

Launch of Coronavirus Future Fund

Full details of the UK Government's Future Fund were released on 18 May 2020. Funding applications will be accepted from 20 May 2020 until the end of September 2020.

The Future Fund was designed to support high growth companies in the United Kingdom affected by the Coronavirus pandemic which have so far been unable to access funding under other government business support programmes either because they are pre-revenue or pre-profit. An initial pot of £250 million has been committed by the UK Government to the Future Fund and this amount will kept under review.

Under the scheme, eligible companies can receive funding from the UK Government in the form of a convertible loan ranging from £125,000 to £5,000,000. Any funding under the scheme will need to be matched by funding of at least the same amount from private investors.

Eligibility

In order to qualify for the scheme, a company must satisfy the following criteria:

- it must have raised at least £250,000 in equity from third party investors in the period from 1 April 2015 to 19 April 2020;
- if it is a member of a corporate group, it must be the ultimate parent company;
- it must be an unlisted limited company incorporated in the United Kingdom on or before 31 December 2019; and
- half or more of its employees must be based in the United Kingdom and/or half or more of its revenues must be from sales in the United Kingdom.

In addition, investors providing matched funding must meet certain eligibility criteria. They should be professional investors rather than "friends and family".

Related Capabilities

- Corporate Governance & Compliance
- Banking & Financial Institutions

Key economic terms

Under the scheme, the Future Fund, the private investor(s) and the company will enter into a convertible loan agreement. There is no ability to negotiate the terms.

The key economic terms of the convertible loan agreement are as follows:

- simple interest will accrue on the loans provided by the Future Fund and the private investor(s) (together, the “**Loans**”) at 8% per annum or such higher rate agreed by the company and the private investor(s);
- the Loans mature after 3 years. Unless the Loans have been previously converted or repaid, the Loans shall convert into equity at that time at a minimum conversion discount of 20% to the price set in the most recent funding round unless the Future Fund and/or the private investor(s) holding a majority of the Loans held such private investor(s) require repayment of their respective Loans. Where repayment of one or more Loans is required, they shall be repaid at that time together with a redemption premium equal to 100% of the principal amount of the Loan(s). There is no right for the company to repay the Loans in advance of the maturity date;
- the Loans will automatically convert into equity on the company's next qualifying funding round at a minimum conversion discount of 20% to the price set in that funding round. A funding round will be a qualifying funding round where the amount raised in equity is equal to or more than the aggregate amount of the Loans;
- on a non-qualifying funding round where the amount raised in equity is more than 25% of the aggregate amount of the Loans, the Loans will convert into equity at a minimum conversion discount of 20% to the price set in that funding round at the election of the private investor(s) holding a majority of the Loans made available by such private investor(s). Where the amount raised on a non-qualifying funding round is equal to 25% or less of the aggregate amount of the Loans, the consent of the Future Fund is also required;
- on an exit (i.e. a sale or IPO), the Loans will convert into equity at a minimum conversion discount of 20% to the price set in the most recent equity funding round unless (i) the amount of the Loans to be repaid to the Future Fund and the private investor(s), including the redemption premium referred to above, is greater than the cash amount to be paid to the Future Fund and the private investor(s) on such exit; or (ii) in the event that non-cash consideration will be paid on such exit, at the election of the Future Fund and/or the private investor(s) holding a majority of the Loans held such private investor(s); and
- upon conversion of the Loans, any accrued but unpaid interest shall either be repaid at that time or convert into equity at the undiscounted price at the discretion of the board of the company.

Use of the funds extended to companies is restricted. The monies cannot be used by the company to: (a) repay shareholder debt; (b) pay any dividends or other distributions; or (c) for a 12 month period, make any bonus or other discretionary payments to any employee, consultant or director of the company other than those required to be paid in the ordinary course of business.

In addition, the Loan provided by the Future Fund must not be used to pay any advisory or placement fees or bonuses to any bank or corporate finance provider.

A copy of the convertible loan agreement can be found [here](#).

What happens on conversion of the Loans?

Prior to any conversion of the Loans, the Future Fund has the right to request a meeting with the company to discuss its shareholder governance rights. The convertible loan agreement states that such rights should be “*commensurate with the proportion of the share capital that the Future Fund shall hold [following conversion] and an appropriate mechanism for the expeditious exercise of those rights by the Future Fund*”. However, the convertible loan agreement also expressly provides that the company is under no obligation to agree to provide any specific shareholder rights in those good faith discussions.

Under the scheme, the Future Fund will not be subject to the same restrictions on the transfer of its shares in the company which apply to other investor(s) and shareholders. Instead, the Future Fund will have the right to transfer its shares in the company without restriction as to price or otherwise and free of pre-emption rights on sale to secondary investors acquiring the whole or part of the Future Fund's interest in a portfolio of 10 or more companies funded under the scheme.

Comment

Two key criticisms of the Future Fund have been made: namely (i) the requirement for a company to raise matched funding from private investors; and (ii) the provision of funding in the form of a convertible loan meaning that any matched funding provided by private investors cannot qualify for Enterprise Investment Scheme (EIS) or Seed Enterprise Investment Scheme (SEIS) reliefs remain (although the UK Government have said that this will be kept under review).

Requiring matching funding from investors undoubtedly restricts the availability of the scheme. However, this concern needs to be weighed up against the benefit in ensuring that taxpayers' funds are only used to support businesses that private investors are themselves willing to support. In addition, without matched funding, the UK Government would need to carry out its own due diligence, leading to delays when this is by necessity, emergency funding.

The unavailability of EIS and SEIS tax relief means that any investments made under the scheme will be less attractive to angel investors in the United Kingdom. This will narrow the pool of potential investors particularly for earlier stage companies.

Dorsey's London office has significant experience in advising both high-growth companies and investors on a wide range of investments and fundraisings. If you have any questions relating to the Future Fund or require any advice in connection with it then please do get in touch.

