# Investment rules for the Seed and Growth Fund

## 0. General

0.1 The Seed and Growth Fund is aimed at strengthening the competitiveness of small and medium-sized enterprises (SMEs). The aim is to enable SMEs to participate in the growth of regional, national and international markets and in the innovation process. The Seed and Growth Fund provides support by acquiring equity and quasi-equity investments (such as direct shareholdings and/or silent partnerships, subordinated loans) in incorporated companies to strengthen or secure their equity base. The reasons for financing are innovation, technology development, product development, market launch and corporate growth.

Target undertakings are SMEs in different lifecycle phases such as the seed (foundation and startup phase) or expansion phase (growth and expansion phase).

0.2 The support provided by the Seed and Growth Fund may include both investments in tangible and intangible fixed assets as well as working capital. In addition, costs for the transfer of ownership rights to enterprises may be supported provided that the transfer occurs between independent investors. Investments to be supported may neither be physically completed nor fully implemented at the time of the investment decision made by the Seed and Growth Fund.

0.3 The Seed and Growth Fund invests in enterprises with their registered office or permanent establishment in the Federal State of Brandenburg or for the purpose of establishing a registered office or permanent establishment in the Federal State of Brandenburg.

0.4 The Seed and Growth Fund is, in principle, available to all sectors. The fund manager ensures the necessary expertise for the acquisition and support and actively supports the investee or borrower in relation to operational management and selected technical issues (hands-on management). The Seed and Growth Fund is administered in accordance with commercial principles. Investment decisions are made by the fund manager on the basis of these investment principles, taking into account the potential economic viability of the investment projects to be financed.

0.5 In order to achieve its objectives, the Seed and Growth Fund seeks close cooperation with EU partners, the German federal government and the German federal states (Länder), as well as with specialised joint venture partners from the private and public sectors.

0.6 The Seed and Growth Fund does <u>not</u> provide financing in the following areas:

- ⇒ The decommissioning or construction of nuclear power plants,
- ⇒ Investments to reduce greenhouse gas emissions from activities listed in Annex 1 to Directive 2003/87/EC,
- ⇒ Production, processing and marketing of tobacco and tobacco products,
- ⇒ Investments in airport infrastructure, unless they are related to environmental protection or they are accompanied by the necessary investments to mitigate airport infrastructure,
- ⇒ Venture capital funds

The financing of export-related activities aimed at Member States or third countries, i.e. directly linked to the quantities exported, to the establishment and operation of a distribution network or to other current costs linked to the export activity, as well as financing contingent upon the use of domestic over imported goods, cannot be supported by the fund.

0.8 The fund manager may not participate in financing through the Seed and Growth Fund.

0.9 The investee is expected to have a clear shareholder structure and to offer promising exit opportunities. The Seed and Growth Fund will seek to dispose of the financing within a manageable time period.

In addition, at least two of the following criteria must be met:

⇒ An anticipated strong market position,

⇒ Stable profits and cash flows,

⇒ Potential for profit and cash flow increases during a 5-year period,

⇒ Professional management with industry-specific experience and sufficient commercial knowledge.

0.10 An SME interested in funding from the Seed and Growth Fund should submit meaningful documentation allowing an initial assessment of the project. The further procedure as well as the necessity of submitting further documents will be agreed with the SME on the basis of a preliminary assessment. There is no legal entitlement to financing.

0.11 Enterprises that receive grants from other funding programmes in addition to funding from the Seed and Growth Fund must keep their own records of the relevant sources of financing.

Financing is possible for the following two products/alternatives:

## 1. Seed financing/Startups[2]

1.1 Financing will be provided for unlisted small enterprises[3] up to five years following their registration, which have not yet distributed profits and which have not been formed through a merger.

1.2 The target undertakings must have an innovative, technological focus, but must not necessarily be in an entirely high-tech sector. Innovative enterprises are undertakings

(a) that can demonstrate, by means of an evaluation carried out by an external expert, that they will in the foreseeable future develop products, services or processes that are new or substantially improved compared with the state of the art in the relevant economic sector and which carry a risk of technical or industrial failure, or

(b) whose research and development costs represent at least 10% of their total operating expenses in at least one of the three years preceding the granting of the aid. In the case of a startup enterprise without any financial history, this must be certified by an external auditor as part of the audit for the current fiscal period.

The test to determine whether an enterprise is considered innovative is conducted by the fund manager at the Wirtschaftsförderung Land Brandenburg GmbH (WFBB).

1.3 A combination of direct shareholdings and subordinated loans is envisaged.

The Seed and Growth Fund will initially offer direct shareholdings. These are minority shareholdings that are, in general, initially 15% of the share capital without the need for a company valuation.

This rule may be deviated from:

(a) with the acquisition of at least 10% of the shares in the enterprise (after the financing round) or the provision of at least 30% of the envisaged equity capital by an independent investor. In such a case, their valuation basis shall be used;

(b) with joint investments with High-Tech Gründerfonds.

1.4 The Seed and Growth Fund assumes the shareholder function in the startup enterprise. Shares in the share capital are acquired by increasing the capital. The Seed and Growth Fund shares in the profits and losses of the associated company in accordance with its capital contribution.

Additional subordinated loans of up to EUR 1.2 million (including the equity investment) will be invested in accordance with capital requirements as well as the liquidity and balance sheet situation. The average maturity of the subordinated loans is seven years. 100% will be disbursed, with a definition of milestones being sought for disbursements. The interest rate is based on the development of the capital market. Early redemption may be permitted upon application. The total amount per enterprise can be used in several financing rounds.

In the case of further financing rounds (outside the seed financing), there is a right to convert the subordinated loans plus accrued interest into a direct shareholding.

The shareholders do not need to provide personal securities and/or guarantees. Private co-investment is not necessary, but possible.

1.5 Seed financing is not available to undertakings in difficulty within the meaning of the Community guidelines on State aid for rescuing and restructuring firms in difficulty[4].

1.6 Seed financing may, in principle, be combined with other aid pursuant to Article 22(4) GBER, provided that the maximum permissible aid amount is not exceeded.

1.7 In cases of state aid pursuant to Art. 107 et seq. TFEU, the following applies: No individual aid may be granted to an undertaking which has not complied with a recovery order pursuant to an earlier decision by the European Commission declaring aid incompatible with the common market, with the exception of aid schemes to deal with the consequences of certain natural disasters.

## 2. Growth financing

2.1 SMEs are financed in the form of equity and/or quasi-equity investments (hereinafter simply referred to as equity investments). The SMEs must meet the criteria of the EU's definition of SMEs in its currently applicable form.[5]

2.2 The size of the equity investment per associate company should not be less than EUR 300,000. The maximum total investment is limited to EUR 6,400,000 per SME.

2.3. The Seed and Growth Fund may not hold more than 49% of the share capital. A blocking minority is envisaged.

2.4. An equity investment may only be made if the investment would be made by public and private investors under the same conditions – pari passu (market investor test)[6].

The following criteria must be met in order to meet the pari passu conditions:

(a) The investment shall be made under identical conditions for public and private investors.
An equity investment is made on identical terms if the public and private investors share the same risks and returns, and are subject to identical subordination and milestone arrangements in respect of the same risk class. It is also considered to be in line with normal market conditions if the public investor is in a better position than the private investor because, unlike the private investors, it receives, for example, a priority return earlier. This is the case as long as the private investors do not benefit from the scheme.

(b) Both categories of actors intervene simultaneously.
An equity investment will be simultaneous for public and private investors if the private and public investors invest together, i.e. as co-investors, in the final beneficiary SMEs through the same investment transaction.

(c) The intervention of the private investor is of genuine economic importance.
The investment of an independent private investor is considered to be of economic importance if it is at least 30%. An independent private investor is a private investor which is not a shareholder of the eligible undertaking in which it invests, including business angels and financial institutions, irrespective of their ownership, to the extent that they bear the full risk in respect of their investment. Private investors will continue to be considered as independent for subsequent investments if they were independent of the enterprise at the time of the initial investment. When setting up a new business, all private investors, including the founders, are considered to be independent of the business.
Quasi-equity investments in the form of subordinated loans may also be made without private co-financing if they are in line with the Reference Rate Communication[7]. The customary market practice of the calculation method (“Brandenburg model”) must be ensured.

2.5 Investment decisions are made in a profit-oriented manner, in accordance with the arm's length principle with regard to the state.

2.6 Growth financing will not be provided for undertakings in difficulty within the meaning of the Community guidelines on State aid for rescuing and restructuring firms in difficulty, as amended[8].

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[1] Seed financings/startups can only be granted if all requirements of Art. 22 GBER are met (Commission Regulation (EU) No. 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union (TFEU), OJ L187 of 26 June 2014, Annex I, in conjunction with Chapter I of the GBER).

[2] Seed financings/startups can only be granted if all requirements of Art. 22 GBER are met (Commission Regulation (EU) No. 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union (TFEU), OJ L187 of 26 June 2014, Annex I, in conjunction with Chapter I of the GBER).

[3] OJ. L 187, 26/06/2014 Annex I

[4] OJ. C 249/1, 31/07/2014

[5] OJ. L 187, 26/06/2014, Annex I

[6] OJ. C 19/4, 22/01/2014

[7] OJ. C 14, 19/01/2008

[8] OJ. C 249/1, 31/07/2014