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LUXEMBOURG LAW FIRM

Luxembourg EuVECA Managers and EuVECA Funds (European Venture Capital Funds)

INVESTMENT FUNDS



'Investment funds work informs much of boutique independent law firm Chevalier & Sciales' deal flow and it is this determined focus on work in the sector which ensures that clients receive 'very client focused and pragmatic' advice to fund managers on their fund structuring, regulatory and operational requirements. Although it also handles work in the retail space, the firm has gained most traction within the alternatives space, including on debt, private equity and hedge funds.'

Testimonial: 'The practice is very client focused and pragmatic. But most importantly, the partners have an extensive knowledge in their respective fields.'



'Well-positioned to handle alternative funds, whether first-time managers or historical players, the firm advises on time-to-market vehicles with a high demand for RAIFs and SCSps. Concerning asset classes, Chevalier & Sciales practice covers a diversity of assets, such as PE and real estate and is increasingly active in relation to crypto, hedge and debt funds.'

LITIGATION, ARBITRATION & DISPUTE RESOLUTION



'The boutique combines creative strategies with a practical, business-centric approach, whether managing high-stakes disputes for private entities and financial institutions, advising on contentious matters or in alternative dispute resolutions. They successfully represented a financial institution in the enforcement of a €500 million arbitral award against a European State in the Grand-Duchy of Luxembourg.'



'Headed by Rémi Chevalier, the arbitration department recently handled the defense of claimants in an investment arbitration regarding the application of the \$1 billion bilateral investment treaty between Switzerland and the Czech Republic. Chevalier has been appointed counsel before the European Courts of Human Rights.'

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INTRODUCTION

On 17 April 2013, the EU published Regulation (EU) No 345/2013 on European venture capital funds to facilitate the financing and marketing of VC funds within the EU, aiming to streamline the financing of the internal market. Venture capital provides finance to companies that are typically quite small, in the initial stages of their corporate existence, and demonstrate strong potential for growth and expansion. VC funds also contribute to the development of such companies with their valuable expertise and knowledge, business contacts, brand equity, and strategic advice. By providing an EU VC label based on EU harmonised requirements, the EU aims to stimulate economic growth, job creation, and capital mobilisation, foster the establishment and expansion of innovative undertakings, increase investments in research, and promote entrepreneurship, innovation, and competitiveness in the internal market.

The EuVECA Regulation was amended in 2018, 2021, and 2023 regarding the management of EuVECA Funds by authorised AIFMs, cross-border distributions, and pre-marketing, as well as the accessibility of information on the European single access point. Any references to the EuVECA Regulation should be understood as references to the [EuVECA Regulation as amended from time to time](#).

This publication focuses on EuVECA Managers and EuVECA Funds, particularly Luxembourg registered AIFMs qualifying as EuVECA Managers managing Luxembourg EuVECA Funds. In this context, the CSSF is the competent authority of the EuVECA Managers

and the EuVECA Funds. Luxembourg is indeed a competitive and efficient business location due to its flexibility, diversity, and broad range of services, skills, investors, and managers.

The EuVECA Regulation provides a product marketing passport to EuVECA Funds. This means that EU alternative investment funds (AIFs) fulfilling the requirements of the EuVECA Regulation can use the EuVECA label, an EU-regulated label, for marketing purposes. As a result, EuVECA Funds managed by a Luxembourg-registered AIFM can attract capital more quickly thanks to the marketing passport.

A key advantage of the EuVECA Regulation is the marketing passport of an AIF managed by a registered AIFM. The EuVECA Regulation has EEA relevance, meaning that all references to the EU in this publication should be understood as references to the EEA.

KEY FEATURES

- Eligibility for the 'EuVECA' label;
- Management by an EU-registered or EU-authorized AIFM of an EU AIF;
- Access to a marketing passport (which is broader than the marketing passport under the AIFMD);
- No obligation for appointment of a depositary if the EuVECA Manager is a registered AIFM;
- Potential for either an external or internal EuVECA Manager;
- Requirement that 70% of the EU AIF's capital be invested in qualifying investments.



In general, it is important to note that the EuVECA regime permits an AIF, managed by either a registered or an authorized AIFM, to use the EuVECA label for marketing and capital-raising purposes. The EuVECA Regulation acts as a supplementary layer of regulation, requiring the AIFM and the relevant AIF to comply with its provisions, the relevant implementing AIFM laws and regulations, and any other product-level requirements. EuVECA Funds and their managers must continually comply with the EuVECA Regulation and the applicable provisions of the AIFMD.

The EuVECA label is recognised and valid in all Member States.

WHAT CHANGES DOES THE EUVECA REGULATION BRING TO FUND STRUCTURING OPTIONS?

The EuVECA Regulation provides an EU label and grants an EU marketing passport for EuVECA Funds managed by either an EU-registered AIFM or an EU-authorized AIFM. As such, the marketing passport introduces a structuring option for the marketing of EuVECA Funds managed by EU-registered AIFMs, an opportunity that did not exist before the implementation of the EuVECA Regulation. Also, the EuVECA Regulation allows EuVECA Funds to be passported without the necessity of a depositary, sidestepping one of the significant conditions imposed for passporting an EU AIF under the AIFMD.

WHAT IS THE SCOPE OF THE EUVECA REGULATION?

The EuVECA Regulation may apply to all registered AIFMs in accordance with Article 3 of the AIFMD, as well as all authorised AIFMs in accordance with Chapter II of the AIFMD. However, not all the provisions of the EuVECA Regulation apply to authorised AIFMs. This is to avoid inconsistencies with the provisions of the AIFMD they must already comply with to be authorised as AIFMs. In this context, it is important to highlight that the following explanations, relating to the general principles, the delegations, the conflicts of interests, the own funds, and valuation requirements, apply specifically to registered AIFMs. They do not apply to authorised AIFMs, which are already subject to either comparable or more rigorous requirements under the AIFMD.

External EuVECA Managers who are registered on the list of EuVECA Managers may additionally manage UCITS, subject to authorisation under the UCITSD.

WHAT IS A EUVECA FUND?

A EuVECA Fund is a UCI that:

- (i) intends to invest at least 70 % of its aggregate capital contributions and uncalled committed capital in assets that are qualifying investments (see the definition below), calculated on the



basis of amounts investible after deduction of all relevant costs and holdings in cash and cash equivalents, within a time frame laid down in its rules or instruments of incorporation;

(ii) does not use more than 30 % of its aggregate capital contributions and uncalled committed capital for the acquisition of assets other than qualifying investments, calculated on the basis of amounts investible after deduction of all relevant costs and holdings in cash and cash equivalents;

(iii) is established within the EU, meaning a EuVECA Fund shall be an EU AIF.

WHAT ARE THE QUALIFYING INVESTMENTS OF EUVECA FUNDS?

The qualifying investments of EuVECA Funds are the following:

(i) equity or quasi-equity instruments that are issued by:

- a qualifying portfolio undertaking (see definition below) and acquired directly by the EuVECA Fund from the qualifying portfolio undertaking;
- a qualifying portfolio undertaking in exchange for equity security issued by the qualifying portfolio undertaking, 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;

(ii) 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;

(iii) shares of a qualifying portfolio undertaking acquired from existing shareholders of that undertaking;

(iv) units or shares of one or several other qualifying venture capital funds, provided that those qualifying venture capital funds have not themselves invested more than 10 % of their aggregate capital contributions and uncalled committed capital in qualifying venture capital funds. Therefore, the structuring of EuVECA Funds of EuVECA Funds is possible. Attention should be drawn to the fact that ESMA has clarified that this point (iv) shall be understood as authorizing EuVECA Funds to invest in EU AIFs that are not yet registered as EuVECA Funds but which materially comply with the criteria of the definition of qualifying venture capital funds (see definition of EuVECA Funds above) and the 10% limit of such point (iv).



WHAT ARE THE QUALIFYING PORTFOLIO UNDERTAKINGS OF EUVECA FUNDS?

The qualifying portfolio undertaking of a EuVECA Fund is an undertaking that:

(i) at the time of the first investment by the EuVECA Fund in that undertaking complies with one of the following conditions:

- the undertaking is not admitted to trading on a regulated market or an MTF, and employs up to 499 persons;
- the undertaking is an SME which is listed on an SME Growth Market;

(ii) is not itself a UCI;

(iii) is not one or more of the following:

- a credit institution;
- an investment firm;
- an insurance undertaking;
- a financial holding company; or
- a mixed-activity holding company.

(iv) is established within the territory of a Member State, or in a third country provided that the third country:

- is not listed as a Non-Cooperative Country and Territory by the FATF on AML/CFT; and
- has signed an agreement with Luxembourg and with each other Member State in which the units or shares of the EuVECA Fund are intended to be marketed to

ensure that the third country fully complies with the standards laid down in Article 26 of the OECD Model Tax Convention on Income and on Capital and ensures an effective exchange of information in tax matters, including any multilateral tax agreements.

ARE THERE PRE-MARKETING RULES APPLICABLE TO THE EUVECA MANAGER?

Yes. Pre-marketing is the provision of information or communication, direct or indirect, on investment strategies or investment ideas by a EuVECA Manager, or on its behalf, to potential investors domiciled in the EU in order to test their interest in a EuVECA Fund either not established or established but not yet notified to the CSSF, in that Member State where the potential investors are domiciled. Pre-marketing does not occur when there is no offer or placement to the potential investor to invest in the units or shares of the EuVECA Fund. Similarly, it is not considered pre-marketing when the information shared with potential investors is sufficient for them to commit to the units or shares of a EuVECA Fund, or if the information includes subscription forms or similar documents, or final-form constitutional documents, prospectus or offering documents of a yet-to-be-established EuVECA Fund.

When a EuVECA Manager performs pre-marketing of the shares or units of the EuVECA Fund, the draft prospectus or offering document given to the investors should not provide

sufficient information for investors to make an investment decision. It shall clearly state that:

- they do not constitute an offer or an invitation to subscribe to units or shares of a EuVECA Fund; and
- the information presented should not be relied upon as it is incomplete and subject to change.

A EuVECA Manager must also adhere to the following rules:

Investors do not acquire units or shares in a EuVECA Fund through pre-marketing. The investors contacted as part of pre-marketing can only acquire units or shares in that EuVECA Fund through marketing, not pre-marketing.

Any subscription by professional investors, within 18 months of the EuVECA Manager initiating pre-marketing, to units or shares of a EuVECA Fund referred to in pre-marketing documentation, or of a EuVECA established as a result of the pre-marketing, is considered as resulting from marketing. Therefore, the EuVECA Manager must comply with the applicable notification procedures outlined in the EuVECA Regulation (see below).

Within two weeks of starting pre-marketing, a EuVECA Manager must send an informal letter, either in paper form or electronically, to the CSSF. This letter must specify the Member States where and the periods during which pre-marketing has been or is being conducted. It should include a brief description of the pre-marketing including information on the presented investment strategies, and

where relevant, a list of the EuVECA Funds that are or were the subject of pre-marketing.

The CSSF then promptly informs the competent authorities of the Member States where the EuVECA Manager has been or is currently engaged in pre-marketing. The competent authorities of the Member State where pre-marketing has been or is being conducted may request the CSSF to provide additional information about the pre-marketing taking place within its territory. For instance, in a scenario where a Luxembourg EuVECA Manager is pre-marketing a Luxembourg EuVECA Fund in Germany, BaFin (the German Financial Supervisory Authority) may request additional information from the CSSF about the pre-marketing activities conducted in Germany.

A third party, if authorized as an investment firm, credit institution, UCITS management company, an AIFM, or acts as a tied agent, may engage in pre-marketing on behalf of an authorised EuVECA Manager. Such a third party must comply with all obligations outlined in this section.

Attention should be paid to the fact that while these rules may seem stringent, the EuVECA Manager does not need to provide information about the content or the recipients of pre-marketing nor comply with any other conditions imposed by a Member State before engaging in pre-marketing. For the sake of clarity, this means that Member States cannot impose further restrictions on pre-marketing conducted by a EuVECA in their territory.



WHAT ARE THE RULES RELATING TO THE 30% LIMIT ON NON-QUALIFYING INVESTMENTS, AS WELL AS THOSE ON LEVERAGE AND BORROWING?

When acquiring assets other than qualifying investments, no more than 30 % of the fund's aggregate capital contributions and uncalled committed capital may be used for the acquisition of such assets. The 30 % threshold should be calculated based on amounts that can be invested after deducting all relevant costs. Holdings in cash and cash equivalents are not included when calculating this threshold, as they are not considered investments.

EuVECA Managers should not employ any method at the level of the EuVECA Fund that increases the exposure of the fund beyond the level of its committed capital. This includes borrowing cash or securities, engaging in derivative positions, or any other means.

Consequently, the EuVECA Managers are only permitted to borrow, issue debt obligations, or provide guarantees at the level of the EuVECA Fund when such borrowings, debt obligations, or guarantees are covered by uncalled commitments.

TO WHOM MAY EUVECA MANAGERS MARKET THE SHARES OR UNITS OF EUVECA FUNDS?

EuVECA Managers may market the shares or units of EuVECA Funds exclusively to investors deemed professional clients either by nature or upon request, in accordance with Annex II of MiFID, or to other investors who meet the following criteria:

- They commit to investing a minimum of EUR 100,000; and
- They state in writing, in a document separate from the commitment agreement their awareness of the risks associated with the proposed commitment or investment.

It should be noted that executives, directors, or employees involved in the management of a EuVECA Manager are not required to qualify as professional investors under MiFID when investing in the EuVECA Fund they manage.

WHAT ARE THE APPLICABLE RULES REGARDING PREFERENTIAL TREATMENT?

The fundamental principle requiring fair treatment of investors applies to the EuVECA



Manager. However, this does not prevent more favourable treatment of private investors compared to a public investor, provided that such treatment complies with State aid rules and is disclosed in the EuVECA Fund's rules or instruments of incorporation.

In fact, the EuVECA Manager is not allowed to provide preferential treatment unless it is disclosed in the rules or instruments of incorporation of the EuVECA Fund.

When structuring the EuVECA Fund, attention should be paid to this point to avoid the need for amending the articles with shareholder consent regarding this matter. Furthermore, the definition of preferential treatment should be assessed according to Luxembourg law, as the notion of investors in a comparable situation might raise specific challenges.

WHAT ARE THE GENERAL PRINCIPLES APPLICABLE TO EUVECA MANAGERS?

The EuVECA Managers must for each EuVECA Fund they manage:

- act honestly, fairly, and with due skill, care, and diligence in conducting their activities;
- apply appropriate policies and procedures for preventing malpractices that can reasonably be expected to affect the interests of the investors and the qualifying portfolio undertakings;
- conduct their business activities in such a way as to promote the best interests of the

qualifying venture capital funds they manage, the investors therein, and the integrity of the market;

- apply a high level of diligence in the selection and ongoing monitoring of investments in qualifying portfolio undertakings;
- possess adequate knowledge and understanding of the qualifying portfolio undertakings in which they invest; and
- treat their investors fairly (see above for preferential treatments).

WHAT ARE THE DELEGATION PROVISIONS APPLICABLE TO EUVECA MANAGERS?

The delegation of functions by a EuVECA Manager to third parties does not affect the EuVECA Manager's liability towards the EuVECA Fund or its investors. The EuVECA Manager must not delegate functions to such an extent that, in essence, it can no longer be considered the EuVECA Manager, or so that it becomes a letter-box entity.

The delegation of functions must not undermine the effectiveness of the EuVECA Manager's supervision and, in particular, must not prevent it from acting, or the EuVECA Fund from being managed, in the best interests of the investors.

WHAT ARE THE OWN FUND REQUIREMENTS APPLICABLE TO THE EUVECA FUNDS?

The EuVECA Manager must maintain sufficient own funds and utilize adequate and appropriate human and technical resources for the effective management of the EuVECA Funds at all times. The own funds should always amount to at least one-eighth of the fixed overheads incurred by the EuVECA Manager in the preceding year. The competent authority of the EuVECA Manager, which is the CSSF in Luxembourg, may adjust that requirement in the event of a significant change to the business. If a full business year has not been completed, the requirement will be one-eighth of the fixed overheads projected in the business plan, unless the CSSF requires an adjustment to that plan.

The initial capital for both internal and external EuVECA Managers should be EUR 50,000.

If the value of the EuVECA Funds managed by the EuVECA Manager exceeds EUR 250,000,000, additional own funds must be provided. This additional amount should be equal to 0,02 % of the amount by which the total value of the EuVECA Funds exceeds EUR 250,000,000. The EuVECA Manager may be permitted not to provide up to 50 % of such additional own funds if it has a guarantee of the same amount from a credit institution or an insurance undertaking located in the EU, or in a third country where it is subject to prudential rules that the CSSF considers equivalent to those set in Union law.

Own funds should be invested in liquid

assets or assets readily convertible into cash in the short term and should not include speculative positions.

WHAT VALUATION RULES AND ACCOUNTING REQUIREMENTS SHOULD THE EUVECA FUNDS COMPLY WITH?

Rules for the valuation of assets of the EuVECA Funds shall be laid down in their rules or instruments of incorporation and shall ensure a sound and transparent valuation process. The valuation procedures used shall ensure that the assets are valued properly and that the asset value is calculated at least annually. Given that the purpose of the EuVECA Regulation is to grant a marketing label, references are made to the applicable accounting rules, company law rules, and product rules relating to valuation.

A Luxembourg EuVECA Manager shall provide an annual report to the CSSF for each EuVECA Fund they manage, within six months after the end of the financial year. This report shall detail the composition of the portfolio of EuVECA Fund and its activities during the previous year. It should also disclose the profits earned by the EuVECA Fund at the end of its life and, if applicable, the profits distributed during its life. This report shall also include its audited financial accounts. The annual report must be produced in compliance with existing reporting standards and the terms agreed



upon between the EuVECA Managers and investors. The report should be made available to investors upon request. Furthermore, the EuVECA Managers and investors may agree to provide additional disclosures to each other.

The audit of the EuVECA Fund shall be conducted at least annually. It must confirm that money and assets are held in the name of the EuVECA Fund and that the EuVECA Manager has established and maintained adequate records and checks regarding the use of any mandate or control over the money and assets of the EuVECA Fund and its investors.

Where a EuVECA Manager is required to make public an annual financial report in accordance with transparency requirements relating to information about issuers whose securities are admitted to trading on a regulated market, the information mentioned above may be provided separately or as an additional part of the annual financial report.

WHAT ARE THE OBLIGATIONS OF PROVIDING INVESTOR INFORMATION CONCERNING EUVECA FUNDS?

The EuVECA Managers shall, for each EuVECA Fund they manage, inform the respective investors, in a clear, fair, understandable, and not misleading manner, of the following prior to their investment decision:

- the identity of the EuVECA Manager and any other service providers it has contracted in relation to the management of the EuVECA Fund, and a description of the delegates' duties;
- the amount of own funds available to the EuVECA Manager for maintaining the adequate human and technical resources necessary for the proper management of its EuVECA Funds;
- a description of the investment strategy and objectives of the EuVECA Fund, including:
 - the types of the qualifying portfolio undertakings in which it intends to invest;
 - any other EuVECA Fund in which it intends to invest;
 - the types of qualifying portfolio undertakings in which the target EuVECA, if any, intends to invest in;
 - the non-qualifying investments which it intends to make;
 - the techniques that it intends to employ; and
 - any applicable investment restrictions;
- a description of the risk profile of the EuVECA Fund and any risks associated with the assets in which it may invest or investment techniques that may be employed;
- a description of the valuation procedure and of the pricing methodology for the valuation of assets, including the methods used for the valuation of qualifying portfolio undertakings;
- a description of how the remuneration of the EuVECA Manager is calculated;
- a description of all relevant costs and of the maximum amounts thereof;
- where available, the historical financial performance of the EuVECA Manager;
- the business support services and

the other support activities provided by the EuVECA Manager or arranged through third parties in order to facilitate the development, growth or in some other respect the ongoing operations of the qualifying portfolio undertakings in which the EuVECA Fund invests, or, where these services or activities are not provided, a negative disclosure;

- a description of the procedures by which the investment strategy or investment policy, or both, may be amended.

Such information is to be kept up to date and reviewed regularly where relevant.

Where the EuVECA Fund is required to publish a prospectus, in accordance with the Prospectus Regulation, or in accordance with the national law of the EuVECA Fund, the above-mentioned information may be provided separately or as a part of the prospectus.

HOW DOES THE EUVECA MANAGER ADDRESS CONFLICTS OF INTEREST?

Conflicts of interest (COIs) are situations where a EuVECA Manager, a person who effectively conducts the business of that manager, an employee, or any person who directly or indirectly controls or is controlled by that manager by another EuVECA Fund or a UCI, or the investor therein:

- is likely to make a financial gain, or avoid a financial loss, at the expense

of the EuVECA Fund or its investors;

- has an interest in the outcome of a service or an activity provided to the EuVECA Fund or to its investors which is distinct from their interest;

- has an interest in the outcome of a transaction carried out on behalf of the EuVECA Fund or its investors which is distinct from their interest;

- has a financial or other incentive favouring the interest of one or more investor(s) or another UCI over the interest of the EuVECA Fund or its investors,

- has a financial or other incentive favouring the interest of investor of the EuVECA Fund over the interest of one or more investor(s) of the same EuVECA Fund;

- carries out the same activities for both the EuVECA Fund and another UCI, or an investor;

- pays or is paid any fee or commission, or provides or is provided with any non-monetary benefits, other than those laid down in Article 24 (1) of AIFMD Commission Delegated Regulation;

- influences and has a personal interest in influencing the development of a qualifying portfolio undertaking to the disadvantage of the EuVECA Fund or its investors or at the expense of the achievement of the objectives of the EuVECA Fund.

These definitions are quite broad compared to some Luxembourg company rules relating to COIs as the EuVECA Regulation deals with, inter alia, non-financial COIs.

The EuVECA Manager shall establish, implement and maintain a written COI policy appropriate to its size and organisational

structure given the nature, scale, and complexity of its business. The COI policy identifies the circumstances that may give rise to a COI and specifies the measures to be adopted and the procedures to be followed on an ongoing basis.

The procedures and measures to prevent, manage and monitor the COIs shall include at least the following steps:

- the prohibition of the exchange of information between the persons or entities mentioned in the above definition of COIs, where such an exchange of information could lead to or facilitate a COI;
- the separation of the supervision of persons or entities mentioned in the above definition of COIs whose interests may conflict;
- the removal of the connection between or dependence on the remuneration of the persons or entities mentioned in the above definition of COIs principally engaged in one activity, and the remuneration of, or revenues generated by, persons or entities principally engaged in another activity, where a COI may arise in relation to those activities;
- the prevention of persons or entities mentioned in the above definition of COIs from exercising inappropriate influence over the management of the EuVECA Fund;
- the prevention or control of the involvement of persons or entities mentioned in the above definition of COIs in any activity that may lead to a COI.

When these measures and procedures are insufficient to prevent, with reasonable confidence, the risks of damage to the interests of the EuVECA Fund or its investors,

the managers of a EuVECA Fund shall promptly inform their senior management or other competent internal body, or the senior management or other competent internal body of the EuVECA Fund, of the risk of damage to the interests of that fund or its investors. Also, they may take any decision or action to ensure that they act in the best interest of the EuVECA Fund or its investors.

Regarding the COIs relating to the portfolio of the EuVECA Fund, the EuVECA Manager shall have written adequate and effective strategies for determining when and how to exercise voting rights held in the portfolio of the EuVECA Fund for the benefit of both EuVECA Fund concerned and its investors.

These strategies shall include at least the following steps:

- monitoring the relevant corporate actions;
- ensuring that the exercise of voting rights is in accordance with the investment objectives and policy of the EuVECA Fund;
- prevention and management of any COI arising from the exercise of those voting rights.

Investors may request the EuVECA Manager to provide them with a summary description of such strategies and the details of the actions taken pursuant to them.

Where organisational arrangements made by a EuVECA Manager are not sufficient to ensure, with reasonable confidence, that risks of damage to investors' interests will be prevented, the EuVECA Manager shall disclose the COIs and their general nature or sources

to the investors in a durable medium and keep that information up to date. Such disclosures may be performed on a website provided that the following conditions are satisfied:

- the investors have been notified of the address of the website and of the place on the website where the information can be accessed;
- the investors have consented to the provision of that information by means of a website; and
- the information is continuously accessible on the website for such a period as the investors may reasonably need to access it.

WHAT CONDITIONS MUST A REGISTERED AIFM MEET WHEN INTENDING TO MARKET A EUVECA FUND?

A EuVECA Manager, registered as an AIFM, intending to use the designation 'EuVECA' for marketing EuVECA funds must inform the CSSF of their intention and provide the following information:

- the identity of the persons who effectively conduct the business of managing EuVECA Funds;
- the identity of the EuVECA Funds, the units or shares which are to be marketed, and their investment strategies;
- information on the arrangements made for complying with the conditions for the

use of the designation of EuVECA as further developed in the EuVECA Regulation (mostly the above-mentioned points);

- a list of Member States where the EuVECA Manager intends to market each EuVECA Fund.

The CSSF will register the EuVECA Manager provided that the following conditions are met:

- the persons who effectively conduct the business of managing EuVECA Funds are of sufficiently good repute and are sufficiently experienced also in relation to the investment strategies pursued by the EuVECA Manager;
- such information is complete; and
- the arrangements made for complying with the conditions for the use of the designation of EuVECA as further developed in the EuVECA Regulation (mostly the above-mentioned points) are indeed compliant with such conditions.

The CSSF will inform the applicant whether it has been registered as a EuVECA Manager no later than two months after receiving all required information.

This registration is valid throughout the EU and permits EuVECA Managers to market EuVECA Funds under the EuVECA label across the EU. The competent authorities of the Member States where the EuVECA Fund is marketed may not impose on the EuVECA Manager any requirements or administrative procedures (including fees and other charges) related to the marketing of their EuVECA Funds, nor shall they require any prior approval of that marketing. The EuVECA Manager must inform the CSSF



when it intends to market a new EuVECA Fund or an existing one in a Member State not previously mentioned in the list of Member States where the marketing of the shares or units of such EuVECA Fund is intended.

Registration as a EuVECA Manager also constitutes a registration as an AIFM in terms of managing EuVECA Funds. However, the EuVECA marketing passport only applies to EuVECA Funds, meaning the EuVECA Manager may manage non-EuVECA AIFs, but they cannot be marketed under the EuVECA marketing passport.

A EuVECA Manager must notify the CSSF of any material changes to the conditions for its initial registration as a EuVECA Manager before implementing such changes. This requirement shows that even an unregulated AIF, managed and marketed under the EuVECA label, is thus regulated. If the CSSF decides to impose restrictions or reject the changes, it will inform the EuVECA Manager within one month of receipt of the notification of those changes. The CSSF may extend that period by up to one month if it deems necessary due to the specific circumstances of the case, after notifying EuVECA Manager. The changes may be implemented if the CSSF does not oppose the changes within the relevant period.

WHAT ARE THE CONDITIONS THAT AUTHORISED AIFMS MUST ADHERE TO IF THEY PLAN TO USE THE EUVECA DESIGNATION FOR THE AIFS THEY MANAGE?

Authorised AIFMs should apply for registration of the AIFs they intend to label as 'EuVECA'. This registration application should be submitted to the competent authority of the funds, which, for Luxembourg investment funds, is the CSSF. The application should include the following:

- the rules or instruments of incorporation;
- the same information required for an applicant registered AIFM as mentioned above;
- the information on the identity of the depositary;
- a list of Member States in which the applicants have established, or intend to establish, the AIFs.

Applicant authorised AIFMs are not required to provide information or documents they have already submitted under the AIFMD. They should comply with the same requirements imposed on the registered AIFMs as mentioned earlier.

The CSSF should inform the applicant whether the fund has been registered as a EuVECA Fund no later than two months after



receiving all the required documentation. Registration is valid across the entire EU and permits the marketing of EuVECA Funds throughout the Union under the 'EuVECA' designation. The competent authorities of the Member States where the EuVECA Fund is marketed may not impose any requirements or administrative procedures (including fees and other charges) relating to the marketing of their EuVECA Funds. They also should not require any approval of the marketing prior to its commencement.

The EuVECA Manager should inform the CSSF when it intends to market a new EuVECA Fund, or an existing one in a Member State not previously mentioned in the list of Member States where the marketing of the shares or units of such EuVECA Fund is intended.

Generally, the EuVECA Regulation acts as *lex specialis* and supersedes the provisions of the AIFMD in the absence of clear rules. ESMA confirmed this rule in Answer 1c of its Q&As on the application of the EuVECA Regulation.

CAN THE CSSF REFUSE TO REGISTER AN AIFM AS EUVECA MANAGER AND/OR AN AIF AS A EUVECA FUND?

Yes. Any refusal to register an AIFM as EuVECA Manager or an AIF as a EuVECA Fund must be substantiated and communicated to the applicant. This refusal is subject to a right of appeal. This right of appeal is also applicable when no decision on registration has been made within two months of the applicant providing all required information.

IS THERE AN EU REGISTRY THAT LISTS ALL EUVECA MANAGERS?

Yes. ESMA maintains a central database, which is publicly accessible on its website. It lists all EuVECA Managers and EuVECA Funds, as well as the countries in which those funds are marketed. (https://registers.esma.europa.eu/publication/searchRegister?core=esma_registers_funds).

GLOSSARY OF TERMS

- **AIF:** Alternative investment funds as defined in the AIFMD.
- **AIFM: Alternative investment fund manager as defined in the AIFMD.**
- **AIFMD:** Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers as amended from time to time
- **AML/CFT:** Anti-money laundering/counter-financing of terrorism.
- **COI:** Conflict of interest.
- **CSSF:** Commission de Surveillance du Secteur Financier, the Luxembourg competent authority for the supervision of the financial sector
- **EEA:** European Economic Area.
- **EU:** European Union or established one of the Member States of the European Union as the case may be.
- **EuVECA Fund:** Investment fund with the EuVECA label according to the EuVECA Regulation
- **EuVECA Manager:** AIFM with the EuVECA label according to the EuVECA Regulation.
- **EuVECA Regulation:** Regulation (EU) No 345/2013 of the European Parliament and of the Council of 17 April 2013 on European venture capital funds as amended from time to time.
- **FATF:** Financial Action Task Force
- **Member State:** Member State of the EU.
- **MiFID:** Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU.
- **Multilateral trading facility (MTF):** Multilateral system, operated by an investment firm or a market operator, which brings together multiple third-party buying and selling interests in financial instruments – in the system and in accordance with non-discretionary rules – in a way that results in a contract.
- **Prospectus Regulation:** Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC.
- **SME:** Company that has an average market capitalisation of less than EUR 200 000 000 on the basis of end-year quotes for the previous three calendar years
- **SME Growth Market:** a MTF that is registered as an SME growth market in accordance with MiFID.
- **UCI:** Undertaking for collective investments/ collective investment undertaking
- **UCITS:** Undertaking for Collective Investment in Transferable Securities constituted in accordance with UCITSD.
- **UCITSD:** Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as amended from time to time.
- **VC:** Venture capital.

HOW CAN WE ASSIST YOU?

Our investment management team:

- Supports you in finding the suitable investment vehicle to meet your requirements and your goals from a marketing, regulatory, legal and tax perspective.
- Introduces you to the suitable service providers to meet your requirements (i.e., custodian bank, AIFM, administrative agent, registrar and transfer agent and auditor).
- Provides assistance with the establishment of the fund (i.e., drafting of the PPM, assistance with the incorporation of the fund and its general partner and regulatory filings with the CSSF).
- Provides assistance with respect to the migration of offshore funds into Luxembourg funds.
- Provides corporate support services throughout the lifetime of your fund (i.e., amendment of fund documents, restructuring, launching or closing sub-funds, etc.).
- Provides assistance with changing of service providers including custodian bank, fund administrator, auditor or registrar and transfer agent).
- Provides assistance with the listing of the units of the fund on the Luxembourg Stock Exchange's regulated or EURO MTF markets.
- Provides support in the registration of the fund in other jurisdictions (in cooperation with local service providers).
- Provides advice on AIFMD-related issues.

- Provides advice to fund promoters on local private placement rules for marketing their funds in Luxembourg.
- Keeps you up to date on new legal and regulatory developments.



OLIVIER SCIALES

Head of Investment Management

Partner

Tel: +352 26 25 90 30

oliviersciales@cs-avocats.lu



CÉCILE RECHSTEIN

Investment Management

Partner

Tel: +352 26 25 90 30

cecilerechstein@cs-avocats.lu



CHEVALIER & SCIALES
LUXEMBOURG LAW FIRM

Chevalier & Sciales is a Luxembourg law firm established in 2005 with specialist expertise in investment management, litigation, arbitration and dispute resolution, tax, banking, finance and capital markets, private wealth management and corporate transactions. Our dynamic litigation and transaction teams have an international reputation for bringing together excellence and intellectual rigour with a practical and business-minded approach in serving our clients.

Our aim is to offer a one-stop-shop service to our clients and to provide tailored solutions to meet their needs, responsively and cost-effectively. Our practice areas are structured to ensure a comprehensive understanding of our clients' business and markets. We work with recognised service providers to provide you with the assistance and services you require through every aspect of your transactions and business.

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LUXEMBOURG

36-38 Grand-Rue
L-1660 Luxembourg
Grand Duchy of Luxembourg

Tel : +352 26 25 90 30
Fax : +352 26 25 83 88

www.cs-avocats.lu //

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