ADVANCE QUEENSLAND

Business Development Fund

Term sheet guide

The Business Development Fund (Fund) has prepared template investment documents to assist applicants and minimise administrative costs for all parties involved. One of these documents is a Term Sheet template. An offer of investment from the Fund to successful applicants will be made by the Investment Panel in the form of the Term Sheet.

The Term Sheet template is provided to applicants when they are invited to pitch so that:

1. the co-investor and applicant business are aware of the terms on which investment will be offered by the Fund; and
2. if there are particular terms the co-investor wishes to raise with the Investment Panel, these can be raised and discussed with the Panel at the end of the pitch session.

Before the pitch session, the applicant must provide a completed draft Term Sheet to the Investment Panel to allow for an informed discussion, and where necessary, negotiation, between the Panel, co-investor and business, permitting investment decisions to be made and executed promptly.

The terms in the Term Sheet template cover a range of matters, including terms protective of the Fund's position, noting that the Fund invests with public money and the terms ensure that the investment remains consistent with the objectives of the Fund.

The following Terms are not negotiable and must be included in agreements relating to a Fund investment, whether the co-investor intends to use the standard Fund

Item	Description	Comments
13 (a)	Fund director	The Fund may appoint a director, but will only appoint a director in exceptional circumstances, as it is the Fund's intention that the co-investor will provide support and mentoring for the business to grow.
13 (a)	Observer rights	This right will not be exercised in the normal course of events.
13 (i)	Tag along rights	The minimum requirement in relation to tag-along rights is that if the co-investor sells, then the Fund must be able to exit using tag along rights, as it is the intention that the Fund will exit if the co-investor exits. Other investors may currently have or insist on tag along rights. This is a commercial matter for the co-investor and the other investors.
13 (j)	Call option (Co-investor buy out option)	This option is only available to co-investors involved in the application for Fund investment. The price is fixed, as is the timeframe in which the option is available. The Call Option Exercise Price for each Security is the Subscription Price for that Security as adjusted each day from the date of issue up to and including the Call Option Completion Date by: (a) the prevailing market yield for a Queensland Treasury Corporation benchmark fixed rate bond closest to a 10 year maturity per annum; plus (b) a margin of 2% per annum, calculated and capitalised daily.

Item	Description	Comments
13 (k)	Put option – co-investor	This option can be exercised by the Fund where the co-investor breaches the terms of investment documents and that breach is not remedied, or a number of other specific conditions are satisfied, for example, if the nature of the business changes, intellectual property essential to the business is sold or licensed, the business moves outside Queensland or there is a change of control of the co-investor without the Fund's consent. This term gives the Fund the ability to exit an investment when it is no longer in the public interest, which is a key condition for the Fund entering an investment.
13 (l)	Put option – founder	This option can be exercised where there is a breach by the founder of the terms of investment documents that is not remedied. This term gives the Fund the ability to exit an investment where the founder does not abide by the terms of the investment documents, which is a key condition for the Fund entering an investment.
13 (m)	Put option exercise price	Calculated according to the same formula as the call option (buy-out option) exercise price.
13 (o)	Co-investor reporting	The co-investor reports quarterly and annually to the Fund about the investee business. The company must provide assistance to the co-investor in preparing these reports (see clauses 16.1 and 27.9(c) of the Shareholders' Deed).
13 (p) 13 (q)	Audit Valuation	These rights are exercisable by both the co-investor and by the Fund. The exercise of these rights may be triggered by concerns about the direction or performance of the company.
17	Costs	Application to the Fund is voluntary – each party's costs in negotiating and executing documents must be borne by that party.
18	Governing Law – Queensland	The Fund is a Queensland Government scheme. Any agreements executed as part of a Fund investment must be subject to the jurisdiction of Queensland courts.
Schedule 2 B	Matters to be determined by special resolution of shareholders	These are generally key matters that affect the Fund's (and other shareholders') investment. In relation to early stage businesses, it is expected directors are unlikely to be remunerated, as the company would generally not have strong cash flows from which to pay directors' fees. If the company is already paying fees to directors, the term around directors' fees may need to be modified (eg "changes to directors' fees"). Matters can be added to Schedule 2 B. No matters should be removed from Schedule 2 B.

For further information visit

advance.qld.gov.au/entrepreneurs-startups/business-development-fund.aspx

16-205 Version 2 • September 2016

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