIFs) |
| <i>Full-scope UK AIFM of an EEA ELTIF.</i> | FUND 4.2 (ELTIFs) |
| <i>UK depositary of a UK ELTIF.</i> | FUND 4.2 (ELTIFs) |

4.2 ELTIFs

Application

4.2.1

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This section applies to:

- (1) a *full-scope UK AIFM* of:
 - (a) a *UK ELTIF*; or
 - (b) an *EEA ELTIF*; and
- (2) a *UK depositary* of a *UK ELTIF*.

The ELTIF regulation

4.2.2

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- (1) The *ELTIF regulation* lays down uniform rules on the authorisation, investment policies and operating conditions of *UK AIFs* or *EEA AIFs*, or compartments of those *AIFs*, that are *marketed* in the *EEA* as European long-term investment funds (*ELTIFs*).
- (2) The *ELTIF regulation* is a directly applicable *EU* regulation.

Interaction between the ELTIF regulation and AIFMD

4.2.3

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- (1) To be eligible to manage an *ELTIF*, an *AIFM* needs to be:
 - (a) a *full-scope UK AIFM*; or
 - (b) a *full-scope EEA AIFM*.
- (2) This means that the *AIFM* and the *depositary* of an *ELTIF* need to comply with the applicable requirements of:
 - (a) *AIFMD*; and
 - (b) the *ELTIF regulation*.

Specific depositary provisions where an ELTIF is marketed to retail investors

4.2.4

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- (1) Article 29 of the *ELTIF regulation* contains specific provisions concerning the *depositary* of an *ELTIF* that is *marketed to retail clients* which have the effect of amending the corresponding provisions of *AIFMD*.
- (2) Article 29 of the *ELTIF regulation* is replicated in ■ FUND 4.2.5EU.

- (3) These specific provisions and the corresponding *AIFMD* provisions and *UK* transposition are summarised in ■ FUND 4.2.6G.
- (4) Where these specific provisions conflict with a *rule* or *guidance*, the relevant *rule* or *guidance* has been disapplied in ■ FUND 4.2.7R.

4.2.5

EU

Specific provisions concerning the depositary of an ELTIF marketed to retail investors

1. By way of derogation from article 21(3) of Directive 2011/61/EU, the depositary of an ELTIF marketed to retail investors shall be an entity of the type referred to in article 23(2) of Directive 2009/65/EC.
2. By way of derogation from the second subparagraph of article 21(13) and article 21(14) of Directive 2011/61/EU, the depositary of an ELTIF marketed to retail investors shall not be able to discharge itself of liability in the event of a loss of financial instruments held in custody by a third party.
3. The liability of the depositary referred to in article 21(12) of Directive 2011/61/EU shall not be excluded or limited by agreement where the ELTIF is marketed to retail investors.
4. Any agreement that contravenes paragraph 3 shall be void.
5. The assets held in custody by the depositary of an ELTIF shall not be reused by the depositary, or by any third party to whom the custody function has been delegated, for their own account. Reuse comprises any transaction involving assets held in custody including, but not limited to, transferring, pledging, selling and lending.

The assets held in custody by the depositary of an ELTIF are only allowed to be reused provided that:

- (a) the reuse of the assets is executed for the account of the ELTIF;
- (b) the depositary is carrying out the instructions of the manager of the ELTIF on behalf of the ELTIF;
- (c) the reuse is for the benefit of the ELTIF and in the interests of the unit- or shareholders; and
- (d) the transaction is covered by high quality and liquid collateral received by the ELTIF under a title transfer arrangement.

The market value of the collateral referred to in point (d) of the second subparagraph shall at all times amount to at least the market value of the reused assets plus a premium.

[Note: article 29 of the *ELTIF regulation*]

Summary of specific provisions concerning the depositary of an ELTIF marketed to retail investors

4.2.6

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| | ELTIF regulation | AIFMD reference | UK transposition |
|-----|--|---|---|
| (1) | Article 29(1) of the <i>ELTIF regulation</i> | Article 21(3) of <i>AIFMD</i> | FUND 3.11.10R to FUND 3.11.15G and FUND 3.11.18R |
| (2) | Article 29(2) of the <i>ELTIF regulation</i> | Second paragraph of article 21(13) and 21(14) of <i>AIFMD</i> | Regulations 30(4) and (5) and 32 of the <i>AIFMD UK regulation</i> (Note 1) |

| | ELTIF regulation | AIFMD reference | UK transposition |
|-----|--|--|---|
| (3) | Article 29(3) of the <i>ELTIF regulation</i> | Article 21(12) of <i>AIFMD</i> | Regulations 30(1) to (3) and 31(1) of the <i>AIFMD UK regulation</i> (Note 2) |
| (4) | Article 29(5) of the <i>ELTIF regulation</i> | Article 21(10) third paragraph of <i>AIFMD</i> | FUND 3.11.24R |

Note 1: The *AIFMD UK regulation* was amended by The European Long-term Investment Funds Regulations 2015 (SI 2015/1882) so that these regulations do not apply to a *depository* of an *EEA ELTIF* or a *UK ELTIF* that is *marketed to retail clients* under Chapter V of the *ELTIF Regulation* (see regulations 30(7) and 32(3) of the *AIFMD UK regulation*).

Note 2: No modifications are needed to these provisions as the liability of the *depository* referred to in article 21(12) of *AIFMD* is unaffected by the *ELTIF regulation*.

Disapplication of FUND depository provisions for an ELTIF marketed to retail investors

4.2.7

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The following provisions do not apply when an *ELTIF* is *marketed* to a *retail client*:

- (1) ■ FUND 3.11.10R to ■ FUND 3.11.15G (Eligible depositories for UK AIFs);
- (2) ■ FUND 3.11.18R (Eligible depositories for EEA AIFs); and
- (3) ■ FUND 3.11.24R (Reuse of assets).

Documentation and information required to market an ELTIF

4.2.8

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- (1) To market an *ELTIF* an *AIFM* is required to:
 - (a) notify its *competent authority* in accordance with article 31 of *AIFMD*, if it wishes to *market* the *ELTIF* in the *Home State* of the *AIFM* (see article 31(1) of the *ELTIF regulation*);
 - (b) notify its *competent authority* in accordance with article 32 of *AIFMD*, if it wishes to *market* the *ELTIF* in a *Host State* of the *AIFM* (see article 31(2) of the *ELTIF regulation*); and
 - (c) provide the following additional documentation and information to its *competent authority* (see article 31(4) of the *ELTIF regulation*):
 - (i) the prospectus of the *ELTIF*;
 - (ii) the key information document of the *ELTIF* in the event that it is *marketed to retail clients*; and
 - (iii) information on the facilities referred to in article 26 of the *ELTIF regulation*.
- (2) To *market* an *ELTIF*, a *full-scope UK AIFM* should submit a notice to the *FCA* using the forms in:
 - (a) ■ FUND 3 Annex 1D (Notification of intention to market an AIF in the United Kingdom) to *market* an *ELTIF* in the *United Kingdom*;

- (b) ■ SUP 13 Annex 8BR (Passporting: AIFMD) to market an *ELTIF* in an *EEA State* other than the *United Kingdom*; and
- (c) ■ FUND 4 Annex 1R (Additional documentation and information to market an *ELTIF*) (as required by ■ FUND 4.2.9R).

4.2.9

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The *AIFM* of an *ELTIF* must submit a notice to the *FCA* using the form in ■ FUND 4 Annex 1R (Additional documentation and information to market an *ELTIF*) to market the *ELTIF*.

Interaction between ELTIFs and authorised funds

4.2.10

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- (1) The requirements in relation to an *ELTIF* are set out in the *ELTIF regulation* rather than in *FCA rules*.
- (2) (a) As a result, the *Glossary* term of an *authorised fund* has only limited application to an *ELTIF*.
 - (b) This is to avoid all the requirements for an *authorised AIF* applying to an *AIFM* or *depository* of an *ELTIF*.
- (3) (a) The *Glossary* term of an *authorised fund* only applies to a *UK ELTIF* (other than a *body corporate* that is not a *collective investment scheme*) in ■ FEES 6 and *COMP*.
 - (b) This is to allow the *rules and guidance* in ■ FEES 6 and *COMP* to apply to a *UK ELTIF* (other than a *body corporate* that is not a *collective investment scheme*) in the same way as other types of *fund* that are authorised by the *FCA*.

4.2.11

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- (1) However, a *full-scope UK AIFM* of a *UK ELTIF* needs to obtain the *permission of managing an AIF* that is an *authorised AIF*.
- (2) Similarly, the *depository* of a *UK ELTIF* needs to obtain the *permission of acting as trustee or a depository of an AIF* that is an *authorised AIF*.
- (3) (a) Where the requirements for an *AIFM* or a *depository* of an *ELTIF* are concerned, an *ELTIF* bears more of a resemblance to an *authorised AIF* than an *unauthorised AIF*.
 - (b) As a result, *firms* that do not have the *permission to manage an AIF* that is an *authorised AIF* or *act as a trustee or depository of an AIF* that is an *authorised AIF* will need to vary their *permission* to be able to act as the *AIFM* or *depository* of an *ELTIF*.

Additional documentation and information to market an ELTIF

This annex consists only of one or more forms. Forms are to be found through the following address: -
FUND 4 Annex 1R

