

Commonwealth of Australia

Industry Research and Development Act 1986

**Policies and practices of the IR&D Board in relation to the Innovation Investment Fund Program
Round Two
Direction No. 1 of 1999**

I, **NICHOLAS HUGH MINCHIN**, Minister for Industry, Science and Resources of the Commonwealth of Australia, acting under subsection 20(1) of the *Industry Research and Development Act 1986*, give the following direction to the Industry Research and Development Board.

Dated 26 November 1999.

NICK MINCHIN

Minister for Industry, Science and Resources

PART 1—PRELIMINARY

Citation

1. This direction may be cited as the IIF program Round Two, Policies and Practices Direction No. 1 of 1999.

Commencement

2. This direction commences on the day on which particulars of the direction are published in the *Gazette*.

[NOTE: For the publication of the particulars, see s. 20 (3) of the Act.]

Interpretation

3. In this direction:

“**Act**” means the *Industry Research and Development Act 1986*.

“**associate**” will have the meaning determined by the *Board*, but will at least include related entities. Without limiting the *Board*’s discretion, examples of associates may include directors and employees and their relatives, and related companies and trusts.

“**AusIndustry**” means AusIndustry, a business unit within the Department of Industry Science and Resources and its successors.

“**Board**” means the Industry Research and Development Board.

“**Board may**” is permissive and not mandatory.

“**Commonwealth program capital**” means amounts invested in or provided to a licensed fund by the Commonwealth or its nominee under the *IIF program*.

“**committed capital**” means amounts the Commonwealth or another person undertakes to invest in or provide to a licensed fund, conditionally or unconditionally.

“drawdown capital” means *committed capital* that has been invested in or provided to a *licensed fund*.

“eligible investee company” means a company which satisfies the criteria developed under part 5 of this direction.

“equity” includes any form of debt financing that is approved by the *Board* which does not compel the borrower or debtor to pay the interest, the coupon or other charge in the nature of interest prior to the end of the term of the debt, except in the event of default.

“fund” includes a firm, body corporate, trust or other structure.

“Government sourced capital” has the meaning given in clause 19.

“IIF guidelines” means the guidelines developed by the *Board* under part 2 of this direction.

“IIF program” means round two of the Commonwealth’s Innovation Investment Fund Program.

“include” “includes” and “including” do not limit the generality of the words which precede them or to which they refer.

“key personnel”, in relation to a fund manager, means those individuals determined to be key personnel by the *Board*.

“licensed fund” means a fund whose manager has been granted a licence in respect of the fund in accordance with this direction.

“non-profit enterprise” means an enterprise whose governing documents prohibit the distribution of profits to its members.

“passive business” means a company:

- (a) which is not engaged in a regular and continuous business operation (the mere receipt of payments such as dividends, rents, lease payments, or royalties is not considered a regular and continuous business operation);
- (b) whose employees are not carrying on the majority of day to day operations, and the company does not provide effective control and supervision, on a day-to-day basis, over persons employed under contract; or
- (c) which the *Board* considers is likely to pass substantially all of the proceeds of the financing to another entity.

“person” includes a firm, body corporate, trust or other structure.

“private capital” means amounts invested in or provided to a *licensed fund* that are not *Commonwealth program capital*.

“privately sourced capital” means amounts invested in or provided to a *licensed fund* that are not, in the opinion of the *Board*, *Government sourced capital*.

“qualifying enterprise” means an enterprise that:

- (a) was established in Australia; and
- (b) is either:

- (i) an institution of higher education specified in section 4(1) of the *Higher Education Funding Act 1988*; or
- (ii) a wholly-owned Commonwealth, State or Territory enterprise which the *Board* considers has objects that include:
 - (A) carrying out *R&D activities*;
 - (B) carrying out services, or making available facilities, in relation to science or technology;
 - (C) training, or assisting in the training of, persons in the field of scientific or technological research; or
 - (D) collecting, interpreting or publishing information relating to science or technology; or
- (iii) a *non-profit enterprise* which satisfies the objectives of the *IIF program* as outlined in clause 5, and which the *Board* considers has objects that include any of those set out in paragraph (ii) of this definition.

“R&D activities” means research and development activities as defined in section 4(1) of the *Act*.

“related entity” of an entity, means an entity which is related to the first within the meaning of section 9 of the *Corporations Law*.

“result”, in relation to research and development activities, means a result that is capable of being exploited as contemplated by the *Act*.

A reference in this direction to an Act or other instrument is a reference to that Act or other instrument as amended or replaced from time to time.

A reference in this direction to “the IIF guidelines, licensing agreement or other contractual documents” or similar words is a reference to any one or more or all of them.

A reference in this direction to the singular includes the plural and vice versa.

Purpose

4. The purpose of this direction is to set out policies and practices to be followed by the *Board* in developing and administering the *IIF program*.

These policies and practices are designed to provide a basis for awarding licences and the ongoing oversight of *licensed funds* under the *IIF program*.

For the purposes of this direction and in implementing the *IIF program*, the *Board* may enter into such deeds, agreements and other documents as it thinks fit.

Board to have regard to certain policy objectives

5. The *Board* must have regard to the following policy objectives in developing and administering the *IIF program*:
 - (a) by addressing capital and management constraints, to encourage the development of new technology companies which are commercialising research and development;

- (b) to develop a self-sustaining Australian early stage, technology-based venture capital market;
- (c) to establish in the medium term a “revolving” or self funding scheme; and
- (d) to develop fund managers with experience in the early stage venture capital industry.

PART 2—IIF GUIDELINES

6. The *Board* must develop guidelines for the operation of the *IIF program* (including the requirements to be imposed on *licensed funds*, their managers or, if applicable, trustees) containing:
 - (a) the matters contemplated by this direction; and
 - (b) any other matters the *Board* thinks fit.
7. Where this direction refers to matters to be included in the *IIF guidelines* or any other document, those references are to be interpreted as a statement of general intent. The *IIF guidelines* or other documents may elaborate on, expand, define or constrain terms or concepts referred to in this direction, and may contain such other provisions as the *Board* considers appropriate having regard to the policy objectives.
8. The *Board* may amend the guidelines from time to time, as it thinks fit, including during the currency of any licensing round and after the applications have been received. The amended *IIF guidelines* apply in respect of that licensing round and to those applicants notwithstanding the date on which the applications were made.
9. The *Board* may:
 - (a) include such of the *IIF guidelines* within the licence agreement or other contractual documents relating to a *licensed fund* as it thinks fit; and
 - (b) where it considers it to be consistent with the policy objectives of the *IIF program* to do so, agree to provisions in the licence agreement or other contractual documents relating to a *licensed fund* as it thinks fit.

PART 3—AWARD OF LICENCES FOR FUND MANAGERS

Number of licensing rounds

10. The number of licensing rounds will be determined by the *Board*. The *Board* must publicise the closing dates for applications for each licensing round.

Application fees

11. The *Board* must levy a fee to recover part or all of the costs incurred by the *Board* and *AusIndustry* in assessing a licence application. The *Board* may refuse to consider a licence application until that fee is paid.

Consideration of applications

12. Applications invited by the *Board* must be considered by the *Board* as soon as practicable.

Award of Licences

13. Without limiting clauses 7 and 9(b), the *Board* must consider applications by reference to the *IIF guidelines*. The number of licences to be awarded by the *Board*, if any, will depend on:
 - (a) the total amount of available *Commonwealth program capital* allocated by the *Board* in each licensing round;
 - (b) the suitability of applicants in terms of the *IIF guidelines*;
 - (c) the level of *Commonwealth program capital* requested within individual applications; and
 - (d) any other matters which the *Board* thinks fit.
14. The *Board* is not obliged to award a licence because an applicant satisfies the *IIF guidelines* or for any other reason.

Requirements concerning applicants

15. Without limiting clauses 7 and 9(b), the *IIF guidelines* are to include criteria by reference to which the *Board* will consider applications. Without limiting clause 16, those criteria must include:
 - (a) the proposed ratio of *privately sourced capital* to *Commonwealth program capital* (subject to the limitations in clause 39(a));
 - (b) a demonstrated ability to access the level of *privately sourced capital* required according to the application for a licence;
 - (c) an understanding of and experience in dealing with issues related to Australian and international technology investments, products, services and markets;
 - (d) expertise and experience in actively seeking and investigating potential equity investments in small early stage companies;
 - (e) expertise and experience in developing and implementing equity investment strategies to achieve returns by investing in small early stage companies;
 - (f) expertise and experience in the development and implementation of successful growth and recovery strategies for small early stage companies;
 - (g) expertise and experience in the successful management of investment portfolios;
 - (h) experience in providing financial management advice to small early stage companies;
 - (i) expertise and experience in realising returns from investments through third party transactions such as later round financing, trade sales and initial public offerings;
 - (j) experience in generating and maintaining a variety of financial data and reports on investment funds;
 - (k) demonstrated good character and high ethical standards;
 - (l) commitment to training and developing the skills of Australian based staff in

all aspects of making venture capital investments in small, early stage companies;

- (m) demonstrated willingness to operate within the intent of the *IIF program*; and
- (n) the *Board* shall have regard to the accessibility of the program for industry around Australia.

16. The *Board* may, if it thinks fit, in respect of any one or more or all applications from time to time:

- (a) take into account experience, expertise, abilities and, without limitation, other matters the *Board* considers relevant when assessing an applicant; and
- (b) attribute to particular categories of experience, expertise, abilities or other matters set out in the criteria or taken into account under clause 16(a), a higher level of relative importance than other such categories or matters in considering an application for a licence.

17. The *Board* must include in the *IIF guidelines* details of the information to be provided by applicants for a licence. That information must include:

- (a) the key personnel of the proposed fund manager including their roles, terms of employment and responsibilities;
- (b) the amount of *Commonwealth program capital* required;
- (c) the amount and sources of the *private capital* raised or proposed to be raised; and
- (d) a business plan that includes details of:
 - (i) the timing of investments;
 - (ii) the level of annual fund management fees; and
 - (iii) the scope of the management services to be provided to the fund for the fund management fee.

18. Without limiting clause 8, the *Board* may, if it thinks fit from time to time, include other requirements relating to applicants and applications in the *IIF guidelines*.

Government sourced capital

19. The *Board* must regard as Government sourced capital amounts invested in or provided to a *licensed fund* by:

- (a) an entity or entities which is or are, in the opinion of the *Board*, funded directly or indirectly by the Commonwealth, a State or Territory; or
- (b) any person whom the *Board* considers is directly or indirectly in receipt of funding from a source or combination of sources which are funded directly or indirectly by the Commonwealth, a State or Territory to such an extent that it is, in the opinion of the *Board*, appropriate to treat any amount invested in or provided to the fund by that person as Government sourced capital,
- (c) but excluding any amount of that funding (whether under paragraph (a) or (b)) that, in the opinion of the *Board*, should not be treated as Government sourced capital.

PART 4—BASIS FOR THE LICENCE AGREEMENTS

Basis for agreements

20. The *Board* must not enter into licence agreements with applicants under the *IIF program* except in accordance with this part 4.

Licences

21. The *Board* may, within the limits under clause 13, offer licences to applicants whom the *Board* considers have the highest relative merit.
22. The *Board* must make an offer in writing and include words to the effect that an applicant may accept the offer by:
- (a) notifying the *Board* in writing;
 - (b) demonstrating to the satisfaction of the *Board* that the *privately sourced capital* has been committed;
 - (c) executing a licence agreement in a form and containing terms acceptable to the *Board* and in accordance with this direction; and
 - (d) complying with any other requirements of the *Board* as notified in the offer of a licence (including entering into documents).
23. The *Board* must provide for the offer to lapse if acceptance does not occur within 6 months of the making of the offer, although the *Board* may grant an extension to a particular applicant if it considers appropriate.
24. If in any particular licensing round an offer of a licence is not accepted or lapses without being extended or renewed, the *Board* may offer a licence to the next applicant in that licensing round that the *Board* considers would best achieve the objectives of the *IIF program*.
25. The *Board* may vary the procedure set out in clauses 21 to 24 if it considers it appropriate to do so having regard to the policy objectives of the *IIF program*.

Pre-licence Investments

26. The *Board* may make provision in the *IIF guidelines* for the conditions to apply for investments in or the provision of finance to *eligible investee companies* made or agreed to be made following the lodgement of an application, but prior to the execution of the licence agreement.

PART 5—THE OPERATION OF LICENSED FUNDS

Eligible investee company

27. The *Board* must make provision in the *IIF guidelines*, licensing agreement or other contractual documents relating to a *licensed fund* requiring the fund to invest in or otherwise provide finance only to eligible investee companies. For a company to be an eligible investee company, it must be:
- (a) a company which:
 - (i) at the time the *licensed fund* first makes an investment in it is incorporated under the *Corporations Law* and proposes to continue that incorporation, unless the *Board* is of the opinion both that:

- (A) the investment would otherwise promote the objectives of the *IIF program*; and
 - (B) the *results* of the *R&D activities* to which that investment relates will be exploited on normal commercial terms and in a manner that will be for the benefit of the Australian economy;
- (ii) which is commercialising the *results* of *R&D activities* or will, under the investment arrangement with the fund, be required to commercialise the *results* of *R&D activities*;
- (iii) which at the time the fund first invests in or provides finance to the company it is at the seed, start-up or early expansion stage of its development;
- (iv) which is providing all of the goods and services it produces through commercialising the *results* of *R&D activities* to persons who are not *associates*;
- (v) which either:
 - (A) has a majority of its employees (by number) and assets (by value) inside Australia at the time when the fund first invests in or provides finance to it; or
 - (B) will use the whole of the initial investment within Australia;
- (vi) which, unless the *Board* determines otherwise in any particular case, at the time when the fund first invests in or provides finance to it, its average annual revenue over the previous 2 years of income does not exceed \$4 million and the revenue in either year is not in excess of \$5 million. The calculation of revenue for a year of income must exclude abnormal items; and
- (vii) which, unless the *Board* determines otherwise in any particular case, at the time when the fund first invests in or provides finance to the company, it is not an *associate* of another company (other than a *qualifying enterprise*) which has an average annual revenue, over the previous 2 years of income, in excess of \$4 million per year and the revenue in either year is not in excess of \$5 million. The calculation of revenue for a year of income must exclude abnormal items; or
- (b) with the consent of the *Board*, a company that has a wholly owned subsidiary which is an eligible investee company under paragraph (a),

and in any case it must (unless the *Board* otherwise agrees) be the company directly into which the *licensed fund* is to invest or directly to which the *licensed fund* is to provide finance and be the company that is to commercialise the *results* of the *R&D activities*.

- 28. Despite clause 27(a)(i), a company will cease to be (and will be taken never to have been) an *eligible investee company* if in the opinion of the *Board* the initial investment was made in an amount or at a time for the primary purpose of qualifying that company as an *eligible investee company*.
- 29. Factors indicating that a company is in the seed stage of development include:
 - (a) that the initial concept of its business is being formed;

- (b) prototypes or concepts of the company's products or services are being developed;
 - (c) its management team is beginning to form; and
 - (d) any other matters the *Board* thinks fit.
- 30. Factors indicating that a company is in the start-up stage of development include:
 - (a) that the funds are necessary for product development, staffing, initial marketing and other start-up costs;
 - (b) its management team is substantially in place;
 - (c) the company is setting itself up to sell its product or service commercially; and
 - (d) any other matters the *Board* thinks fit.
- 31. Factors indicating that a company is in the early expansion stage of development include:
 - (a) that the funding is necessary for working capital to help launch the manufacture and sale of the company's products or services. Typically, the company is not profitable and frequently will be cash-flow negative; and
 - (b) any other matters the *Board* thinks fit.

Excluded companies

- 32. The *Board* must make provision in the *IIF guidelines*, licensing agreement or other contractual documents relating to a *licensed fund* to exclude companies that conduct any of the following businesses from being *eligible investee companies*:
 - (a) re-lending or re-investing;
 - (b) passive businesses;
 - (c) real estate businesses;
 - (d) mining operations; or
 - (e) the acquisition of land used or intended to be used for agricultural, horticultural or forestry purposes.
- 33. The *Board* must make provision in the *IIF guidelines*, licence agreement or other contractual document relating to a *licensed fund* to require that the fund not, without the prior approval of the *Board*, invest in or provide finance to *eligible investee companies* who:
 - (a) are *associates* of the fund manager;
 - (b) are *associates* of any entity which provides over 10 percent of the *privately sourced capital* to the fund;
 - (c) are controlled by an entity providing *privately sourced capital* to the fund;
 - (d) have a director who is or has been an *associate* of the fund manager; or
 - (e) have any other relationship with the fund that the *Board* considers inappropriate.

34. The *Board* may make provision in the *IIF guidelines*, licensing agreement or other contractual documents relating to a *licensed fund* to exclude other persons from being *eligible investee companies*. The *Board* may make those exclusions on the basis of activities, corporate structure, industry category, sources of revenue or any other generally applicable basis.

Determination of an eligible investment company

35. Investment decisions will be made by fund managers, but fund managers may in any particular case request that the *Board* determine whether a company is an *eligible investee company* and, subject to clause 37, the *Board* must make that determination.
36. The *Board* is not limited in placing conditions, qualifications or disclaimers on a determination of whether or not a company is an *eligible investee company*.
37. The *Board* may levy fees that do not exceed the costs incurred by it and *AusIndustry* in making a determination under clause 35. The *Board* may refuse to consider a request or to make or notify a determination under clause 35 until those fees are paid.

Control of an eligible investee company by a licensed fund

38. The *Board* may make provision in the *IIF guidelines*, licensing agreement or other contractual documents relating to a *licensed fund* to limit the level of control exerted by the fund or its manager on an *eligible investee company*. In doing so the *Board* must consider:
- (a) the objectives of the *IIF program*;
 - (b) the capital generally required at the early stage of development and the cost of capital at each stage of investment;
 - (c) the ability of the fund to realise a return from an investment in small early stage companies;
 - (d) the ability of the fund to protect its investment in small early stage companies;
 - (e) the role of the fund manager in providing advice, guidance and influence to small early stage companies; and
 - (f) any other matter the *Board* thinks fit.

Operation of licensed funds

39. The *Board* must include requirements to the following effect in the *IIF guidelines*, licensing agreement or other contractual documents relating to a *licensed fund*:
- (a) the ratio of *Government sourced capital* to *privately sourced capital* contributed to a *licensed fund* will not exceed 2:1;
 - (b) a *licensed fund* may be a unit trust, company or other structure approved by the *Board*. A Pooled Development Fund cannot invest in or provide money to a *licensed fund*;
 - (c) a *licensed fund* must not raise monies in the form of debt, or equity with features materially consistent with debt, with the exception of leasing equipment or short term debt for the purpose of maintaining the short term liquidity of the *licensed fund*, without the consent of the *Board*;
 - (d) a *licensed fund* must source at least 30% of its *private capital* from entities not associated with the fund manager. The *Board* may place additional

requirements in the *IIF guidelines* which require a *licensed fund* to have a diversity of entities providing the *private capital*;

- (e) a *licensed fund* must provide funding to *eligible investee companies* only by means of *equity* purchase, with the exception of:

- (i) short term loans provided for temporary purposes to an *eligible investee company* in which the fund has previously invested or to which it has previously provided finance; and
 - (ii) convertible notes.

Unless otherwise approved by the *Board*, the *equity* purchased must be a new issue;

- (f) at least 60% of a *licensed fund's committed capital* must be invested within 5 years of the granting of the licence, unless the *Board* agrees otherwise;
- (g) a *licensed fund* must not invest in or provide to an *eligible investee company* more than \$4,000,000 or 10% of the fund's *committed capital*, whichever is the lesser, unless the *Board* agrees otherwise. In addition to considering whether or not to agree to a greater level of investment in an investee company in a particular case, the *Board* may from time to time issue determinations increasing the permitted level of investment in *eligible investee companies* generally or in particular classes of eligible investee companies;
- (h) transactions carried out by a *licensed fund* in relation to *eligible investee companies* must be carried out at arm's length;
- (i) a *licensed fund* and investee company, investor, trustee, director or manager of such a fund must avoid transactions where a conflict of interest exists. Where such transactions are unavoidable, the parties to the transaction must be able to demonstrate that the transaction was carried out on an arm's length basis in a manner consistent with Part 3.2 of the *Corporations Law*. The fund or the investor must notify the *Board* of any such conflict of interest, the nature of the conflict, the nature of the transaction and the terms and conditions of the transaction within thirty days of entering into such a transaction;
- (j) a person who has invested in or provided amounts to a *licensed fund* must not influence or attempt to influence, the individual investment or financing decisions of the fund manager;
- (k) a *licensed fund* must have an appropriate number of suitably qualified and experienced investment managers having regard to the size and type of the fund;
- (l) monies provided to an investee company must be applied to advance the company in the commercialisation of its *R&D activities* via marketing, sales, distribution, administration, production, product development or development of a prototype; and
- (m) any other requirements the *Board* thinks fit.

PART 6—TIMING OF PROVISION OF CAPITAL TO LICENSED FUNDS

Drawdown of capital

40. The *Board* must determine in the *IIF guidelines*, the licensing agreement or other contractual documents relating to a *licensed fund*, the process by which *Commonwealth program capital* will be invested in or provided to the fund. In determining that process, the *Board* must consider the following:
 - (a) that *Commonwealth program capital* will be invested or expended within a reasonable period by the fund;
 - (b) where it considers appropriate, the *Board* may withhold *Commonwealth program capital* from being drawdown; and
 - (c) any other matters the *Board* thinks fit.

PART 7—INFORMATION TO BE PROVIDED BY LICENSED FUNDS

Reporting

41. The *Board* must make provision in the *IIF guidelines*, licensing agreement or other contractual documents relating to a *licensed fund* to require the fund to provide audited reports, as specified by the *Board*, within 75 days of the end of the fund's year of income unless otherwise specified by the *Board*.
42. The *Board* must make provision in the *IIF guidelines*, licensing agreement or other contractual documents relating to a *licensed fund* to allow the *Board* from time to time to request information from the fund for the purpose of:
 - (a) monitoring the performance of the fund, its manager and (if applicable) trustee;
 - (b) assessing the financial viability of the fund, its manager and (if applicable) trustee;
 - (c) auditing the activities of the fund, its manager and (if applicable) trustee;
 - (d) evaluating the performance of the fund, its manager and (if applicable) trustee and the *IIF program*;
 - (e) investigating the activities of the fund, its manager and (if applicable) trustee in terms of compliance with the licensing agreement and other contractual documents relating to the fund; and
 - (f) any other purpose the *Board* thinks fit.

Placing a licensed fund under special conditions.

43. The *Board* must make provision in the *IIF guidelines*, licensing agreement or other contractual documents in relation to a *licensed fund* to ensure that where the *Board* is of the opinion that the fund or its manager:
 - (a) is or may become insolvent or suffer what the *Board* considers to be a substantial loss of capital;
 - (b) is in breach of the *IIF guidelines*, any requirement imposed on it under clause 22 or any contractual or other obligation owed to a third party:

- (c) has failed to achieve activity milestones contained within the licence agreement or other contractual document relating to the fund; or
- (d) a member of the *key personnel* ceases to be employed or otherwise retained by the fund in the manner stated in the application to be awarded a licence;

the *Board* may, in consultation with entities contributing *private capital* (excluding the fund's manager and *associates*), place additional conditions on the operations of the fund to protect the value of the monies invested in the fund.

44. These conditions may include, but are not limited to:

- (a) replacement of a fund manager;
- (b) divestment of specified investments;
- (c) limitations on investments, short term debt raising or other financing instruments;
- (d) reimbursement of costs associated with correcting the circumstance; or
- (e) recruitment by the fund manager of additional staff with appropriate expertise, experience or abilities.

Conditions to apply to investors

45. The *Board* must make provision in the *IIF guidelines*, the licence agreement or other contractual document relating to a *licensed fund* for the conditions to apply in the event a person who has invested in or provided amounts to the fund breaches the *IIF guidelines*.

Valuation

46. The *Board* must make provision in the *IIF guidelines* for policies and methodologies to ensure a consistent, transparent and realistic valuation of *licensed fund* assets. Where practicable these methodologies and policies are to reflect what is, in the opinion of the *Board*, generally accepted practice in Australia.

Other Requirements

47. Nothing in this part 7 limits the requirements that may be imposed under clause 22.

PART 8—INCOME DISTRIBUTION AND TERM

Distribution

48. In determining the terms on which *Commonwealth program capital* is invested in a *licensed fund*, the *Board* must require the fund to distribute monies upon the receipt of earnings or the realisation of investments or other financings in the following manner:

- (a) first, an amount equal to the *licensed fund's* total *committed capital* is to be divided amongst the Commonwealth and private investors pro rata according to the amount subscribed by them, whether or not drawn down;
- (b) secondly, each investor (including the Commonwealth) is to be paid an amount equal to the interest on the outstanding daily balance of the amount from time to time invested in or provided to the fund by that investor. Interest ceases to be calculated in this way once the *committed capital* is "repaid" under clause 48(a). The interest rate is to be the 10 year Commonwealth bond rate prevailing on the date the offer of a licence is made by the *Board* and

stipulated in the offer document;

- (c) thirdly, each investor (including the Commonwealth) is to be paid an estimate of a notional amount of interest that investors might otherwise have received on amounts invested in or provided to the fund after the *committed capital* is “repaid” under clause 48(a). The manner of calculation of the estimate is to be determined by the *Board*; and
- (d) fourthly, any surplus is to be divided between the Commonwealth (as to 10%) and the other investors and the fund manager (as to 90%).The Commonwealth has no priority as to distributions.

49. The *Board* must make provision in the *IIF guidelines*, or in the licensing agreement or other contractual document relating to the operation of a *licensed fund* to allow the *Board* to determine the distribution of fund monies as between the other investors and the fund manager as contemplated by clause 48(d). In making such a determination, the *Board* will take into consideration any distribution mechanism agreed between the fund manager and the other investors.

Ten Year Term

50. The *Board* must make provision for a *licensed fund* to be wound up no later than 10 years after the date *Commonwealth program capital* is first contributed, with all monies distributed in accordance with clauses 48 and 49, subject to an extended period to allow for the orderly and prudent disposal of the fund assets or for other reasons the *Board* thinks fit.

PART 9—FEES

Fund management fees

51. The *Board* must make provision in the *IIF guidelines*, licensing agreement or other contractual documents in relation to a *licensed fund* for the setting of appropriate management fees. In approving these and any other fees, the *Board* must have regard to:
- (a) the level of resources for fund managers that the *Board* considers appropriate;
 - (b) the scope of the management services to be provided by the fund manager to the fund and included in the fund management fee;
 - (c) the interests of the investors in the fund, including the Commonwealth;
 - (d) the objectives of the *IIF program*; and
 - (e) any other matters the *Board* thinks fit.

Management Services

52. The *Board* must include in the *IIF guidelines*, licensing agreement or other contractual document in relation to a *licensed fund* a requirement that any management services provided to an investee company by the fund manager or an *associate* of the fund manager which are paid for by the investee company are charged at no more than market rates, are optional, and are open to provision by a third party.

PART 10—REMOVAL OF FUND MANAGERS

53. The *Board* must make provision in the *IIF guidelines*, licence agreement or other contractual document relating to the operation of a *licensed fund*, for the removal of the fund manager in circumstances the *Board* considers appropriate.

PART 11—LIQUIDATION

54. The *Board* must make provision in the *IIF guidelines*, licence agreement or other contractual document relating to the operation of a *licensed fund* for the liquidation of the assets of the fund prior to the 10 year term referred to in clause 50 in circumstances the *Board* considers appropriate.

PART 12—TRANSFER OR WITHDRAWAL OF INVESTORS

55. The *Board* must make provision in the *IIF guidelines*, licence agreement or other contractual document relating to the operation of a *licensed fund* for the conditions to apply upon any of the following circumstances occurring:
- (a) the withdrawal of a person who has invested in or provided amounts to the fund or the transfer of ownership of any part of that person's interest in the fund;
 - (b) where a person (other than the Commonwealth in respect of *Commonwealth program capital*) does not deliver *committed capital* in accordance with their obligations to do so; and
 - (c) the transfer of all or part of the *Commonwealth program capital*.

PART 13—EVALUATION

56. The *Board* must make provision in the *IIF guidelines*, licence agreement or other contractual documents relating to the operation of a *licensed fund* for the fund to co-operate in the evaluation of the *IIF program*.