

# Legal update

## COVID-19 and the Future Fund

### Guidance for OMBs

Originally announced by the Chancellor on 20 April, the Future Fund, issuing convertible loans to companies, will now be open to applications from 20 May 2020 up to the end of September 2020. If you are applying, or anticipate applying, you will need a nominated solicitor – this is a mandatory part of the process. We are here to help and guide you through this process.

The Government has made £250 million available for the Future Fund.

We have set out the key terms of the scheme below. One of the key criteria is that, for the company to be eligible, it must have raised at least £250,000 in equity from third-party investors in previous funding rounds in the last five years (from 1 April 2015 to 19 April 2020, inclusive) and must be able to match fund any monies received from the Future Fund, with investor match funding. It is worth noting that a company must have identified investors before they make an application as the Government has said that its online portal was “not a matching service”.

If you are considering applying for the scheme, we can support your business through the process to completion, including advising on:

- The application process and eligibility criteria (relevant to both you and your investors)
- Providing detailed analysis and advice on the terms of the Loan Note Instrument – which is non-negotiable and is binding on you and your investors
- Enabling completion and drawdown of monies (the evidencing of ability to meet the strict practicalities of completion is a requirement of the British Business Bank – the distribution of funds for successful applications must be handled through a nominated company solicitor. It is the company’s responsibility to appoint a solicitor with the necessary right to practice and handle client monies, something we as a firm are authorised to do).

Existing investments in a company that have qualified for EIS and SEIS tax relief may potentially be adversely affected by participation in the scheme, therefore specific tax advice should be obtained prior to an application being submitted.

### Key terms

The application process is investor-led. This means an investor, or lead investor of a group of investors, applies in connection with you. We can work with you and your investors on the application process and agreeing the terms of investment (within the criteria set out in the required documentation).



## Application and amount

The Future Fund will match up to 100% of the amount provided by investor(s), up to a maximum of £5 million. The Future Fund loan amount provided to business ranges from £125,000 to £5 million.

Amounts of Future Fund loans must be at least matched by co-investment from investors.

The loan will mature after 36 months.

The loan cannot be repaid early by the company other than with the agreement of all of the investors.

## Restrictions on the use of funds

Funding must not be used to (a) repay any borrowings; (b) pay any dividends; (c) pay any bonuses; (d) pay any advisory fees.

## Interest

The loans will have a minimum of 8% per annum (non-compounding) interest charge applied. This interest will be higher if the company and the investor(s) agree between themselves. Unlike a typical bank loan, the interest is not payable on a monthly basis and instead will accrue until the loan converts. At this point, the interest will either be repaid or convert into equity.

The loans will convert into shares in the company in certain circumstances, including an exit or a new funding round.

Investors and the Future Fund both invest using a convertible loan agreement, which is predefined and cannot be negotiated. We can provide a summary of the terms of the convertible loan agreement.

**Most crucially there are eligibility criteria that must be met by the company and the investor(s) as set out below:**

“FCA Rules” means the FCA’s handbook of rules and guidance

“FPO” means the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005

The investor must fall within any of the following categories:

- An “investment professional” within the meaning given to that term in article 19 of the FPO
- A high net worth company, unincorporated associated or high value trust falling within article 49(2) of the FPO
- A “certified sophisticated investor” or a “self-certified sophisticated investor” within the meaning given in articles 50 and 50A respectively of the FPO
- A “certified high net worth individual” within the meaning of article 48 of the FPO
- An equivalent professional, high-net worth, institutional or sophisticated investor in accordance with applicable law and regulation in such investor’s home jurisdiction
- An association of high net-worth or sophisticated investors within the meaning of article 51 of the FPO
- Capable of being classified as a “professional client” within the meaning given in the glossary to the FCA Rules

Note that all other investors must fall within one of the above categories in order for them to be eligible to invest in the convertible loan agreement. It is the responsibility of other investors to ensure they are eligible.

The company must meet the following criteria:

- The company must have raised at least £250,000 in equity from third-party investors in previous funding rounds in the last five years (from 1 April 2015 to 19 April 2020, inclusive)
- If the company is a member of a corporate group, it must be the ultimate parent company
- The company does not have any of its shares or other securities listed on a regulated market, a multilateral trading facility, a recognised investment exchange and/or any other similar market, stock exchange or listing venue
- The company must be a UK incorporated limited company
- The company must have been incorporated on or before 31 December 2019
- At least one of the following must be true for the company:
  - Half or more employees are UK based
  - Half or more revenues are from UK sales

### Practical steps – how it works in practice:

- The investor, or lead investor of a group of investors, certifies they meet the scheme eligibility criteria and provides key investment details.
- The company confirms the accuracy of the investment application details provided, before submitting the full application.

### Contract is finalised:

In the case of approved applications, all parties will execute an agreement (in the template form) and satisfy certain conditions set out in the agreement before the funds are released.

If you would like to discuss this update further, please contact Paul Raftery, Partner at [paul.raftery@weightmans.com](mailto:paul.raftery@weightmans.com) or your usual Weightmans contact.

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