

**A QUICK GUIDE TO
VENTURE CAPITAL LAW IN EUROPE**

April 2013

INTRODUCTION



Private Equity and Venture Capital in Europe

Finance in Europe has been the subject of a wide range of new regulation since the onset of the economic downturn in 2007-08. Increased legislation may be perceived as an important tool to help prevent a repeat of the mistakes of the past, but it may also reduce the efficiency of the European single market as a focus for investments.

At the heart of this dichotomy are the new Directive on Alternative Investment Fund Managers (AIFM Directive) and “passport” regulation for Venture Capital (VC) Funds. The latter aims to improve the efficiency of VC investments in Europe while avoiding the tightening of capital and other requirements that the AIFM Directive will fully implement for certain Funds from July 2013.

But this challenge may prove even harder than anticipated due to the existing current fragmented legal framework across many countries.

Meritas therefore presents here a reference guide for Private Equity and Venture Capital professionals, advisers and lawyers. It sets out the current status of jurisdictions, implementation of new regulation and key considerations to take into account when deciding to invest in different European jurisdictions.

This guide will ensure that businesses have:

- the necessary knowledge regarding the legal requirements applicable to investors; and

- the foresight to implement new investment decisions accordingly.

In other words, don't be taken by surprise; use this guide to successfully implement investment strategies and expand your acquisition targets across Europe.

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- Corporate Governance
- Defence of shareholder's rights
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- Due Diligence
- Insolvency & Bankruptcy
- Joint Ventures
- Mergers & Acquisitions – LBO, MBO, MBI, BIMBO
- Responsibility for the appointment and dismissal of administrators

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Before commencing an investment we therefore recommend you seek independent professional legal, tax and investment advice as to whether it is suitable for your particular needs and circumstances. Failure to seek detailed professional personally-tailored advice prior to acting could lead to you acting contrary to your own best interests.

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REGULATION

Austrian Limited Liability
Companies Act (Gesetz über
Gesellschaften mit beschränkter
Haftung - GmbHG).

Banking Act (Bankwesengesetz –
BWG).

Law concerning the tax treatment
of medium-sized companies
(MiFiG 2007).

Investment Funds Act 2011.

Directive 2011/61/EU of the
European parliament and of the
council of June 8, 2011,
on Alternative Investment Fund
Managers – AIFMD.

MARKET ACCESS REQUIREMENTS

- Establishment of a business plan through the company wanting to be financed (the “Company”) by a private equity company (“PE-Company”).
- Valuation procedure through the PE-Company.
- Letter of Intent (LOI);
Disposition of investment and compliance with the main conditions;
- Detailed analysis via due diligence.
- Investment contract.
- temporary investment – exit through “going public”, sale to another financial investor, buy-back or trade sale.
- Registration with the Austrian Companies’ Register.

Not subject to authorisation or supervision through a local authority, but subject to supervision through tax administration.

PERMITTED INVESTMENTS

Depending on the phase of the Company, there are different financial needs and therefore various forms of financing:

- Early stage financing – Seed Financing, Start-up-Financing and First-Stage-Financing;
- Growth financing – Second-Stage-Financing and Third-Stage-Financing;
- Maturity financing – varies according to the individual needs of the Company.

RISK DIVERSIFICATION REQUIREMENTS

Restrictions may be provided by the Company's Articles of Association and/or any decision of the Board of Directors and/or general meetings of the Company.

General requirements:

- Business and product concept – the Company shall provide a business and product concept and should have reached a good market position;
- Market – stability and high entrance barriers;
- Management – established and experienced management able to exploit the potential of valorisation and ensure stable cash-flows.

NON-MANDATORY COEFFICIENT

Not regulated

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REGULATION *

Belgian private equity funds typically adopt the form of a public limited liability company (SA / NV), although some other legal forms can be used.

The Belgian regulator has further provided for 2 specific forms of collective investment:

- The public PRIVAK
- The private PRIVAK

Applicable regulation:

- The Belgian Company Code;
- The Law of August 3, 2012, relating to certain undertakings for collective investment, as amended;
- The Royal Decree of April 18, 1997, relating to undertakings for investment in non-listed companies and growth companies, as amended;
- The Royal Decree of May 23, 2007, relating to Private PRIVAK, as amended;

MARKET ACCESS REQUIREMENTS

Common private equity fund – no registration or license is needed.

Public PRIVAK – a licence needs to be obtained towards the Belgian Financial Services and Markets Authority (FSMA).

Private PRIVAK – registration on the list of private PRIVAKS held by the Ministry of Finance.

In general – if the thresholds of a public offer are met, the provisions of the Prospectus Law need to be complied with.

- The Prospectus Law of June 16, 2006, relating to public offers, as amended.

*Changes to the applicable rules can be expected as a result of the implementation of the AIFM Directive.

PERMITTED INVESTMENTS

Common private equity fund – no restrictions.

Public PRIVAK:

- Financial instruments and cash;
- Raw materials;
- Investments as further detailed by the Law of August 3, 2012, and the Royal Decree of April 18, 1997.

Private PRIVAK:

- Financial instruments issued by non-listed (Belgian or foreign) companies.

RISK DIVERSIFICATION REQUIREMENTS

Common private equity fund – no restrictions.

Public PRIVAK:

- Permitted investments according to the principle of risk spreading;
- At least 50% must be invested in shares;
- Maximum 20% in permitted investments of the same issuer (+ capped amount);
- At least 70% must be invested in the so-called qualified investments.

Private PRIVAK:

- No geographical limitation;
- No obligation to diversify.

NON-MANDATORY COEFFICIENT

Interest paid by the HoldCo is in principle tax-deductible.

In 2012, Belgian tax law introduced a general thin capitalisation rule (a 5:1 debt-equity ratio). This thin capitalisation rule now applies to loans granted by certain 'tainted' lenders and affiliated companies.

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REGULATION

A holding company regulated by the Commercial Act 1991 is mostly used.

Other structures:

- Collective Investment Scheme (CIS) and Closed- End Investment Funds (CEI), regulated by Activity of the Collective Investment Schemes; and
- Other Companies for Collective Investment Act from 2011 (ACISOCCIA).

Subordinate acts:

- Ordinance No.44 of October 20, 2011;
- Ordinance No.26 of March 22, 2006;
- Ordinance No.25 of March 22, 2006.

Public Offering of Securities Act 1999.

*Changes can be expected after the implementation of the AIFM Directive

MARKET ACCESS REQUIREMENTS

Establishment of a holding company in the form of a stock company (with minimum capital of BGN50,000 or €25,000); limited liability company (with minimum capital of BGN2 or €1); or partnership limited by shares, registration in Commercial Register.

CIS – in the form of a mutual fund, investment company or CEI managed by a management company. The required capital is minimum BGN500,000 or €250,000.

PERMITTED INVESTMENTS

Holding – stocks of subsidiaries, debentures and patents. Cannot take part in non-legal entities, acquire licences not intended for use by the subsidiaries, or acquire real estate not for its own needs.

CIS and CEI – types of transferable securities and liquid financial assets admitted to regulated stock markets, bank deposits, CISs stocks and derivative financial instruments. Investments in precious metals are not allowed.

RISK DIVERSIFICATION REQUIREMENTS

Holding company – 25% of the capital of the holding should be paid directly to subsidiaries.

Holding Company – entitled to finance only subsidiaries and investments that cannot exceed 10 times the amount of capital of the holding.

ACISOCCIA and Ordinance No.44 – limitations in type of investments (not exhaustive):

- Total value of the exposition of CIS not larger than the net value of its assets;
- CIS shall not invest more than 5% of its assets in transferable securities or instruments of the money market;
- CIS shall not invest more than 20% of its assets in deposits in one person;
- The participation of CEI in a public company cannot exceed 25% of its assets.

NON-MANDATORY COEFFICIENT

Tax legislation – regulation of thin capitalisation.

Limits deductibility of expenses for interests in financial year if ratio own capital-acquired capital of 3:1 is not observed.

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REGULATION

International Collective Schemes
Law 47 (I) 1999 (ICIS).

Cyprus Companies Law, Cap. 113.

Partnership and Business Names
Law, Cap. 116.

The International Trust Law
69(I)/1992.

Open-Ended Undertakings
for Collective Investments in
Transferable Securities 200(I)/2004
(UCITS) – provided these are
addressed only to professional or
eligible investors

MARKET ACCESS REQUIREMENTS

Registration with the following
authorities:

- ICIS – Central Bank of Cyprus (“CBC”);
- Limited Liability Companies – Registrar of Companies (“ROC”);
- Partnerships – Registrar of Partnerships;
- Cyprus International Trusts – no registration;
- UCITS – Cyprus Securities and Exchange Commission.

PERMITTED INVESTMENTS

No investment restrictions apply to private ICIS, but any investment policy should be in line with the Private Offering Memorandum.

Cyprus International Trusts may make investments in movable and immovable property including shares in companies.

UCITS may make investments in listed securities.

RISK DIVERSIFICATION REQUIREMENTS

Private ICIS do not have any restrictions on the percentage of assets held in particular securities. However the following restrictions apply:

- Number of unit holders is limited to 100;
- *Right* to transfer units is restricted;
- Issue of bearer units is prohibited;
- Any invitation to the public to subscribe for any units of the scheme is prohibited;
- A custodian bank should be appointed, unless specifically exempt by the CBC;

ICIS Annual Financial Statements to be submitted with CBC and ROC.

In relation to Limited Liability Companies, restrictions may be provided for in the company's memorandum and articles of association and any decisions of the

Board of Directors and/or General Meeting of the company – Annual Financial Statements to be submitted with ROC.

Under the Partnership and Business Names Law, partnership's affairs may be regulated by a private partnership agreement and are subject to relevant applicable laws – Annual Financial Statements to be submitted with ROC.

Regarding UCITS:

- Up to 10% can be held in illiquid assets;
- Minimum capital requirements apply;
- Annual Financial Statements to be submitted with ROC.

NON-MANDATORY COEFFICIENT

Not regulated

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REGULATION

Act No. 189/2004, on Collective Investments.

Act No 513/1991, Commercial Code.

MARKET ACCESS REQUIREMENTS

Investment Funds, Investment Companies Equity Fund Managers are subject to the authorisation of the Czech National Bank

PERMITTED INVESTMENTS

Depends on the type and statute of the investment / equity fund.

Standard funds must conform to EU regulation.

Special funds collecting investments from public:

- Special securities funds;
- Special real estate funds;
- Special funds of funds.

Special funds of qualified investors – investments depending on their statute.

RISK DIVERSIFICATION REQUIREMENTS

Depends on the type and statute of the investment / equity fund.

Standard funds must conform to EU regulation.

Specific diversification in the case of Special funds collecting funds from the public depending on their type.

Diversification in the case of Special funds of qualified investors depends on their statute.

NON-MANDATORY COEFFICIENT

Not regulated

REGULATION

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Private equity and venture capital funds have not hitherto been independently regulated in Denmark. There is no specified legal vehicle for private equity or venture capital funds in Denmark and thus the legal vehicles used (conventionally a combination of limited liability companies and limited partnerships) are subject only to the ordinary regulation for such vehicles.

In December 2012, a Bill was tabled to implement Directive 2011/61 EU on Alternative Investment Fund Managers with effect from July 22, 2013. The Bill has not yet been adopted.

If the Bill is adopted in its current form, there will in future be regulations concerning carried interest, depositaries, risk management functions, organisation

(including on valuation of assets and delegation of powers), transparency, cross-border marketing and supervision, however it is yet undecided if and to what extent the Bill would cover the set-ups commonly used in Denmark for private equity and venture capital funds.

MARKET ACCESS REQUIREMENTS

Currently, there are no specific requirements to the conventionally used private equity or venture capital fund set-up other than registration with business and tax authorities.

If the Bill tabled in December 2012 is passed, there will in future also be a requirement as an administrator of such a fund to be registered with the Financial Supervisory Authority and, if the fund(s) managed is/are sufficiently large, ie. above €100 million, also to receive an authorisation.

PERMITTED INVESTMENTS

Not regulated

RISK DIVERSIFICATION REQUIREMENTS

Not regulated

NON-MANDATORY COEFFICIENT

Not regulated

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REGULATION

No specific legislation on venture capital funds or management companies exists in Finland. Venture Capital funds and management companies act under the general rules of corporate and investment legislation:

- Limited Liability Companies Act 624/2006;
- Partnerships Act 389/1988;
- Act on Common Funds 48/1999;
- Act on Investment Services 747/2012;
- The Securities Markets Act 746/2012 (applies only to freely tradable shares).

MARKET ACCESS REQUIREMENTS

Finnish venture capital funds are mainly structured as temporary limited partnerships governed by the management company as a general partner and investors contributing as limited partners. In this model, even a foreign limited partner can be considered to have a permanent residence in Finland and be therefore subject to taxation for the Finnish source income.

In general, management companies or venture capital funds are not considered as investment firms or entities subject to the supervision of the Finnish Financial Supervision Authority.

PERMITTED INVESTMENTS

Not regulated

**RISK DIVERSIFICATION
REQUIREMENTS**

Not regulated

**NON-MANDATORY
COEFFICIENT**

Not regulated

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REGULATION

Act N°83-I of January 3, 1983.

Order N°2011-915 of August 1, 2011.

French Monetary and Financial Code (mainly Article 214-2 et seq).

General regulation of the French Autorité des Marchés Financiers (mainly Art. L.411-1 et seq).

MARKET ACCESS REQUIREMENTS

Establishment of a common fund (Fonds commun de Placement – FCP) to be managed by a management company (Société de Gestion). Each of them are subject to an authorisation from the French Autorité des Marchés Financiers (AMF).

Minimum share capital for the management company – €125,000 (other required conditions are provided for in the French Monetary and Financial Code (Art. 532-9).

Minimum asset value that the common fund must have upon its constitution €300,000.

PERMITTED INVESTMENTS

Act N°83-I of January 3, 1983.

Order N°2011-915 of August 1, 2011.

French Monetary and Financial Code (mainly Article 214-2 et seq).

General regulation of the French Autorité des Marchés Financiers (mainly Art. L.411-1 et seq).

RISK DIVERSIFICATION REQUIREMENTS

Depending on the kind of common fund:

Venture Capital Fund (FCPR):

- At least 50% of its assets in equity-like securities, equity securities or securities which give direct or indirect access to the capital of unlisted companies (as regards to this 50%, up to 20% can nevertheless be invested in listed companies – on French and/or European Market – provided that capitalisation of such companies is below € 150.000,000).

Local Fund (FIP):

- At least 60% in financial securities, shares of limited liability companies and current account advances in unlisted

NON-MANDATORY COEFFICIENT

Venture Capital Fund (FCPR) – up to 50% of its assets in listed companies.

Local Fund (FIP) and Innovation Fund (FCPI) – up to 40% of their assets in listed companies.

companies (including 20% invested in companies created for less than 8 years) plus other geographic requirements.

Innovation Fund (FCPI):

- At least 60% in financial securities, shares of limited liability companies and current account advances in innovative unlisted companies.

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REGULATION

No specific act for venture capital and private equity.

New framework conditions for private equity through the EU Directive for Alternative Investment Fund Manager (AIFM). Intended to be transposed into national law through an act called Kapitalanlagegesetzbuch (KAGB). Time limit for transposition ends middle of 2013.

For private equity and venture capital investments general corporate law is applicable. The usual structure: GmbH (similar to a LLP) or a GmbH & Co. KG (a limited partnership with limited partners who are the investors as well as a GmbH a general partner).

MARKET ACCESS REQUIREMENTS

The equity investor of a GmbH or GmbH & Co. KG filed or listed, respectively, with the commercial register and thus can be seen by the public.

The articles of association of a GmbH are public, but there is a possibility to separate certain regulations to a non-public shareholders' agreement. The partnership agreement of a GmbH & Co. KG is not public.

There is a securities prospectus requirement for funds.

With the KAGB coming into force there should be a mandatory registration for managers of funds.

PERMITTED INVESTMENTS

So far there are no restrictions in general. Therefore private equity / venture capital funds usually invest in companies with the following criteria:

- Innovative (often IT, medtech, biotech);
- Only a few years old;
- Not listed on the stock exchange;
- Intangible assets (know how, patent);
- Low capital;
- High growing potential.

With the KAGB coming into force, there may be permitted investments. This restriction should only apply to closed-end mutual funds.

Private investors must not invest into private equity funds with the KAGB coming into force.

RISK DIVERSIFICATION REQUIREMENTS

So far there are no restrictions for closed-end funds, only for open-end funds.

With the KAGB coming into force there may be restrictions for open-end and closed-end funds. The structuring cannot be foreseen at the moment.

NON-MANDATORY COEFFICIENT

There are thin capitalisation rules. The net interest cost of a company is deductible until €3million. Apart from this tax exempt amount, the so-called interest barrier entails that the net interest cost of a company is only deductible up to an amount of 30 % of the EBITDA stated for tax purposes.

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REGULATION

Two main types of structures:

- Closed-end venture capital mutual funds, (so-called AKES) established and regulated under law 2992/2002 (article 7); and
- Venture capital corporations (EKES), which have the form of a special purpose Societe Anonyme, regulated by law 2367/1995 (articles 5-9).

Investors – opt to establish a company limited by shares that is not specifically designed to promote venture capital purposes.

Laws – amended soon, relevant draft bill submitted for voting by the Greek Parliament.

Venture capital – investment vehicles of foreign jurisdictions to fund Greek targets. Venture capitalists have relied on AKES to pursue their plans, which is, tax-wise, a more competitive and transparent vehicle.

MARKET ACCESS REQUIREMENTS

AKES – a type of agreement / partnership, which is neither supervised nor in need of a particular authorisation, but only regulated by law. Certain conditions apply to firms acting as managers of AKES. Draft law: possibility of units in AKES being admitted to trading, supervising authority will be the Hellenic Capital Market Commission.

EKES' articles of association – must be approved by the Ministry of Development, also its supervising authority. Draft law: shares of such companies should, within 2 years, be admitted to trading on a regulated market or multilateral trading facility, in which case supervision will be entrusted to the relevant authorities.

PERMITTED INVESTMENTS

AKES can only invest in shares and bonds of non-listed companies, which are based in Greece. The draft law partly abolishes such prohibition, and allows, under certain conditions, investing in listed companies, that if not based in an EU country, should at least have operations in Greece.

EKES' investments restricted to shares and bonds of non-listed companies which are based in Greece and which are active in the agricultural, commercial or hotel industry, or engage in industrial activity. The draft law abolishes such restriction, and allows investing in listed companies, under certain conditions. EKES may also grant guarantees at the companies in which they participate.

RISK DIVERSIFICATION REQUIREMENTS

AKES not subject to any debt-equity ratios, only have to comply with certain risk diversification requirements.

NON-MANDATORY COEFFICIENT

It is prohibited by law that EKES' debt exceeds equity.

REGULATION

Historically, most funds in Ireland were established as Limited Partnerships under the Limited Partnership Act 1907.

There are, however, a number of legal structures or schemes available to promoters who wish to operate a regulated fund (“Collective Investment Scheme” or “CIS”). The main structures used are:

Investment Companies:
Part XIII of the Companies Act, 1990

Unit Trusts:
Unit Trusts Act, 1990

Investment Limited Partnerships:
Investment Limited Partnerships Act, 1994

Common Contractual Funds
- Investment Funds, Companies and Miscellaneous Provisions Act, 2005

All regulated funds
- Central Bank NU Notices

There are 3 categories of investors:
- Retail investors;
- Professional Investors; and
- Qualifying Investors

Note: the Alternative Investment Fund Managers Directive (AIFMD) must be implemented in Ireland (and all other EU member states) by 22 July 2013.

Markets in Financial Instruments Directive (MIFID)

Irish Venture Capital Association adopts the EVCA Code of Conduct

MARKET ACCESS REQUIREMENTS

Regulated Funds:
All regulated funds must be authorised by the Central Bank.

The principal service providers (ie. promoters and managers) to the fund must meet certain regulatory requirements and be approved by the Central Bank.

A prospectus must be filed with the Central Bank containing a description of the risks, any potential conflict of interest and all other details set out under the Central Bank NU Notices for the particular fund structure.

There are certain minimum subscription requirements dependent on the type of investor.

Unregulated Funds:
Unregulated funds are free to operate under the provisions of partnership law and company law.

PERMITTED INVESTMENTS

A CIS may be established with mixed investment objectives and in such cases, the investment restrictions outlined under the heading 'Risk Diversification Requirements' shall apply pro rata to that proportion of net assets which is intended to be invested in that particular type of scheme.

A CIS which invests in property or property-related assets are subject to further rules and regulation set out under the Central Bank NU Notices.

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RISK DIVERSIFICATION REQUIREMENTS

Under the Companies Act 1990, an Investment Company must operate with the aim of spreading investment risk.

The Central Bank NU Notices provide for a number of investment and borrowing restrictions. With regard to investments, there are a number of restrictions regarding the percentage of the CIS's net assets that may be invested.

Restrictions apply in respect of the following investments:

- securities which are not traded in or dealt on a market which is provided for in the trust deed, deed of constitution, articles of association or partnership agreement;
- securities issued by the same institution;
- security issued by any single issuer;
- investments in other CISs;

NON-MANDATORY COEFFICIENT

Not regulated

- unregulated funds;
- investments in one company or group of companies; and
- warrants on transferable securities.

The restrictions identified above apply in varying degrees to the different types of investors:

- Retail Investors – there are strict investment and borrowing restrictions placed on retail investors;
- Professional Investors – the restrictions may be dis-applied in part or in whole on a case-by-case basis;
- Qualified Investors – the restrictions are largely dis-applied. Where a QIF is established as a unit trust, there are no risk spreading rules.

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REGULATION

Legislative Decree no. 58/1998.

Ministerial Decree no. 228/1999.

Joint Regulation of the Bank of
Italy and Consob dated October
29, 2007.

Bank of Italy Regulation dated May
5, 2012.

MARKET ACCESS REQUIREMENTS

Establishment of a closed end
investment fund to be managed
by a share limited company (SGR),
subject to the authorisation of the
Bank of Italy.

SGR's key persons are subject to
several professional requirements.

Public deed and registration with
the Register of Enterprises.

Registration with the Register
of SGRs under Article 35 of
Legislative Decree no. 58/1998.

PERMITTED INVESTMENTS

In general terms, a closed end investment fund, subject to the conditions set forth by the Bank of Italy, may invest in (Articles 4 and 12 of Ministerial Decree no. 228/1999):

- Financial instruments;
- Other funds;
- Real estate rights and/or real estate companies;
- Receivables;
- Other goods whose evaluation is periodically available (6 monthly at least); and
- Bank deposits.

RISK DIVERSIFICATION REQUIREMENTS

The Fund's Regulation shall indicate adequate diversification requirements, in consideration of the nature of relevant goods and markets.

A general requirement is provided concerning investments in financial instruments of a single issuer or in units of the same fund (normally 20% of total fund's asset value).

The participation in a listed company cannot exceed 10% of the share capital of the same company.

More specific diversification requirements are provided in respect to real estate funds.

NON-MANDATORY COEFFICIENT

Italian tax legislation imposes certain limits to the deductibility of interest expenses resulting from the acquisition debt. Interest paid on the indebtedness may be deducted in the same financial year up to the amount of the positive interest, if any, received by the company in the same year; a further deduction of the interest expenses is allowed up to 30% of the company's EBITDA.

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REGULATION

Five different types of structures are used for private equity purposes:

- SOPARFI – Financial Participation Company;
- SICAR – Capital Risk Investment Companies;
- SIF – Specialised Investment Funds;
- UCI – Undertakings for Collective Investment;
- SPF – Family Wealth Management Company.

Principal enactments:

Law of August 10, 1915, on Commercial Companies (for SOPARFI type vehicles);

Law of June 15, 2004, on SICAR;

Law of February 13, 2007, on SIF;

Law of December 17, 2010, on UCI;

Law of May 11, 2007, on SPF.

MARKET ACCESS REQUIREMENTS

SOPARFI – unregulated vehicle. No market access requirement.

SICAR and the SIF – semi-regulated vehicles, require authorisation of the Luxembourg Financial Supervisory Authority (CSSF). They benefit from a lighter regulatory regime than fully regulated vehicles such as the UCI.

Undertakings for collective investments (UCIs) – subject to CSSF authorisation and supervision. Require investors with significant resources and a higher degree of risk diversification than SIFs and SICARs.

SPF – not subject to supervision of the CSSF but subject to tax authorisation supervision.

PERMITTED INVESTMENTS

SOPARFIs – unrestricted, but prospectus needed for offer to the public.

SICARs – investment must qualify as risk capital (involve risks and intention to develop the activity), prospectus needed for offer to the public.

SIFs – no restrictions, but prospectus must be issued if it does not offer redemption opportunities to investors.

UCIs – not restricted but no offer of securities prior to approval of the CSSF, prospectus required if it does not offer redemption opportunities to investors.

SPF – only for financial assets as defined in Law of August 5, 2005. Not allowed to exercise any management role in its subsidiaries.

RISK DIVERSIFICATION REQUIREMENTS

SOPARFIs, SICARs and SPFs not subject to any risk diversification requirements.

SIFs should not invest more than 30% of its assets in any target company (CSSF Circular 07/309).

UCIs should not invest more than 20% of its assets in any target company.

NON-MANDATORY COEFFICIENT

SOPARFI – 85:15 debt-equity ratio acceptable to tax authorities. If exceeded, they consider part of the shareholder's loan to be equity and the related interest payments as hidden dividend.

SICAR – not subject to any debt-equity ratio. It may finance its investments without restriction.

SPF – no legal requirement but in practice a ratio of maximum 8:1 debt to equity.

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REGULATION

Various legal forms – most prevalent limited liability company (NV or BV), Cooperative, limited partnership (CV), Fund for joint account (FGR) or a combination thereof.

Regulations:

- The Dutch Civil Code (Company Law);
- Dutch Financial Supervision Act (Wft).

MARKET ACCESS REQUIREMENTS

Wft provides that (managers of) investment funds (IF) require a licence by the Dutch Authority for the Financial Markets (AFM) to market securities in such funds.

If subject to supervision in a designated foreign jurisdiction exempt from the licencing requirement. Supervision only by foreign supervisor.

Designated jurisdictions:

- United States (if SEC-registered);
- Luxembourg;
- Ireland;
- United Kingdom;
- France;
- Guernsey;
- Jersey;
- Malta.

Exemptions apply:

- Funds only marketing to qualified investors;
- Funds marketed to a maximum of 99 non-qualified investors;
- Units offered in the the fund have a minimum denomination of €100,000 or can only be acquired at a minimum consideration of €100,000.

If units or shares offered under exemptions: mandatory disclaimers apply.

After implementation of AIFM Directive (scheduled for 22 July 2013) managers of a private equity fund: apply to the AFM for an AIFMD licence unless it meets a de minimis test.

PERMITTED INVESTMENTS

Not regulated

RISK DIVERSIFICATION REQUIREMENTS

Not regulated

NON-MANDATORY COEFFICIENT

Dutch companies – attractive investment vehicles for private equity due to participation exemption (if stake exceeds 5% of shares in investment vehicle). It allows tax-free collection of income and gains from target investments.

Interest paid by a Dutch company is tax-deductible, subject to thin capitalisation rules. Inter-company or shareholder loans may not exceed a debt/equity ratio of 3:1. Interest on the excess will not be deductible.

Deduction of interest on debt incurred by a single-purpose Dutch holding company part of the same fiscal unity as the Dutch target: restricted if and to the extent that

- I. the acquisition-debt-to-purchase-price ratio exceeds an acceptable ratio (60% in the first year, reduced by 5% annually over the course of 7 years, down to a 25%) by 8; and
- II. the annual amount of interest due on the acquisition debt exceeds €1 million.

REGULATION

Private equity funds are not regulated as investment funds. No particular restrictions exist in Norway on how a private equity fund organised as a limited partnership can be marketed or advertised.

However, on May 27, 2011, the Council of the European Union (Council) adopted Directive 2011/61/EU on alternative investment fund managers (AIFM Directive).

AIFM Directive entered into force on July 21, 2011, and must be implemented by July 22, 2013. The full effects of the AIFM Directive remain to be seen, but is expected to become clearer during the implementation process.

The AIFM Directive applies to managers of all funds that are not UCITS funds (including venture capital funds) save for certain smaller funds with managed assets below certain thresholds.

Other regulations of indirect relevance:

- Act of June 21, 1985, No. 83 – Companies Act;
- Act of June 13, 1997, No. 44 – Limited Liability Companies Act;
- Act of June 13, 1997, No. 45 – Public Limited Liability Companies Act;
- Act of June 29, 2007, No. 75 – Securities Trading Act.

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MARKET ACCESS REQUIREMENTS

The most common Norwegian legal structures used as a vehicle for private equity funds are:

- Silent partnerships;
- Limited partnerships;
- Limited liability companies.

The silent partnership has the most similarities with an offshore limited partnership and has become the predominant Norwegian legal structure.

If foreign investors are targeted in the fundraising, Norwegian private equity fund managers typically use a limited partnership in a foreign offshore jurisdiction, in particular the Channel Islands, as fund vehicle.

PERMITTED INVESTMENTS

Save for the AIMF regulations to be implemented on July 22, 2013, there are no restrictions for common private equity funds.

If the private equity funds however are structured as investment services according to the Securities Act, an authorisation from the NFSA (Norwegian Financial Services Authority) is required.

RISK DIVERSIFICATION REQUIREMENTS

Common private equity fund – no restrictions.

Subject to mandate agreement between investors and managers.

NON-MANDATORY COEFFICIENT

Common private equity fund – no restrictions.

Subject to mandate agreement between investors and managers.

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REGULATION

Portuguese Securities Code
(Decree-Law 357-A/2007).

Portuguese Companies Code
(Decree-Law 262/86).

Decree-Law No. 375/2007, which
regulates the activity of investing
in venture capital by means of
Venture Capital Companies (VCC),
Venture Capital Funds (VCF) or
Venture Capital Investors (VCI).

Regulations issued by Portuguese
Securities Market Commission
(CMVM) – most important CMVM
Regulation 1/2008 on Venture
Capital.

MARKET ACCESS REQUIREMENTS

General Rule – subject to simplified
prior registration before CMVM. Prior
communication is sufficient if:

- Capital is not offered to the public;
and
- Capital holders are only professional
investors or minimum capital
subscribed is equal to or greater than
€500,000.

Deed of incorporation and commercial
registration for VCC and VCI; VCF set-
up when first subscription included in
its portfolio. Minimum share capital for
VCC / VCI – €750,000, except if object
is exclusively the management of VCF
(minimum share capital reduced to
€250,000).

VCC must be public limited liability
companies and shares nominative. VCI
must be sole shareholder of private
limited liability companies. VCF –
minimum subscribed capital €1,000,000;
minimum of €50,000 per investor, except
for directors of the management entity.

PERMITTED INVESTMENTS

VCC, VCI and VCF allowed to:

- Invest in equity and securities which are convertible, exchangeable or grant right to its acquisition;
- Invest in debt capital instruments of companies in which they have or intend to have a participating interest;
- Provide guarantees to companies in which they hold a participating interest;
- Invest any treasury surpluses in financial instruments;
- Carry out financial transactions required for developing the respective activity, including risk coverage.

VCC – also invest in the investment units of VCF, and VCF can also invest in the investment units of other VCF.

RISK DIVERSIFICATION REQUIREMENTS

Investment of VCC, VCI and VCF in listed securities cannot exceed 50% of their respective assets.

VCC and VCF cannot invest more than 33% in companies invested two years after initial investment, and less than two years prior to liquidation of VCF or request for the liquidation of VCC.

VCF cannot invest more than 33% of their assets in another VCF.

VCC cannot invest more than 33% of its assets in a VCF managed by other entities.

NON-MANDATORY COEFFICIENT

Not regulated

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REGULATION

Act 25/2005, regulating Private Equity Entities and their Management Companies.

Act 1/1999, regulating Private Equity Entities and their Management Companies (Additional Order 2nd, 1 and 3).

Act 3/2009, concerning Structural Amendments of Commercial Companies.

Act 24/1988, of the Spanish Stock Exchange.

Royal Legislative Decree 4/2004, passing the refunded text of the Tax Companies Act.

MARKET ACCESS REQUIREMENTS

Subject to previous authorisation from the Comisión Nacional del Mercado de Valores (National Commission of Securities Market – CNMV)

Registered by Public Deed and filed in the Commercial Registry

Registration in the Administrative Registry of the CNMV

Minimum share capital of €1.200,000, 50% to be disbursed with formation, the remainder in the subsequent 3 years

PERMITTED INVESTMENTS

Investments in non-financial and non- real estate companies

Financial companies includes:

- Banks;
- Investment services companies;
- Insurers;
- Holding companies and investment trusts;
- Brokering firms.

Real estate companies excludes:

- Holding real estate assets that comprise more than 50% of total assets, provided at least 85% of their accountable value is subject to an economic activity.

The investment must not be listed on the Spanish Stock Exchange, any other European stock market or OECD country market at the time of acquisition:

- Companies listed on secondary stock markets are however permitted.

Other allowed activities:

- Participative loans;
- Other loans (to participated companies forming part of the mandatory coefficient);
- Advising invested companies.

RISK DIVERSIFICATION REQUIREMENTS

Private equity entities (ERC) may:

- Hold 60% in shares or other financial instruments giving acquisition rights;
- Invest up to 30% in participative loans granted to invested companies;
- Invest up to 20% in a Spanish ERC or equivalent, not already having more than 10% in ERC.

Private equity funds (FERC) may:

- Hold up to 60% in shares or other financial instruments giving acquisition rights, of which 50% can be placed in another ERC or foreign entity which would not be able to place more than 10% in a ERC;
- Not exceed 40% of their assets in each ERC.

NON-MANDATORY COEFFICIENT

Private equity entities (ERC) and Private equity funds (FERC) may:

- Hold 40% in trade securities, other companies, participative loans, cash or invested companies;
- Not exceed 40% of their assets in other ERCs.

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REGULATION

Four types of structure:

- Stock Corporation (Aktiengesellschaft or AG);
- Limited Liability Company (Gesellschaft mit beschränkter Haftung – GmbH);
- Investment Company with Fixed Capital (Société d'investissement à capital fixe – SICAF); and
- Limited Partnership (Kommanditgesellschaft für kollektive Kapitalanlagen – KKG).

Principal enactments:

Federal Act of March 30, 1911, on the Amendment of the Swiss Civil Code (CO)

Federal Law of June 23, 2006, on Collective Investment Schemes (KAG). On March 1, 2013, important revisions of KAG occurred.

MARKET ACCESS REQUIREMENTS

AG is the most common vehicle. An AG serving the purpose of an investment vehicle is likely to fall within the scope of the KAG and be subject to supervision by the Swiss Financial Market Supervisory Authority (FINMA), if none of the following apply:

- It does not form a collective capital investment;
- It is commercially operational;
- It is a Group Company (Holding);
- It is listed on a Swiss Stock Exchange;
- A Swiss AG serves as an investment company which only allows qualified investors to be shareholders.

KKG typically have high operational costs and fall under the supervision of FINMA, this is usually worthwhile only if assets of CHF100 million or more are held.

PERMITTED INVESTMENTS

For AGs, the type of investment undertaken is unrestricted. However, a prospectus must be issued for public offers (Art. 652a CO).

If the investment vehicle is qualified as a collective investment scheme (CIS), it will be regulated by KAG and subject to FINMA supervision.

The practice of FINMA is unclear with respect to the definition of a collective investment scheme. Currently, FINMA seems to apply the rule “I know it when I see it”.

RISK DIVERSIFICATION REQUIREMENTS

The main legal investment vehicle for private equity purposes is the KKG. However they are subject to FINMA supervision (AG's are not), consequently only 14 KKGs are currently registered.

KAG restricts the investment scope of a CIS. The CO does not provide for such restrictions.

KKGs are always subject to restrictions, whereas AGs have a free investment scope (unless they qualify as a CIS).

Independent of legal form, the distribution (Vertrieb) of shares is regulated by KAG and subject to FINMA supervision.

NON-MANDATORY COEFFICIENT

Under the Swiss Tax Authorities' “safe harbour” guidelines, a 70/30 debt-equity ratio is acceptable. Any interest paid on excess debt is not deductible.

If a related party debt exceeds the allowable debt, this will be re-characterised for tax purposes as equity and subject to capital tax.

Stamp Duty is levied on the issue of shares and bonds. An exception being securities issued for commercial reorganisation.

REGULATION

UK Financial Services Authority (FSA – in transition to be divested into three different entities) regulates all UK private equity firms.

Walker Guidelines and Guidelines Monitoring Group (GMG) are voluntary guidelines.

UK Companies Act 2006 for investee companies and Bribery Act 2010.

City Code on Takeovers and Mergers.

UK Listing Authority (UKLA) / London Stock Exchange (LSE) for certain listed entities e.g. private equity investment trusts (PEITs); real estate investment trusts (REITs) and venture capital trusts (VCTs).

Markets in Financial Instruments Directive (2004/39/EC) (MiFiD).

The Alternative Investment Fund Managers Directive (2011/61/EC) (AIFM Directive) – from July 2013.

British Venture Capital Association (BVCA) represents the UK private equity and venture capital industry.

European Private Equity and Venture Capital Association (EVCA) professional standards handbook.

International Private Equity and Venture Capital Valuation Guidelines Board (IPEV Board) – investor reporting guidelines (IRG) for General Partners.

MARKET ACCESS REQUIREMENTS

Largest and most developed market in Europe – over 50% of the total annual private equity investment.

Access:

- Venture capital funds investing in early stage (ie. seed/start-up) businesses;
- Over 450 private equity funds investing in mature businesses eg. via MBO/MBI funding;
- On and offshore listed funds, including VCTs (HKFSI is the market leader in sponsor and legal support), PEITs and REITs;
- Other tax driven wrappers eg. Enterprise Investment Schemes (EIS) / Seed EIS (SEIS) / crowd funding schemes;
- Institutional investors / pension funds / funds of funds;
- Real estate and hedge funds;
- Sovereign wealth funds;
- Fractionals;
- UK and international HNW investors and family offices; and
- Turnaround funding specialists.

PERMITTED INVESTMENTS

Wide range of sectors:

- Trading businesses;
- Financial services;
- Hotels and fractionals;
- Real estate – development and investment;
- Specialist – eg. fine art / aircraft / yachts / fine wine; and
- High end residential.

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RISK DIVERSIFICATION REQUIREMENTS

FSA authorisation for those conducting “regulated activities”.

Marketing restrictions to limited categories only (eg. FSMA).

Exempt categories for Prospectus Directive.

UKLA / LSE restrictions and requirements for listed entities and funds.

VCT and EIS – tax driven requirements eg. via Finance Act 2012.

NON-MANDATORY COEFFICIENT

UK fund structures usually via limited partnership structures for tax transparency.

No statutory requirements on investment periods, amounts or transfers for private equity funds structured as LPs.

LPs are usually closed ended – do not allow redemptions.

Private equity funds structured as LPs governed by a partnership agreement.

LP agreements provide for minimum subscription levels and regulate transfers.

LP usually managed by a management company/general partner via a separate contract.

