RocaJunyent Informs

Banking and Finance Law Department
22 December 2024

European long-term investment funds (ELTIFs): developments introduced by Delegated Regulation (EU) 2024/2759

On 25 October 2024, the "*Commission Delegated Regulation (EU) 2024/2759 of 19 July 2024 supplementing Regulation (EU) 2015/760 of the European Parliament and of the Council as regards regulatory technical standards specifying the circumstances in which the use of a derivative shall have the sole purpose of hedging the risks inherent in other investments of the European long-term investment fund (ELTIF)"* was published in the Official Journal of the European Union*, the requirements relating to the redemption policy and liquidity management tools of an ELTIF, the circumstances for the matching of requests for transfer of units or shares of the ELTIF, certain criteria for the disposal of the assets of the ELTIF and certain elements of the indication of costs"* (hereinafter "**Delegated Regulation 2024/2759**").

As we have stated in previous articles and information alerts, the main objective that the European legislator sought with the creation of ELTIFs was to provide durable (long-term) financing for different infrastructure projects, unlisted companies or listed small and medium-sized enterprises (SMEs) that issue equity or debt instruments for which there is no easily identifiable buyer, thus contributing to financing the real economy of the European Union. They were also intended to give retail investors access to assets traditionally reserved for professional investors.

> **The main regulation of ELTIFs is found in the "Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds**

ELTIFs were incorporated into the Spanish legal system by virtue of Law 18/2022 of 28 September on the creation and growth of companies (colloquially known as the "*Crea y Crece Law*") which introduced amendments, among others, to "*Law 22/2014 of 12 November regulating venture capital entities, other closed-end collective investment entities and management companies of closed-end collective investment entities, and amending Law 35/2003 of 4 November on Collective Investment Institutions*".
As of the date of this alert, five (5) ELTIFs are registered in the European Long-Term Investment Funds Register of the Spanish Securities and Exchange Commission (CNMV). It is not yet a widely used form of closed-end collective investment in Spain, unlike in other jurisdictions such as Luxembourg, France and Italy.

This alert summarises the main aspects introduced by Delegated Regulation 2024/2759:

- It identifies the requirements that must be met in order for ELTIFs to be considered to be using financial derivative instruments for the sole purpose of hedging the risks inherent to their own investments (the only scenario in which ELTIFs are allowed to invest in derivatives).

- In order to ensure that the investment strategy of an ELTIF is in line and consistent with its liquidity profile and redemption policy, each of the elements to be taken into account by the management company are identified to assess whether the life of an ELTIF is compatible with the life cycles of each of its assets.

- As an exception to the general rule that ELTIFs may not redeem their units or shares prior to the maturity of the ELTIF, it is possible, subject to certain conditions, for ELTIFs to provide for the possibility of redemption prior to the maturity of the ELTIF. For this purpose, the documentation of the ELTIF may identify a minimum holding period that allows the ELTIF to complete the investment of its capital contributions. Regulation 2024/2759 identifies the circumstances and criteria to be taken into account by the management company for the purpose of determining the minimum holding period.

- It identifies what minimum information on redemption policy and liquidity management tools the management company shall provide to the competent authority in order to be able to demonstrate that an adequate liquidity management system and effective procedures are in place to control the liquidity risk of the ELTIF, consistent with the ELTIF's long-term investment strategy and proposed redemption policy.

- It identifies the elements to be contained in the redemption policy of the ELTIF where the ELTIF provides for the possibility of redemptions during its life.

- It sets out the criteria and elements for determining the percentage of ELTIF assets to which the overall amount of redemptions is limited during a given period, in line with the liquidity and investment management strategy communicated by the management company of the ELTIF.

- The elements to be contained in the policy for the matching of requests where the ELTIF documentation provides for the possibility to partially or fully match, during the life of the ELTIF, requests for transfer of units or shares of the ELTIF by outgoing investors with requests for transfer by potential investors are developed.

- It identifies the conditions and requirements for determining the execution price and the conditions for apportionment in the matching transfers referred to in Article 19(2a) of Regulation (EU) 2015/760, and the level of fees, costs and charges, if any, related to the transfer.

- It identifies what information ELTIFs shall disclose to investors when transfers are matched under the terms of Article 19(2a) of Regulation (EU) 2015/760 and the timing of such disclosure.

Each ELTIF should inform the competent authority of the orderly disposal of its assets in order to redeem the units or shares of investors after the maturity of the ELTIF no later than one (1) year before the maturity date of the ELTIF. At the request of the competent authority of the ELTIF, the ELTIF should submit to the ELTIF a detailed plan for the orderly disposal of its assets. Such a plan should contain, inter alia, an assessment of the market of potential buyers. For this purpose, Delegated Regulation 2024/2759 identifies which elements, in relation to each of the assets in which the ELTIF invests, should be taken into account by the management company in order to carry out such an assessment

The plan must also include a valuation of the assets to be disposed of. For this purpose, Delegated Regulation 2024/2759 establishes criteria to be taken into account by the management company in order to carry out such valuation.

- Finally, it includes definitions, calculation methods and presentation formats for the various costs incurred, directly or indirectly, by investors in the ELTIF, namely: (a) establishment costs, (b) costs related to the acquisition of assets, (c) performance-related management costs and fees, (d) distribution costs and (e) other costs, including administrative, regulatory, custodian, custodian, professional services and audit costs.