

# European Venture Capital Funds Regulations

## Introduction

On 20 May 2015 the Minister for Finance published the European Union (European Venture Capital Funds) Regulations 2015 ([SI 167/2015](#)). This legislation designates the Central Bank as the Competent Authority for the purposes of the European Venture Capital Funds Regulations (the EuVECA Regulations - [Regulation \(EU\) No 345/2013](#)).

The EuVECA Regulations came into effect in July 2013 at the same time as, and complimentary to, the Alternative Investment Fund Managers Directive (AIFMD - [Directive 2011/61/EU](#)). The EuVECA Regulations form a package alongside the European Social Entrepreneurship Funds Regulations ([Regulation \(EU\) No 346/2013](#)) in permitting regulated Alternative Investment Fund Managers (AIFMs) to market “qualifying venture capital funds” (EuVECAs) and “qualifying social entrepreneurship funds” (EuSEFs) on a pan-European basis.

Both EuVECAs and EuSEFs are part of the European Commission’s programme to expand capital markets in Europe and decrease the reliance on bank financing.

The term “Authorised AIFM” is used herein to refer to an AIFM that is fully AIFMD compliant and, unless otherwise specified, includes a reference to an alternative investment fund (AIF) which is self-managed. The term “Registered AIFM” refers to an AIFM that is exempt from the full requirements of AIFMD owing to it being “sub-threshold” (see “Who can avail of the EuVECA Regulations?” below) and which is obliged to register with the Central Bank. Unless otherwise specified, the term Registered AIFM also includes a reference to an AIF which is obliged to register with the Central Bank as a sub-threshold AIF and which is self-managed. An Authorised AIFM can be sub-threshold in circumstances where it has chosen to “opt in” to full AIFMD compliance.

## History and relevance of AIFMD

Registered AIFMs are not required to comply in full with all of the requirements of AIFMD. Unlike Authorised AIFMs, Registered AIFMs may not avail of the Europe-wide passport whereby an AIFM can market AIFs and raise capital in jurisdictions in addition to its “home” member state.

The EuVECA Regulations allow Registered AIFMs to avail of a pan-European EuVECA passport similar to that available to Authorised AIFMs under AIFMD.

## Who can avail of the EuVECA Regulations?

The EuVECA Regulations can be availed of by managers that:

- are established in the EU;
- do not exceed the threshold of total assets under management set out in Article 3(2) of AIFMD: €100m, or €500 million in funds with no leverage and a five year lock-in period;
- are subject to registration in their home member state in accordance with the AIFMD; and
- manage portfolios of qualifying venture capital funds (see “Qualifying venture capital funds” below) as defined in the EuVECA Regulations.

In short, the EuVECA Regulations apply to Registered AIFMs or sub-threshold Authorised AIFMs.

## Qualifying venture capital funds

An EuVECA fund is a collective investment undertaking that intends to invest at least 70% of its aggregate capital

contributions and uncalled committed capital in qualifying investments (see “Qualifying investments” below).

Assets other than qualifying investments can be acquired, up to a maximum of 30% of aggregate capital contributions and uncalled capital investments.<sup>1</sup>

## Qualifying investments

Under the EuVECA Regulations, qualifying investments cover:

- equity or quasi-equity instruments that are issued by:
  - a qualifying portfolio undertaking (see “Qualifying portfolio undertaking” below) and acquired directly by the EuVECA fund from the qualifying portfolio undertaking,
  - a qualifying portfolio undertaking in exchange for an equity security issued by the qualifying portfolio undertaking (i.e. convertible debt securities), or
  - an undertaking of which the qualifying portfolio undertaking is a majority-owned subsidiary and which is acquired by the EuVECA fund in exchange for an equity instrument issued by the qualifying portfolio undertaking;
- secured or unsecured loans granted by the EuVECA fund to a qualifying portfolio undertaking in which the EuVECA fund already holds qualifying investments, provided that no more than 30% of the aggregate capital contributions and uncalled committed capital in the EuVECA fund is used for such loans;
- shares of a qualifying portfolio undertaking acquired from existing shareholders of that undertaking; and/or
- units or shares of one or several other EuVECA funds, provided that those EuVECA funds have not themselves invested more than 10% of their aggregate capital contributions and uncalled committed capital in EuVECA funds.

## Qualifying portfolio undertaking

A qualifying portfolio undertaking is defined as an undertaking that:

- at the time of an investment by the EuVECA fund:
  - is not admitted to trading on a regulated market or on a multilateral trading facility as defined in the Markets in Financial Instruments Directive (MiFID - [Directive 2004/39/EC](#)),
  - employs fewer than 250 persons, and
  - has an annual turnover not exceeding €50 million or an annual balance sheet total not exceeding €43 million;
- is not itself a collective investment undertaking;
- is not a credit institution, investment firm, insurance undertaking, financial holding company, or mixed-activity holding company; and
- is established in an EU member state, or in a third country provided that the third country:
  - is not listed as a [Financial Action Task Force non-cooperative country and territory](#), and
  - has signed an agreement with the home member state of the EuVECA fund’s manager and with each other member state in which the units or shares of the EuVECA fund are intended to be marketed.

## Permitted investors

EuVECA funds may only be marketed to:

- investors who are professional clients as defined in MiFID;
- investors who may on request be treated as professional clients

pursuant to MiFID;

- investors who commit a minimum of €100,000 and confirm in writing that they are aware of the risks associated with making such an investment; and
- management personnel of the AIFM investing in the EuVECA funds they manage.

These conditions are broadly similar to those applied under the [Central Bank's AIF Rulebook](#) to distinguish Retail Investors from Qualified Investors.

## Other points to note

The manager of an EuVECA fund must comply with common provisions on conduct of business and conflicts of interest, organisation, delegation, valuation of assets, own funds, disclosure to investors and the provision of an annual report to the Central Bank (or other relevant national regulator).

The EuVECA Regulations do not have mandatory application; it is up to the manager of the EuVECA fund to register with the Central Bank (or other home state regulator).

Once registered, an EuVECA fund can be marketed across the EU to professional investors (as outlined above) and to use the terms "European Venture Capital Fund" and "EuVECA".

Where the assets under management of a Registered AIFM of an EuVECA fund rise above the €100m/€500 million threshold and the Registered AIFM is required to become an Authorised AIFM the funds can continue to be marketed using the "European Venture Capital Fund" / "EuVECA" brand. However, it must comply with AIFMD in full while continuing to comply with the EuVECA Regulations.

<sup>1</sup> The calculation of the 70% and 30% limits are calculated on the basis of amounts investible after deduction of all relevant costs and holdings of cash and cash equivalents. Holdings of cash and cash equivalents are not taken into account in calculating the 30% limit.

## KEY CONTACTS



**Brian McDermott**  
*Partner and Head of Asset Management & Investment Funds*  
+353 1 649 2307  
bmcdermott@algoodbody.com



**Michael Barr**  
*Partner*  
+353 1 649 2327  
mbarr@algoodbody.com



**Stephen Carson**  
*Partner*  
+44 20 7382 0820  
scarson@algoodbody.com



**Mary McKenna**  
*Partner*  
+353 1 649 2344  
mmckenna@algoodbody.com



**Nollaig Greene**  
*Knowledge Lawyer*  
+353 1 649 2359  
ngreene@algoodbody.com

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