European Venture Capital Funds Regulation: Getting Closer to Full Application of a New Regime

By Orestis Omran, Nora Wouters on March 25, 2013

On March 12, the European Parliament voted to approve the proposal for a European Venture Capital Funds Regulation. Although formal approval by the Council is still pending, the final adoption of the Regulation, which is scheduled to enter into force on July 22, 2013 to coincide with the implementation of the Alternative Investment Fund Managers Directive ("AIFMD"), should be considered certain.

Scope

The Regulation provides that managers of European Venture Capital Funds who do not require authorization under the AIFMD can optionally select to apply for a marketing passport that will allow them to raise capital freely throughout the EU, benefiting from the admittedly less onerous regulatory requirements compared to those of the AIFMD.

This Regulation applies to managers of collective investment undertakings, provided that those managers: (i) manage portfolios of qualifying venture capital funds, whose assets under management in total do not exceed a threshold of EUR 500 million. Further specification of the calculation method of this threshold will be made through delegated acts, which the Commission is empowered to adopt; and (ii) their collective undertaking invests at least 70 percent of its aggregate capital contributions and uncalled committed capital in assets that are qualifying investments, as defined by the Regulation.

As it stands, the new legislation will apply only to EU funds; however, review of the regulation two years after the commencement of its application might extend the scope to cover non-EU funds based in countries that fulfill certain tax-related requirements.

Information to Competent Authorities

The regulatory requirements with which managers of European Venture Capital Funds need to comply vis-à-vis the competent National Authorities include the disclosure of: (i) the composition of the investment portfolio; (ii) the identity of the persons who effectively conduct the business of managing the fund; (iii) the identity of the funds whose units or shares will be marketed and their investment strategies; and (iv) the Member States where the venture capital fund manager intends to market each fund and the intention to market a new qualifying fund.

Information to Investors

At the same time, managers should provide their investors with information on (i) the identity, the investment strategy, the risk profile, the valuation procedure and pricing strategy; (ii) the remuneration of the manager of the qualifying fund; (iii) the fees, charges and expenses, which shall be borne by investors; and (iv) the fund's historical performance and procedures for amendment of the adopted investment strategies and policies. In contrast with the AIFMD, there is no requirement to appoint a depositary and the manager can delegate functions to third parties, their liability though being unaffected by such delegation.

Conclusion

All in all, investment managers of qualifying European Venture Capital Funds should seriously consider the new Regulation as a way of ensuring more flexibility in their investments through the less burdensome regulatory requirements imposed therein. Bearing in mind that the review of the Regulation in two years will probably extend its application to non-EU established venture capital funds, managers of the latter should pay close attention to the new regime in order to be prepared to introduce their funds into it.

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