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Department of Industry,
Science and Resources

Australian Venture Capital Fund of Funds (AFOF)

Customer Information Guide

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Our purpose is to help the government build a better future for all Australians through enabling a productive, resilient and sustainable economy, enriched by science and technology.

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The purpose of this publication is to inform fund managers and investors of the requirements of registering and maintaining an Australian Venture Capital Fund of Funds (AFOF).

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1. Introduction to this guide

This guide will help with understanding the requirements of an Australian Venture Capital Fund of Funds (AFOF) partnership.

If seeking AFOF [registration](#)^[link], complete the [online application form](#) and lodge the supporting documents listed under 'Applying' on the [AFOF web page](#) with the application.

Industry Innovation and Science Australia's authorised delegate will decide on the application. For assistance with an application, [contact us](#) or email venturecapital@industry.gov.au.

Some provisions of the *Venture Capital Act 2002*, which enables the AFOF program, refer to 'in the form approved by Industry Innovation and Science Australia'. A [list](#) of those provisions and a description of the approved form for each is provided on business.gov.au.

2. Overview of AFOF program

The AFOF program aims to encourage investment in a portfolio of Early Stage Venture Capital Limited Partnerships (ESVCLPs) and Venture Capital Limited Partnerships (VCLPs).

The program offers tax incentives and provides diversification and flexibility for fund managers and investors. It aims to stimulate Australia's venture capital sector by:

- helping fund managers attract pooled capital, so they can raise new venture capital funds to invest into innovative Australian businesses
- offering tax benefits to fund managers and eligible foreign investors
- connecting investors with innovative Australian businesses
- helping Australian businesses grow by receiving financial support.

The program is enabled by the:

- *Venture Capital Act 2002* (VCA)
- *Income Tax Assessment Act 1936* and the *Income Tax Assessment Act 1997* (ITAA36 and ITAA97).

Fund managers can [apply](#) to Industry Innovation and Science Australia to register a partnership as an AFOF.

The program commenced in December 2002 with the passing of the VCA and amendments to the ITAA36 and ITAA97. It is administered jointly by the Department of Industry, Science and Resources (DISR) and the Australian Taxation Office (ATO) on behalf of the Australian Government.

3. Registration as an AFOF

3.1 Industry Innovation and Science Australia's delegates

Industry Innovation and Science Australia has authorised the Innovation Investment Committee and senior executive staff of the department as delegates who can decide registration applications against the program legislation.

3.2 Eligibility criteria

A partnership must meet the following criteria listed in Table 1 to be eligible for registration as an AFOF.

Table 1: AFOF eligibility criteria

Eligibility criteria	VCA reference
<p>The eligibility criteria for an AFOF partnership are that:</p> <ul style="list-style-type: none">the partnership is established by or under the law of a State or Territoryall of the partners who are general partners are Australian residentsthe partnership is to remain in existence for a period of not less than 5 years and not more than 20 years.	s9-5
<i>For investment requirements refer to section 3.3</i>	

3.3 Investment requirements for registration

A partnership must meet the following investment requirements listed in Table 2 to be eligible for registration as an AFOF.

Table 2: AFOF investment requirements for registration

Investment requirements for registration	VCA reference
<p>Each investment that the AFOF partnership owns must be:</p> <ul style="list-style-type: none">an investment in a VCLP or an ESVCLP <p>or</p> <ul style="list-style-type: none">an eligible venture capital investment in a company or unit trust in which a VCLP or an ESVCLP owns one or more eligible venture capital investments<ul style="list-style-type: none"><i>Note: this includes an investment in a company that would have been an eligible venture capital investment but for subsections 118 - 425(2) and (6) of the Income Tax Assessment Act 1997</i> <p>and</p>	s9-5

Investment requirements for registration	VCA reference
<ul style="list-style-type: none"> This includes an investment in a unit trust that would have been an eligible venture capital investment but for subsections 118 - 427(3) and (7) of the <i>Income Tax Assessment Act 1997</i> 	
<p>An AFOF partnership must also:</p> <ul style="list-style-type: none"> only carry on activities that are related to making eligible venture capital investments <p>and</p> <ul style="list-style-type: none"> every debt interest that the partnership owns is, and continues to be, a permitted loan. 	s9-5

3.4 How to apply for registration

A partnership can apply for an AFOF registration using the [online application form](#). See a summary of how to register in Table 3. For assistance with an application, [contact us](#) or email venturecapital@industry.gov.au.

Table 3: Registering as an AFOF

Summary	VCA reference
Complete and submit the online application form	s11-1(1)
<p>An application must include:</p> <ul style="list-style-type: none"> a certificate of registration as a limited partnership or an incorporated limited partnership partners' details a signed eligible partnership agreement partnership Information Memorandum or public offer documents 	s11-1(2)
The delegate can request additional information before deciding on an application for registration.	s11-10

3.5 Granting registration

The delegate will grant registration if they consider the application satisfies the legislative requirements for an AFOF.

The delegate has 60 days after receiving a complete application to decide whether to grant registration and can extend that period by a further 60 days [s11-15 VCA]. A complete application is one that satisfies all the requirements of s11-1(2) of the VCA. If the application is incomplete, it will not be considered.

The 60-day timeframe does not start until all information and documents are received. If the last day to decide an application – the 60th day – falls on a Saturday, Sunday or public holiday, the decision can be made on the next business day.

3.6 Conditional registration

A partnership that does not meet all the requirements under s9–5 of the VCA may be granted conditional registration.

A partnership that has been conditionally registered must present evidence to satisfy the delegate that it is likely to gain registration within 24 months. Conditional registration lapses after 24 months if a partnership does not meet the registration requirements.

A conditionally registered AFOF may, in certain circumstances, make investments. However, the AFOF must gain registration before it realises any gains for the tax benefits to apply.

To gain registration, a further complete application must be submitted that demonstrates the partnership meets all requirements for registration. An application for registration can be lodged at any time during the conditional registration period. However, it should be lodged no later than 60 days before the conditional registration lapses (that is, within 24 months after the conditional registration was granted). If conditional registration of an AFOF lapses, it can reapply for registration. However, the application would need to address, to the delegate's satisfaction, those matters that prevented the partnership from initially gaining registration.

When advertising a conditionally registered AFOF, it is important to not misrepresent the AFOF as being registered. Any reference to 'registered' should clarify that the registration is conditional. The following statement may be used when advertising an AFOF: 'The Partnership is conditionally registered as an AFOF and further conditions will need to be met before being fully registered as an AFOF.'

3.7 When registration is in force

Generally, AFOF registration of a partnership comes into force on the day registration is granted, under s13–1 of the VCA. However, if an AFOF is conditionally registered (under s13–5 of the VCA) and then registration is granted, registration is taken to have come into effect:

- for the purposes of the ITAA97 (that is, the tax concession), on the day the partnership was granted conditional registration
- for the purposes of the ITAA36 (that is, the flow-through tax treatment):
 - if the partnership has only carried on activities related to becoming registered as an AFOF, on the day the partnership was established
 - otherwise, on the day on which conditional registration was granted.

Eligible foreign investors would become entitled to the tax concession when full registration is granted and would be eligible to claim the tax concession in the year the capital was contributed, via an amendment to their tax return.

3.8 Maintaining registration

An AFOF registration is subject to a number of ongoing requirements. To maintain registration, an AFOF must ensure it meets the:

- investment requirements (see section 3.3)
- reporting requirements
- other registration requirements.

Refer to Table 2 in section 3.3 of this guide for information on the investment registration requirements for an AFOF. Table 4 below provides further information on the ongoing requirements to maintain AFOF registration.

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Table 4: Requirements to maintain AFOF registration

Requirements	VCA reference
Investment requirements	Refer to Table 2 in section 3.3
Reporting requirements The following constitutes a failure to meet the requirements of Division 15, allowing the delegate to revoke registration: <ul style="list-style-type: none"> not submitting quarterly return within one month of the end of each quarter 	s15–10
Other requirements The following constitutes a failure to meet the registration requirements of an AFOF: <ul style="list-style-type: none"> the AFOF is no longer a partnership that satisfies the eligibility requirements of the VCA <p><i>Note: If the delegate is satisfied an AFOF has failed to meet its requirements it will advise the AFOF that it has 60 days in which to remedy the contravention. An AFOF can apply to have this period extended by a further 60 days. If the contravention is not remedied within the set period its registration must be revoked. A decision to revoke under this provision is reviewable under Division 29 of the VCA.</i></p>	s9-5

3.9 Revoking registration

The delegate may revoke an AFOF's registration:

- for failing an 'investment registration requirement' (see section 3.3)
- for failing any 'other registration requirements' (see section 3.8)
- at its discretion (see section 3.8)
- at the fund manager's request. Under s17–25 VCA an application for revocation may be lodged at any time and the delegate will revoke registration as soon as practicable.

Generally, if the delegate considers an AFOF does not meet the registration requirements, it must issue a notice advising the AFOF and inviting a response. If after considering the response the delegate is satisfied there is a contravention, the delegate will direct the AFOF to rectify the contravention within a period determined in accordance with the VCA. If the contravention is not remedied within the set period, the delegate must revoke the AFOF's registration.

3.10 Review of a decision

Division 29 sets out the delegate's decisions that are reviewable. Under this Division, an AFOF may ask the delegate to review certain decisions. If the delegate confirms its decision, the AFOF may then apply to the Administrative Review Tribunal to review the decision.

The following are reviewable under the VCA (not an exhaustive list). Decisions under:

- subsection 9–10(3), allowing, or refusing to allow, a longer period for the purposes of paragraph 9–10(1)(b) for repayment of a permitted loan

- section 13–5, refusing to register a partnership as an AFOF
- section 17–1, 17–5 or 17–10, revoking a registration under Part 2
- subsection 17–1(2), determining a period within which investment registration requirements must be met
- section 25–5, determining a shorter period or refusing to make such a determination (relates to the Australian nexus test for an investee [s118–425(2)(b) of the ITAA97])
- section 25–10, refusing to make a determination (relates to the Australian nexus test for a company [s118–425] or a unit trust [s118–427(3) of the ITAA97])
- section 25–15, refusing to make a determination (relates to a company’s primary activity [s118–425(3) and (13)] or a unit trust’s primary activity [s118–427(4) and (14) of the ITAA97]).

4. Regulation of AFOF investments

4.1 Eligible investments

To meet the registration requirements, an AFOF needs to make eligible venture capital investments which are outlined in section 3.3 of this guide.

Full details on eligible investments made by VCLPs and ESVCLPs are outlined in the Customer Information Guides for both these venture capital partnerships:

- [Venture Capital Limited Partnerships \(VCLP\) - Customer Information Guide](#)
- [Early Stage Venture Capital Limited Partnerships \(ESVCLP\) - Customer Information Guide](#)

For a VCLP an investment must be either:

- an eligible venture capital investment
- permitted by s9–1(1)(e)(ii) or (iii) of the VCA
- a debt interest that is a permitted loan.

For an ESVCLP investments must accord with an ESVCLP’s approved investment plan and must be either:

- an eligible venture capital investment
- permitted by s9–3(1)(f)(ii) or (iii) of the VCA
- a debt interest that is a permitted loan.

5. Managing an AFOF

5.1 General partner

The general partner is responsible for managing the operation of an AFOF. Specifically, it is the body responsible for ensuring the AFOF operates in accordance with the relevant legislation. The general partner should be a management team that consists of individuals with skills and experience relevant to managing a venture capital fund.

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5.2 Venture capital management partnerships

A venture capital management partnership (VCMP) is a limited partnership that:

- is a general partner of one or more:
 - Venture Capital Limited Partnerships (VCLPs)
 - Early Stage Venture Capital Limited Partnerships (ESVCLPs)
 - Australian Venture Capital Fund of Funds (AFOFs)
- only carries on activities that relate to being a general partner.

A limited partnership ceases to be a VCMP if it ceases to meet these requirements.

The general partner of an AFOF or a limited partner in a VCMP who becomes entitled to receive a payment of a 'carried interest' may have that payment taxed as a capital gain, which may be subject to concessional taxation. For the carried interest to qualify as a discount capital gain, the general partner must have entered into the partnership agreement under which the gain arose at least 12 months previously, and must meet the other requirements for the discount.

5.3 Reporting to the delegate

An AFOF must report on its activities within one month of the end of each quarter (Division 15 of the VCA).

The delegate will monitor compliance through examining relevant documents, including both quarterly and annual returns. The delegate may also ask for additional information they consider necessary for administering the program. Compliance assessments are also undertaken by the ATO, which receives copies of all AFOF reports submitted to the delegate. The ATO may undertake risk assessment activities to ensure compliance with the legislation it administers.

5.4 Statement of expectation

An Expectation and Compliance Statement has been issued, which can be viewed on the

[AFOF web page](#). The statement outlines what is expected from an AFOF.

6. Taxation

An AFOF is a partnership for income tax purposes. A partnership is a look through entity with taxation liability flowing through to the partner level. Partners in an AFOF may qualify for income tax exemption on their share of gains and losses made by the AFOF on:

- investments made by a VCLP or ESVCLP in which the AFOF is a partner
- investments made by the AFOF directly in companies and unit trusts if a VCLP or ESVCLP in which the AFOF is a partner has also invested.

The exemption applies to partners of the AFOF who are foreign residents and meet other requirements of being eligible venture capital partners. The investment must be an eligible venture capital investment and have been made while unconditional registration was in force. The gain or loss must also have been made while unconditionally registered. Other conditions also apply. Broader exemptions that apply to ESVCLP investments may also apply when they flow through an AFOF.

For more information on the potential availability of this income tax exemption, refer to the Australian Taxation Office website (www.ato.gov.au).

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| business.gov.au/grants-and-programs/australian-venture-capital-fund-of-funds

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7. Monitoring and sanctions

7.1 Powers to direct

If the delegate is satisfied that an AFOF has contravened the VCA, they must direct the AFOF to remedy the contravention within a period of time.

The period will depend on the nature of the contravention (see section 3.8 of this guide). The delegate must revoke the registration of an AFOF that fails to remedy a contravention.

7.2 Powers to monitor

The delegate is required to monitor an AFOF's activities to ensure they continue to operate in compliance with the relevant legislation and meet their registration requirements. This is generally undertaken through reviewing AFOF returns (quarterly and annual). Copies of these returns (and registration applications) are routinely provided to the ATO.

7.3 Annual report

Industry Innovation and Science Australia reports on the AFOF program in its annual report to the Minister for Industry and Science.

Further Information

For further information, visit the [AFOF web page](#) or contact AusIndustry on:

- Email: venturecapital@industry.gov.au
- Phone: 13 28 46

Glossary

Term	Description
AFOF	Australian Venture Capital Fund of Funds partnership
ATO	Australian Taxation Office
Conditional registration	Granted under s13–5(1) of the VCA
Debt interest	Division 974 of the ITAA97 sets out the tests for determining whether an interest is debt or equity
Eligible venture capital investments	Sections 118–425 and 118–427 of the ITAA97
ESVCLP	Early Stage Venture Capital Limited Partnership
General partner	A fund manager responsible for identifying and making investments, and whose liability is not limited
Industry Innovation and Science Australia	A body established under the <i>Industry Research and Development Act 1986</i> (IR&D Act)
Innovation Investment Committee	A committee of Industry Innovation and Science Australia appointed under the IR&D Act
Investment requirements	Section 9–5 of the VCA
ITAA36	<i>Income Tax Assessment Act 1936</i>
ITAA97	<i>Income Tax Assessment Act 1997</i>
Registration	Registration under s9–5 of the VCA
VCA	<i>Venture Capital Act 2002</i>
VCLP	Venture Capital Limited Partnership
VCMP	Venture capital management partnership