

Appendix A

Enterprise Start-up Fund Program

Pilot Program

Guidelines

CONTENTS

- 1. These are the Guidelines for the Enterprise Start-up Fund Pilot Program (ESF Pilot Program), and may be cited as the ESF Pilot Program Guidelines of 2001. 31**
- 2. These Guidelines commence on the day on which they are signed by the appropriate official of the government of the Peoples Republic of China. 31**
- 3. These Guidelines are established by the *SETC* acting under [insert authority]. These Guidelines are program and operational policy guidelines only. The purpose of these Guidelines is to establish at a general level the policies and practices to be adopted by the *SETC* in its administration of the *ESF program*. While these Guidelines will refer to matters to be included in the *governing documents*, those references are to be interpreted only as a statement of general intent. In addressing those matters in the *governing documents*, the *SETC* may elaborate on, expand, vary, define, constrain or omit terms or concepts referred to in these Guidelines as the *SETC* considers appropriate having regard to the policy objectives of the *ESF program*. Those documents may also contain any other provisions the *SETC* considers appropriate having regard to those objectives. 31**
- 4. For the purpose of implementing these Guidelines and other matters not contemplated by these Guidelines, the *SETC* may enter into any agreements and other documents it thinks fit. 31**
- 5. The *SETC* may amend these Guidelines from time to time. 31**
- 6. The policy objectives of the *ESF program* are: 31**
 - (a) by addressing capital and management constraints, to encourage the development of new and early-stage small and medium enterprises (SMEs) that contribute to economic development, both in traditional industries and those based on advanced technology. 31
 - (b) to add to a self-sustaining, Chinese early-stage direct equity investment industry; 31

- (c) to encourage participation in direct equity investments by non-government and local government sources, and 31
- (d) to develop fund managers with experience in the early stage venture capital industry. 32
- 7. The Government has committed __ million RMB of its Development Fund to be invested in a small number of venture capital funds which will be established to invest in small businesses in the early stages of their development. Interested persons may apply for a licence to manage a proposed fund under the program.** 32
- 8. The Development Fund will provide up to two-thirds of the agreed level of capital for each fund, by direct loans or by loan guaranties (directly or through a Credit Guaranty Company), under the terms set forth in Section __ below. The Development Fund will provide up to one times the investment in the fund by local or provincial government sources, and up to two times the investment in the fund by non-government sources. The fund manager will be responsible for arranging the investment by sources other than the Development Fund.** 32
- No additional Government funds will be contributed beyond the 2:1 ratio of the agreed level of capital. The SETC encourages competitive bids from applicants involving the amount of capital they will source from the other investors, up to a maximum Development Fund participation of two-thirds of the fund total.** 32
- 9. In establishing the *ESF program*, the *SETC* is concerned to establish a framework which offers compatible operating structures and procedures with those offered to the venture capital industry generally.** 32
- 10. The Development Fund may lend or guarantee loans to the *licensed funds* through a wholly-owned company.** 32
- 11. The role of the fund manager will be to identify likely investees and investigate all aspects of their businesses and their potential for growth in global markets. The fund managers will make the investment decisions. The *licensed funds* will invest in companies permitted by these guidelines, by purchasing newly issued *equity* or providing long term debt financing, so that the money provides the necessary cash for the company's development and expansion.** 32

12. SETC expects a fund manager to behave and manage the fund using its best commercial endeavours lawfully, ethically and within the Guidelines, licence agreement and other agreements. 32
13. The Development Fund and other investors will not generally have any rights to make investment (or divestment) decisions. 33
14. The fund manager's primary roles will be to: 33
15. The fund manager will be bound by the requirements of the licensing agreement with SETC and it is primarily through this agreement and this relationship with the fund manager that the SETC will exercise its regulatory role. 33
16. The fund manager, through the fund's constituent documents, will manage the commercial operations of the fund on behalf of the investors. 33
17. The fund manager will also have a significant relationship with each of the fund's investees. 33
18. The successful applicants may include some management groups new to the Chinese venture capital market. While the management team of the successful applicants is expected to include experienced financial and business professionals, the SETC expects, in accordance with the policy objectives of the *ESF program*, that the successful applicants will be committed to training and developing the skills of Chinese based staff in all aspects of venture capital investment activities in small, early stage companies. Applicants should indicate their commitment to utilize available training courses and mentoring opportunities in staff development. 33
19. The *licensed funds'* investments are expected to have a duration of up to ten years, although this may vary depending on the rate of development of the individual investees. 34
20. A *licensed fund's committed investment* will be drawn down by the manager as it is needed for investment in eligible investees. Proceeds from the sale of investments will not be available for reinvestment by the manager. 34
21. The critical element of venture capital investing that distinguishes this activity from other investment activities is the provision of management assistance to investees. The fund manager's role

- will include the provision of advice, guidance and assistance on many aspects of the investees' business activities. This management assistance complements the capital invested in the investees and increases the likelihood of the investees' eventual success in global markets. 34
22. In considering bids from prospective fund managers, the SETC will take into consideration the proposed management fee to be paid to the fund manager. These management fees are intended to cover the fund manager for the operating costs of the *licensed fund*, although some expenses may be directly recoverable by managers from the fund in addition to their fees. 34
23. The proceeds from the *licensed fund's* investments will be distributed to the Development Fund, the non-government and local government investors and the manager of the fund in accordance with clause 158. 34
24. The *ESF program* will be administered by the SETC through its Fund Management Committee (FMC) The SETC is to receive all reports and information provided to investors. 34
25. The SETC will advertise for licence applications. The SETC will undertake a rigorous assessment of applications, with particular emphasis on the skills, experience and track records of the proposed management personnel of each applicant in managing venture capital funds specialising in technology investments in small early stage companies. Consideration will be given not only to the quantum of management fees sought by each applicant but also the timing of their payment. The SETC may interview applicants whom the SETC considers display the highest level of relative merit. 35
26. The applicants to whom the SETC makes an offer will have six months in which to accept the offer, comply with any pre-conditions imposed and negotiate and agree with the SETC the contractual documents necessary to establish the operational framework of the individual *licensed funds*. In certain cases, the SETC may grant an extension to one or more applicants if it considers appropriate. For the purposes of this clause 28, "agree" means finalise and execute to the satisfaction of the SETC. 35
27. The Government and the SETC are concerned that all investment decisions and other decisions

- concerning transactions that may provide a benefit to any person are appropriate in the circumstances and do not give rise to any conflict of interest. 35
28. A *licensed fund* must not adopt practices in relation to a taxation law or other law of the Development Fund or of a State or Territory that would or might bring the *ESF program* into disrepute. Accordingly, the *SETC* will not approve structures which are, or will be perceived to be, tax avoidance arrangements. 35
29. In these Guidelines: 35
30. A reference in these Guidelines to an Act or other instrument is a reference to that Act or other instrument as amended or replaced from time to time. 37
31. A reference to *SETC* may is permissive and not mandatory. 37
32. A reference to a fund may include a firm, body corporate, trust, partnership, joint venture or other structure. 37
33. References to include, includes, including and in particular do not limit the generality of the words which precede them or to which they refer. 37
34. A reference to an investor may include a physical person, a firm, body corporate, trust or other structure. 37
35. It should be understood that the documents regulating the operation of a *licensed fund* and its manager will contain substantial obligations in excess of those set out in these Guidelines. These Guidelines are a statement of policy only and should not be seen as a definitive statement of the Government's requirements under the *ESF program*. 37
36. The *SETC* will publicise any *licensing round* in the manner it determines from time to time. In doing so, the *SETC* will publicise the closing date for applications, the address for lodging applications, any application fee applicable to the *licensing round* and any other information which the *SETC* considers to be of relevance to potential applicants. 37
37. The *SETC* may levy fees to recover part or all of the costs incurred by the *SETC* or the Development Fund in assessing licence applications.

- Those fees will not be refunded to applicants under any circumstances. The *SETC* may refuse to consider a licence application until the relevant fee is paid. 37
38. The purpose of each *licensing round* is to identify applicants with the capacity and capability to manage a *licensed fund* in such a way as to fulfil the objectives of the *ESF program*. To that end, it is the responsibility of each applicant to clearly demonstrate its capacity and capability. When it publicises a *licensing round*, the *SETC* will inform potential applicants of the information required by the *SETC* to consider an application, as set out in Annexure A. The *SETC* may request additional information after the lodgement of an application in order to assist it in assessing the application. 37
39. The *SETC* will, subject to clause 42, establish a shortlist from the applicants in each *licensing round*. The shortlisted applicants will be provided with a copy of the model *governing documents* for the licensed fund and will be invited by the *SETC* to submit an offer for the grant of a licence. The applicant's offer must be in accordance with clause 60 and must identify the changes to the model documents proposed for their fund. The *SETC* will determine the form and timing of the invitation to submit offers. 38
40. Subject to clauses 60 to 63, the *SETC* will assess applications (and offers for the grant of a licence) against the selection criteria outlined in these Guidelines. Subject to clause 42, applications will be assessed by the *SETC* as soon as practicable. 38
41. The *SETC* will assess applications on a competitive basis by reference to the selection criteria referred to in clauses 48 to 59. The *SETC* may interview any applicant as part of the assessment process. 38
42. The *SETC* is not obliged: 38
- (a) to shortlist an applicant or award a licence because an applicant satisfies these Guidelines or for any other reason; or 38
 - (b) to award a licence to any applicant in a *licensing round*. 38
43. Background checks, including checks of bankruptcy or criminal records of persons considered by the *SETC* in connection with the licensing of a licensed fund to be relevant to

assessing an application, may be undertaken as part of the assessment process.	38
44. As part of the assessment process, the <i>SETC</i> may seek advice from external experts on specific areas of an application or offer to take up a licence. Those experts will be required to treat information provided to them as confidential.	38
45. Applicants must demonstrate that their proposed <i>key personnel</i> and management team are qualified and have the knowledge, experience, and capability necessary for developing and managing an investment portfolio of the kind contemplated by the <i>ESF program</i>, including:	38
(a) expertise and experience in actively seeking and investigating potential equity investments in small, early stage companies;	38
(b) expertise and experience in developing and implementing equity investment strategies to achieve returns by investing in small, early stage companies;	38
(c) expertise and experience in the development and implementation of successful growth and recovery strategies for small, early stage companies;	39
(d) expertise and experience in the successful management of investment portfolios;	39
(e) experience in providing financial management advice to small, early stage companies;	39
(f) expertise and experience in realising returns from investments through third party transactions such as later round investments, trade sales and initial public offerings; and	39
46. The <i>SETC</i> expects that licensed fund managers will:	39
(a) demonstrate a commitment to training and developing the skills of China - based staff in all aspects of venture capital investment activities in small, early stage companies;	39
(b) have an appropriate ratio of investment managers to <i>committed capital</i> having regard to the size and type of the <i>licensed fund</i> ;	39
(c) have a balance of relevantly qualified and skilled <i>key personnel</i> ; and	39
(d) have developed a sound and satisfactory business plan.	39
47. If the fund proposes to make investments in companies based on advanced technology, the proposed <i>key personnel</i> must have an understanding of, and experience in dealing with, issues related to	

technology investments, products, services and markets, including:	39
(a) demonstrated expertise and experience in any specific technologies which will be the investment focus of the <i>licensed fund</i> ;	39
(b) experience in providing advice to technology-based businesses; and	39
(c) experience in commercialising technology investments.	39
48. In assessing this criterion, the SETC will consider:	39
(a) the proposed size of the <i>licensed fund</i> including the amounts of local government and non-government <i>sourced capital</i> . The SETC will accept competitive bids from applicants matching the amount of investment they will source from non-government and local government sources, up to a maximum Development Fund to non-government investment ratio of 2:1, plus a maximum of Development Fund to local government sourced investment of 1:1;	39
(b) the applicant's ability to raise the level of non-government and local government investment proposed in the application, including any underwriting arrangements the applicant has in place. The SETC will give greater weight to applications with underwritten capital than those without underwriting;	39
(c) the applicant's ability to meet the capital investment requirements set out in these Guidelines, including the minimum capital investment requirements and management and ownership diversity requirements;	40
(d) the proposed sources of capital; and	40
(e) evidence of linkages with global capital markets.	40
49. The SETC:	40
(a) expects that shortlisted applicants will provide the <i>FMC</i> , as a minimum, with letters of intent to commit the required level of non-government and local government capital, with preference given to applicants with underwritten funding commitments for their non-government and local government sector capital; and	40
(b) encourages, to the extent permitted by law, raising from pension funds, insurance companies, other institutional investors, and foreign sources.	40
50. Applicants must demonstrate through the application that the <i>licensed fund</i> will:	40
(a) operate within these Guidelines; and	40

- (b) achieve commercial returns for its investors, and repayment of loans made or guaranteed by the Development Fund. 40
- 51. Applicants must demonstrate experience in generating and maintaining a variety of financial data and reports on investment funds.** 40
- 52. Applicants must demonstrate an investment policy which proposes a balance of investments across the seed, start up and early expansion stages. An investment policy may include a regional focus.** 40
- 53. Applicants must demonstrate a willingness to operate within the intent, and to promote the policy objectives, of the *ESF program*.** 40
- 54. Applicants must demonstrate the good character and high ethical standards of themselves and their *key personnel*, including through their respective general business reputations.** 40
- 55. *SETC* will consider the amount, structure and timing of management fees sought by the fund manager.** 41
- 56. *SETC* may have regard to additional criteria and undertake other enquiries in order to consider the suitability of applicants and decide whether or not to accept an offer from shortlisted applicants to take up a licence.** 41
- 57. In particular, *SETC* may take into account experience, expertise and abilities which, while not directly addressing the criteria, are relevant to the *ESF program*.** 41
- 58. *SETC* may attribute a higher level of relative importance to one or more of the selection criteria.** 41
- 59. *SETC*'s assessment of applications will be based on comparative merit.** 41
- 60. *SETC* may invite those applicants whom it considers have the highest level of relative merit against the selection criteria, to submit offers to the *SETC* for the grant of a licence. An offer must:** 41
- (a) be in writing in the form required by *SETC*; 41
 - (b) demonstrate to the *SETC*'s satisfaction that the investment by others than the Development Fund has been committed; 41
 - (c) contain an agreement by the applicant to sign a licence agreement and any other documents required by *SETC*, and specify any conditions to which that agreement is subject; and 41

(d) comply with any other requirements notified by *SETC*.

41

61. Particular conditions may apply to individual licensees, to be determined on the basis of their applications and offers and as part of the licensing process. These may include conditions relating to the consequences of the failure by the applicant to raise their proposed level of capital. In particular, SETC may require the applicant to proceed on the basis of the investment capital successfully raised by the applicant, matched by the Development Fund in the proposed capital ratio stated in the applicant's application (such an approach would result in a level of capital for the fund below that originally proposed in the applicant's offer).

41

62. SETC may accept or decline an offer to take up a licence at its absolute discretion. An offer to take up a licence will lapse if it is not accepted within six months of the offer being made, although the SETC may, with the consent of the relevant applicant, extend the time during which it may accept the offer if it considers appropriate to do so. If in any round an offer to take up a licence is declined, withdrawn or lapses, SETC may invite an offer to take up a licence from the next shortlisted applicant in the *licensing round* the licensing of whom the SETC considers may best achieve the objectives of the *ESF program*.

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63. Without limiting its rights, SETC may withdraw an invitation to make an offer to take up a licence if, at any time before the invitation expires, SETC is of the opinion that the person to whom it was made is not making a serious attempt to formulate and submit an offer within the period required by the invitation.

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64. The Development Fund will endeavour to establish a model structure (or structures) which seeks within Development Fund law to establish a venture capital market which is treated consistently between China and the rest of the world. In particular, the Development Fund seeks to facilitate the development of a viable venture capital market serving both traditional and technology-based industries.

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65. A *licensed fund* may be a unit trust, company, partnership, joint venture or other structure approved by SETC. Unit trusts, partnerships and direct investments have been the structures previously preferred, provided they comply with all

- relevant regulatory requirements, but fund managers are encouraged to consider all possible structures. Whatever structure is adopted, all regulatory requirements applicable to the fund and its operations must be fully complied with. 42
66. No structure should: 42
- (a) limit the fund manager’s ability to carry out its functions as reflected in the selection criteria referred to in these Guidelines; 42
 - (b) limit *SETC* in the exercise of its powers in respect of the *ESF program*; or 42
 - (c) risk bringing the *ESF program* into disrepute. 42
67. Where the *licensed fund* is structured as a trust which has both a trustee and a manager, the trustee must be fully independent of the fund manager and must not, without *SETC*’s consent, be an *associate* of the fund manager, otherwise than as a *result* of their relationship under the trust deed. 42
68. Where a trust deed is in place which has both a trustee and a manager, the trustee’s relationship with the relevant fund manager must not impair or detract from the Development Fund’s desired level of management by the fund manager and the *SETC*’s regulation of the fund manager. 42
69. The trustee of a *licensed fund* which is a trust must not have *control* over investees unless it is also the single responsible entity for that fund and then only in the circumstances and to the extent permitted by the *governing documents*. 42
70. By approving a structure, the *SETC* is not endorsing or providing a warranty for the structure in relation to other laws either at the present or in the future. The fund manager, the investors and the fund should seek independent advice regarding the fund’s structure. 43
71. An investor in a *licensed fund* must not be in a position to influence the individual investment decisions of the *licensed fund* manager. 43
72. A *licensed fund* may not represent or imply to anyone that the *SETC*, the Development Fund or anyone connected with them has endorsed any investments made by the *licensed fund* or guarantees its performance. A statement to that effect must be included in any solicitation to investors. 43

73. The ratio of loans made or guaranteed by the Development Fund to the investment capital contributed to a *licensed fund* by non-government and local government sources will not exceed 2:1. The ration of such loans to investment capital contributed by government sources will not exceed 1:1. 43
74. A *licensed fund* must source at least 30% of the non-government and local government investment capital from sources not legally *associated* with the fund manager. 43
75. Except for loans made by or guaranteed by the Development Fund, a *licensed fund* must not raise money 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*. Short term debt must take the form of a borrowing, the features of which are as follows: the lender is a bank, and the licensed fund's total outstanding borrowings do not exceed 5% of its total committed capital at any time. 43
76. The manager will be paid an annual management fee from the licensed fund, to be agreed by *SETC*. 43
77. The management fee is to remunerate the manager for all costs associated with the manager, trustee or *SETC* of directors, and the licensed fund, except for taxes payable by a manager in its capacity as manager of the licensed fund in respect of the fund's money, commissions and brokerage on the sale or other realisation of the fund's investments and the fund's audit fees. Apart from those items, the fund must not reimburse expenses in excess of the management fee. 43
78. In considering applications for a licence under the *ESF program*, the *SETC* will take account of the amount, structure and timing of the fees and other incentives proposed by the applicant, having regard to the interests of prospective investors in the proposed fund and the fact that considerable management time and effort is likely to be required towards the end of the life of the fund as strategies are developed and implemented to exit investments. 44
79. A *licensed fund* may not require, as a condition of investing in an *eligible investee SME*, that the manager receive payment for services provided. 44

- 80. A licensed fund must invest, or be committed to invest, at least 60% of its committed capital within three years of the granting of a licence.** 44
- 81. Drawdown capital not invested in eligible investee companies, or otherwise expended, must be held as cash or on deposit at call with any bank.** 44
- 82. Provisions to the effect of clause 81 must be included in the trust deed, constitution or other governing documents of the licensed fund.** 44
- 83. The licensed fund manager must obtain SETC's prior written approval for any changes to or replacement of key personnel. That approval is at the discretion of SETC, and the licensed fund manager must satisfy SETC that:** 44
- (a) the *key personnel* have appropriate skills and expertise and meet the requirements for the management team set out in the selection criteria; 44
 - (b) the management team will continue to possess an appropriate mix and appropriate levels of skills and expertise; and 44
 - (c) any other matter SETC considers relevant is satisfied. 44
- 84. A fee will be payable by a licensed fund manager to cover SETC's costs of assessing the manager's application. Any time limit within which the SETC is required to act will not begin to run until the fee has been paid.** 44
- 85. The Development Fund may sell, assign, transfer, or otherwise dispose of any equity or debt, or other security held by or on behalf of the Development Fund in connection with Development Fund program capital. In those cases, the non-government and local government investors in the particular licensed fund will have first right of refusal to purchase the Development Fund's loans.** 45
- 86. The governing documents may include provisions relating to the disposal of interests in a licensed fund by the Development Fund and non-government and local government investors. The SETC will generally not restrict the sale or transfer of the other capital of the fund, providing the sale or transfer does not:** 45
- (a) reduce the amount of total capital available to the *licensed fund*; or 45
 - (b) alter the composition of the investment capital or its sources in a manner which would be contrary to these Guidelines or the *governing documents*. 45

87. **A licensed fund must not change its structure without the SETC's prior written approval.** 45
88. **A licensed fund will be required to pay an application fee in connection with any application for approval by the SETC of any change in its structure. Any time limit within which the SETC is required to act will not begin to run until the fee has been paid.** 45
89. **A licensed fund manager may not transfer, sell or otherwise deal with, or mortgage, charge or encumber its licence.** 45
90. **A licensed fund manager may only retire as manager of the relevant licensed fund on giving the notice required by the licensed fund's governing documents.** 45
91. **A licensed fund must invest in eligible investee companies. For a SME to be an eligible investee company, it must be:** 45
- (a) subject to clause 92, a company which: 45
- (i) **at the time the licensed fund first makes an investment in it is less than three years old, and incorporated under the relevant law and proposes to continue that incorporation, unless the SETC is of the opinion both that the investment would otherwise promote the objectives of the ESF program; and** 46
- (ii) **at the time the licensed fund first invests in the company, its business activity, which the investment is intended to support and develop, is at the seed, start-up or early expansion stage of its development;** 46
- (iii) **is providing all of the goods and services it produces to persons who are not associates;** 46
- (iv) **has a majority of its employees (by number) and assets (by value) inside China at the time the licensed fund first invests in the company or will use the whole of the initial investment within China;** 46
- (v) **at the time the licensed fund first invests in the company, has no more than 250 employees in the manufacturing sector or no more than 100 employees outside the manufacturing sector (unless approved by SETC).** 46
- (vi) **at the time the licensed fund first invests in the company, is not, without the consent of the SETC, an associate of a company that does not meet the requirements of this clause 91,** 46

(vii) but does not include a body described in clause 97; or	46
(b) with the consent of the <i>SETC</i> , a company or other incorporated body which has a wholly owned subsidiary that satisfies paragraphs (a)(i)-(vi), 46	
92. Factors indicating that a company is in the seed stage of development include:	46
(a) that the initial concept of its business is being formed;	46
(b) prototypes or concepts of the company's products or services are being developed;	46
(c) the management team is beginning to form; and	46
(d) any other matters <i>SETC</i> thinks fit.	46
93. Factors indicating that a company is in the start-up stage of development include:	47
(a) that the investment is necessary for product development, staffing, initial marketing and other start-up costs;	47
(b) the management team is substantially in place;	47
(c) the company is setting itself up to sell its product or service commercially; and	47
(d) any other matters <i>SETC</i> thinks fit.	47
94. Factors indicating that a company is in the early expansion stage of development include:	47
(a) that the investment will provide necessary 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	47
(b) any other matters <i>SETC</i> thinks fit.	47
95. The early expansion stage of development can encompass an established business undertaking the commercialisation of <i>R&D activities</i>, the size and scale of which, in the opinion of the <i>SETC</i>, results in the company being at a similar stage of development.	47
96. The <i>licensed fund</i> must not invest in, or provide finance to, companies:	47
(a) whose primary business activity involves, directly or indirectly, providing capital to others, purchasing debt obligations or factoring;	47
(b) an investment in which (unless <i>SETC</i> has otherwise agreed) would involve the fund in a leveraged buy-out;	47
(c) which are passive companies. A passive company is a company:	47

- (i) 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); 47
 - (ii) whose employees are not carrying on the majority of day to day operations, and the body does not provide effective *control* and supervision, on a day to day basis, over persons employed under contract; or 47
 - (iii) which *SETC* considers is likely to pass substantially all of the proceeds of the investment to another entity; 47
 - (iv) whose business is substantially that of mining or the development of buildings or other real estate. 47
 - (d) in the seed stage, where the initial investment will be used primarily for a foreign operation; 48
 - (e) which purchases, or will purchase, goods or services from a supplier who is an *associate* of a *licensed fund*, its manager or trustee, except under the following conditions: 48
 - (i) the amount of goods and services purchased (or to be purchased) from the *associate* with the investment, or with capital released as a *result* of the investment, is (or will be) less than 5% of the total amount of the investment; 48
 - (ii) the price of such goods and services is (or will be) no higher than that charged other customers of the *associate* or market price; 48
 - (f) which is, or is the manager of, another *licensed fund* 48
 - (g) which carries on business in the capacity of trustee of a trust or in any nominee or representative capacity; 48
 - (h) which proposes to use all or any part of an investment made by the licensed fund to finance the acquisition of land used or intended to be used for agricultural, horticultural or forestry purposes; or 48
 - (i) which is, or is in a class of companies, determined by *SETC* to be ineligible. 48
97. All investment decisions will be made by the licensed fund managers. Managers may apply to the *SETC* for a determination as to whether or not the *SETC* considers a company is an *eligible investee company*. 48
98. The *SETC* is not restricted in placing any conditions, qualifications or disclaimers on a

- determination as to whether a company is an *eligible investee company*. 48
99. A licensed fund manager will be required to pay an application fee in connection with any application for a determination of whether a company is an *eligible investee company*. The fee must accompany the determination request. The *SETC* may decline to provide a determination until the fee is paid. Any time limit within which the *SETC* is required to act will not begin to run until the fee has been paid. 48
100. The *SETC* may make provision in the *governing documents* to recognise investments in *eligible investee companies* by a licensed fund made after the lodgement of an application but prior to the grant of a licence in respect of the fund. 49
101. A *licensed fund* must invest in *eligible investee companies* by means of *equity* purchase or convertible notes, except for short-term loans for temporary measures in circumstances where the *licensed fund* has already invested in the *eligible investee company*. Unless otherwise approved by the *SETC* the *equity* purchased must be a new issue and any conversion of notes must similarly lead to a new issue. 49
102. A *licensed fund* may not invest in an *eligible investee company* in such a way that the fund becomes or may become liable for the debts or liabilities of that company or any other entity. 49
103. A *licensed fund* must not invest in, or provide finance to, an *eligible investee company* by means of a leveraged buyout, or in a manner consistent with a leveraged buyout, unless the *SETC* otherwise agrees. 49
104. The manager and the associates of it and a licensed fund may hold an interest in an *eligible investee company* only if: 49
- (a) the *SETC* gives its prior written approval; or 49
 - (b) that interest represents compensation reasonably provided on an arms' length basis for services provided as a member of the *SETC* of directors of the *eligible investee company*. 49
105. Without the consent of the *SETC*, co-investment in an *eligible investee company* with other *licensed funds*, whether licensed under the *ESF program* or the *REEF program*, is limited to a

- total of 10% of the total *committed capital* of the funds investing in the company. 49
106. A *licensed fund* must not invest more than 10% of the fund's total *committed capital*, whichever is the lesser, in any particular *eligible investee company*, unless the *SETC* agrees otherwise. In addition to considering whether or not to permit a greater level of investment in an investee company in a particular case, the *SETC* may from time to time issue determinations increasing the permitted level of investment in *eligible investee companies* generally or in particular classes of companies. 49
107. A *licensed fund* must not, without the prior written approval of the *SETC*, invest in, or provide finance to, an *eligible investee company* where: 50
- (a) the company is an *associate* of any entity which provides over 10% of the *non-government or local government capital* to the fund; or 50
 - (b) the company is controlled by an entity providing non-government *sourced capital* to the fund. 50
108. The total of all amounts invested by a *licensed fund* in *eligible investee companies* in which a non-government and local government investor in the *licensed fund* holds an interest must not exceed 20% of the *licensed fund's* total *committed capital*. 50
109. If an investee company ceases to be an *eligible investee company* because of a change in its business activity: 50
- (a) the fund manager must notify the *SETC* within thirty days; and 50
 - (b) the *licensed fund* must not make any further investments in the company and must divest its investments in the company within two years or within any other period agreed by the *SETC*. 50
110. To protect a *licensed fund's* investment, its manager may designate one or more persons (who may be *associates* of the manager) to serve as an officer, director, or other participant in the management of an *eligible investee company*. The manager must identify any such person in its records available for the *SETC's* review as part of the reporting requirements of the *licensed fund* and its manager. Without the *SETC's* prior written approval, the person must not receive any income or anything of value from the company unless it is for the benefit of the *licensed fund*, with the exception of properly reimbursable expenses incurred by that person in his capacity as a

- director, and distributions based upon the person's ownership interest in the *eligible investee company* (if any). 50
111. A fund manager may not exercise or concur in exercising any power or discretion it has as manager of the fund if the manager or any *associate* of the manager has a direct or indirect personal interest in or arising out of the exercise of that power or discretion. 50
112. Except with the *SETC's* prior written approval, a *licensed fund* is not permitted to sell its investments in an *eligible investee company* (including assets acquired in a liquidation) to any *associate* of the manager or the fund (or, if the fund is a trust, of the trustee). As one of the prerequisites to such an approval, a *licensed fund* must satisfy the *SETC* that the proposed terms of disposal are at least as favourable to the fund as the terms reasonably obtainable were the sale to be made at arms' length to a third party, and that the assets are disposed of with the agreement of both the licensed fund manager and the *eligible investee company*. 50
113. Except to the extent the *governing documents* provide to the contrary, the rights and obligations attaching to each unit, share or other equity interest (in the case of a *licensed fund* that is a trustee, company or other investment structure respectively) held by an investor in the fund are to be the same. 51
114. It is envisaged that *drawdown capital* will be invested or expended by the *licensed fund* within 30 days of the date on which the capital is provided. The *SETC* will develop provisions, to be included in the *governing documents* of a *licensed fund*, that deal with the treatment of any *drawdown capital* not invested within that period. At the time of each drawdown of investment capital, *SETC* will loan or guarantee loans in such ratio to local government-sourced and non-government sourced investment capital as has been agreed upon at the time of licensing. 51
115. Without limiting clause 122, a fund manager may not drawdown capital in advance of the *SETC* approving as an eligible investee company or as an eligible investment a company or investment (respectively) in relation to which the fund manager has sought and is awaiting the *SETC's* advice as to eligibility. 51

116. Where the <i>SETC</i> becomes aware that a <i>licensed fund</i> has made an investment in, or provided funds to:	51
(a) a company which is not an <i>eligible investee company</i> at a relevant time; or	51
(b) is otherwise ineligible according to clause 99,	51
117. Subject to clause 118, drawdown of fees may recommence after 120 days or earlier at the <i>SETC</i>'s discretion. The management fees payable for the period may be recouped on the first drawdown following recommencement, if the <i>SETC</i> so determines.	51
118. If at or about the expiration of the 120 day period referred to in clause 125, the <i>SETC</i> is not satisfied that the <i>licensed fund</i> is taking appropriate steps to rectify the breach, the <i>SETC</i> may act to terminate the licence of the fund manager. The <i>SETC</i> may, but is not obliged to, consult with investors contributing investment capital (excluding the fund manager and its <i>associates</i>) prior to terminating a licence.	51
119. All reports and financial statements to be provided to the <i>SETC</i> must be submitted to [insert appropriate office]. In addition to a hard copy, a <i>licensed fund</i> must, if required by the <i>SETC</i>, submit all required documentation electronically or on disk.	51
120. A <i>licensed fund</i> must provide to the <i>SETC</i>:	52
(a) a copy of the <i>licensed fund's</i> trust deed, constitution or other similar <i>governing documents</i> within 30 days of establishment of the fund;	52
(b) a copy of any amendments to the documents referred to in clause 120(a) within 7 days of making the amendment;	52
(c) a copy of the <i>licensed fund's</i> register of investors within 30 days of its establishment;	52
(d) a copy of any amendment to that register within 7 days of making the amendment;	52
(e) any report, application or document filed with any other government office, at the same time as it is filed;	52
(f) a copy of any report it furnishes to its investors, including any prospectus, letter or other publication concerning the <i>licensed fund's</i> financial operations or those of any <i>eligible investee company</i> . The copy must be provided at the same time as the report is furnished to the investors;	52

(g) reports for any litigation or other proceedings relating to the *licensed fund* or its manager describing the proceedings and identifying the other parties involved and the *licensed fund's* or its manager's relationship to them. Such a report must be provided within 30 days of the action being commenced. The proceedings covered by this paragraph include any action by a *licensed fund*, or by a *licensed fund's* security holder in a personal or derivative capacity, against an officer, director, investment adviser or other *associate* of the *licensed fund* for alleged breach of duty, but do not include litigation to which a manager and the Development Fund are parties in respect of which the manager would otherwise be entitled to claim legal professional privilege;

52

(h) copies of pleadings and other documents relating to any litigation or other proceedings as the *SETC* may specify. If any litigation or proceeding has been terminated by settlement or final judgment, the *licensed fund* must promptly advise the *SETC* of the terms. This paragraph does not apply to collection actions by a *licensed fund* or proceedings to enforce the *licensed fund's* ordinary creditor's rights; and

52

(i) any other reports as directed in writing by the *SETC*, including interim financial reports and other *governing documents*.

52

121. A *licensed fund* must establish and maintain accounting records using generally accepted Development Fund accounting principles and practices consistently applied over time. The *SETC* may approve variations to those principles and practices generally or in a particular case.

52

122. A *licensed fund* must keep and be able to provide the *SETC* with access to the following records:

53

(a) all accounting and other financial records; and

(b) all documents and supporting materials related to, explaining or evidencing business transactions.

53

123. Subject to clause 133, a *licensed fund* must preserve all documents relating to the fund for a period of at least 6 years.

53

124. Clause 131 applies only for the purposes of the *ESF program*. Where other Development Fund, State or Territory laws impose more stringent

requirements, those requirements apply and take precedence.	53
125. A licensed fund must provide the following information to the SETC within 30 days of making an investment:	53
(a) an eligible investee status declaration, executed by the <i>licensed fund's</i> manager certifying that the investee company is an <i>eligible investee company</i> ;	53
(b) a declaration by the <i>licensed fund's</i> manager of the intended use of the proceeds, and	53
(c) a declaration by the <i>licensed fund's</i> manager that the nature and structure of the investment complies with the fund's <i>governing documents</i> .	53
126. A licensed fund must provide the following information to the SETC within 75 days of the end of the licensed fund's financial year:	53
(a) audited financial statements and any supplementary information for the period of 12 months ending 31 December in that year. The financial statements must be audited by the fund's auditor;	53
(b) an assessment of the economic impact of each investment over that 12 month period, specifying export and domestic sales, import replacement activities, employment growth (direct and indirect), revenue growth and product development and commercialisation;and	53
(c) a portfolio valuation report for that 12-month period prepared in accordance with the <i>SETC's</i> valuation policy or other policy approved by the <i>SETC</i> .	53
127. A licensed fund must provide to the SETC unaudited financial statements and any supplementary information covering the financial affairs of the fund for the period 1 January to 30 June each year, within 45 days of the end of that 6 month period.	54
128. The SETC will examine all licensed funds for the purpose of evaluating compliance with these Guidelines as and when it considers appropriate.	54
129. A licensed fund must make all books, records and other documents and materials requested by the SETC available for the examination. In addition, the appointment document appointing the licensed fund's auditor must provide that any information in the auditor's working papers in respect of the licensed fund be made available to the SETC or its examiner upon request.	54

- 130. A fund manager must obtain any information requested by the *SETC* or its examiner for the purpose of verifying the declarations made in the eligible investee status declarations. In this regard, a *licensed fund's* investment documents must contain provisions requiring *eligible investee companies* to provide the *SETC* or its examiner access to their books and records for that purpose.** 54
- 131. *Licensed funds* must use the valuation policy approved by the *SETC* in determining the value of their investments. Unless the *SETC* determines otherwise, the European Venture Capital Association Valuation Policy is the valuation policy approved by the *SETC*.** 54
- 132. *Licensed funds* must conduct a valuation of their investments as at each 31 December and the end of each financial year.** 54
- (a) be presented before the reporting deadline; and 54
- (b) provide reasons for the late filing. 54
- 133. Extensions will normally only be allowed in extraordinary circumstances outside the *licensed fund's control*.** 54
- 134. The *SETC* may accept or reject a request for an extension of time conditionally or unconditionally.** 54
- 135. In the event of any late filing of documentation required under these Guidelines, the *SETC* may instruct the fund manager not to make any drawdowns on capital in respect of management fees without the *SETC's* consent.** 54
- 136. Drawdowns in respect of management fees may recommence on filing of the documentation in a satisfactory form. The management fees payable for the period may be recouped on the first drawdown following recommencement, if the *SETC* so determines.** 55
- 137. The manager of a *licensed fund* must ensure that the document specifying the terms and conditions of the investment by a *licensed fund* in an *eligible investee company* contains provisions specifying the dispute resolution procedures to be followed in the event of a dispute between the company and the fund or the fund manager.** 55
- 138. The *governing documents* must include default provisions relating to the manager, the trustee and the overall financial position of a *licensed fund*.** 55

- 139. The consequences of default may depend on who commits the default and the circumstances in which it arises. For example, if a fund manager becomes insolvent, there will be a need to move swiftly to appoint a new manager. 55**
- 140. In the case of some defaults, the *SETC* may allow a period of grace within which the defaulting party is given an opportunity to correct the default. 55**
- 141. A *licensed fund* is in a condition of capital impairment if, at any time after the third anniversary of its commencement, the amount remaining after deducting from the total *committed capital* of the fund the aggregate of: 55**
- (a) the current value of all investments held at that date; 55
 - (b) the total of all distributions to investors and managers; 55
 - (c) the amount of any uncalled *committed capital* of the fund; and 55
 - (d) the amounts of paid annual management fees, 55
- 142. A *licensed fund* which is in a condition of capital impairment may be placed on a watch list with additional conditions of operation. Generally, these additional conditions will include more frequent reporting requirements, but may vary on a case-by-case basis. 55**
- 143. If the amount calculated in accordance with clause 151 is an amount that is more than 50% of the total *committed capital* of a *licensed fund*, the *SETC* may consider replacing the fund manager. 55**
- 144. The *SETC* may, but is not obliged to, consult with investors contributing investment capital (excluding the fund manager and its associates) prior to taking action of the kind referred to in clause 143 or 144. 56**
- 145. The *SETC* may revoke a licence if the manager is in breach of its conditions. The events giving rise to a right to terminate will be negotiated as part of the licensing process. 56**
- 146. Examples of events which the *SETC* may consider sufficiently significant to warrant the revocation of a licence include unremedied or repeated breaches of the licence, insolvency of the manager and capital impairment of the fund exceeding 50% after 3 years. 56**

- 147. Licensed funds must have a term of 10 years. At the end of 10 years, a licensed fund must be wound up, although an extension for a period of up to 3 years may be allowed to permit the orderly and prudent disposal of assets. The SETC may require the governing documents to include provision for the early liquidation of the fund. Those circumstances requiring early liquidation will be set out in full in the governing documents. An example of a circumstance which the SETC will consider sufficiently significant to warrant the early liquidation of a fund is where the net asset value of the fund is a negative amount for a period of at least 6 months. Other examples may include:** 56
- (a) the fund is required to be wound up by a court order; 56
 - (b) the fund is or becomes insolvent or suffers a substantial loss of capital; and 56
 - (c) the investors require the fund to be wound up. 56
- 148. The fund must make a distribution on the receipt of earnings or the realisation of investments in the following manner:** 56
- (a) First, the total amount to be distributed shall be divided into two parts in the same proportion as the ratio of government investment plus related loans made or guaranteed by the Development Fund to non-government investment in the fund plus loans made or guaranteed by the Development Fund. For example, if the fund has an investment of 1 hundred million RMB from government sources and 2 hundred million RMB from non-government and local government sources, and loans have been made at the maximum ratio of 1:1 for government and 2:1 for non-government investment, for a total fund of 8 million RMB, 2/8 of the distribution shall be made to the first part, and 6/8 to the second part. 56
 - (b) Second, for each part, interest shall be paid to the Development Fund or other lender guaranteed by the Development Fund on the amount of such loans related to government or non-government investment, as the case might be, calculated at the interest rate or discount rate on such loans to the date of the distribution. 57
 - (c) Third, the remaining amount to be distributed to each part shall be paid to the investors in that part (local government or non-government) and as repayment of loans applicable to that part, in the same proportion as the amount invested and the amount of loans then outstanding for that part. For the example set forth in (a)

above, for the first part one half would be paid to the investors and one half applied to debt repayment; for the second part, one third would be paid to the investors, and 2/3 applied to debt repayment.	57
(d) Subsequent distributions shall be made in the same order as set forth above, until all loans have been repaid. Following debt repayment, distributions shall be made to the investors in each part in proportion to the total investment plus applicable loans related to that part. In the example of (a) above, 2/8 would be paid to the governmental investors, and 6/8 to the non-governmental investors. A portion of these distributions may be made to the Fund Manager as compensation (the "carried interest", in accordance with the agreement between the Manager and the investors in the Fund.	57
149. The Development Fund will not accept any in-specie or other in-kind distributions.	57
150. The SETC's focus will be on the overall performance of the fund, and not on the performance of individual investments per se.	57
151. A licensed fund must co-operate in the evaluation of the ESF program. This may include, but is not limited to:	57
(a) facilitation of visits to investee companies by SETC members, or other representatives or consultants;	57
(b) distribution of information to investee companies;	57
(c) attendance by the fund manager or representatives of investee companies at evaluation meetings;	57
(d) provision of statistical or other information on the activities of investee companies; and	57
(e) provision of the terms and conditions of investment in investee companies.	57
1. Full name, address (street and postal), telephone and facsimile numbers of the applicant.	58
2. Full name, address (street, postal and e-mail), telephone and facsimile numbers of the directors, senior partners and/or secretary of the applicant.	58
3. Full name, address (street, postal and e-mail) telephone and facsimile numbers of the auditor, banker and legal adviser of the applicant.	58
4. Full name, address, current occupation of each of the key personnel of the fund manager. Key	

<p>personnel includes individuals whose expertise, experience or abilities are to be assessed in relation to the awarding of a licence to the fund manager. Applications should include the proportion of the time of each member of the key personnel that will be allocated to the fund.</p>	58
<p>5. Description of the role, responsibilities and terms of employment of those key personnel.</p>	58
<p>6. The qualifications, specific expertise, previous experience and skills of each of the key personnel, individually and as a team.</p>	58
<p>7. The following documents and information in respect of each of the key personnel:</p>	58
<p style="padding-left: 40px;">(a) an up to date police report;</p>	58
<p style="padding-left: 40px;">(b) confirmation that the person is not an undischarged bankrupt. For that purpose, undischarged bankrupt means a person who:</p>	58
<p style="padding-left: 40px;">(i) under the applicable law, is a bankrupt in respect of a bankruptcy from which the person has not been discharged; or</p>	58
<p style="padding-left: 40px;">(ii) under any other law (of China, or otherwise), has the status of an undischarged bankrupt,</p>	58
<p>8. A summary of claims for the individuals in the team, and more detailed comments giving actual experience for each individual, in terms of the performance measures above. Details of the extent to which the individuals in the team have worked together, and their individual and collective commitment to the principles of the <i>ESF program</i>, should also be provided.</p>	59
<p>9. Full name, address (street, postal and e-mail), telephone and facsimile number of at least five referees who can substantiate the claims or facts contained within the application. The applicant should include details of the relationship between the fund manager or the key personnel and the referee.</p>	59
<p>10. A brief description of the organisational structure of the proposed fund manager. If the application is being made on behalf of several entities in partnership, joint venture or other arrangement, provide a brief description of each entity's role and responsibilities with regard to managing the proposed fund.</p>	59

ENTERPRISE START-UP FUND

Pilot Program

GUIDELINES

Part 1 - Preliminary

Citation

1. These are the Guidelines for the Enterprise Start-up Fund Pilot Program (**ESF Pilot Program**), and may be cited as the ESF Pilot Program Guidelines of 2001.

Commencement

2. These Guidelines commence on the day on which they are signed by the appropriate official of the government of the Peoples Republic of China.

Authority for Guidelines

3. These Guidelines are established by the *SETC* acting under [insert authority]. These Guidelines are program and operational policy guidelines only. The purpose of these Guidelines is to establish at a general level the policies and practices to be adopted by the *SETC* in its administration of the *ESF program*. While these Guidelines will refer to matters to be included in the *governing documents*, those references are to be interpreted only as a statement of general intent. In addressing those matters in the *governing documents*, the *SETC* may elaborate on, expand, vary, define, constrain or omit terms or concepts referred to in these Guidelines as the *SETC* considers appropriate having regard to the policy objectives of the *ESF program*. Those documents may also contain any other provisions the *SETC* considers appropriate having regard to those objectives.
4. For the purpose of implementing these Guidelines and other matters not contemplated by these Guidelines, the *SETC* may enter into any agreements and other documents it thinks fit.
5. The *SETC* may amend these Guidelines from time to time.

Policy objectives of the ESF program

6. The policy objectives of the *ESF program* are:
 - (a) by addressing capital and management constraints, to encourage the development of new and early-stage small and medium enterprises (SMEs) that contribute to economic development, both in traditional industries and those based on advanced technology.
 - (b) to add to a self-sustaining, Chinese early-stage direct equity investment industry;
 - (c) to encourage participation in direct equity investments by non-government and local government sources, and

- (d) to develop fund managers with experience in the early stage venture capital industry.

Part 2 - Overview of the ESF program

Introduction

7. The Government has committed __ million RMB of its Development Fund to be invested in a small number of venture capital funds which will be established to invest in small businesses in the early stages of their development. Interested persons may apply for a licence to manage a proposed fund under the program.
8. The Development Fund will provide up to two-thirds of the agreed level of capital for each fund, by direct loans or by loan guaranties (directly or through a Credit Guaranty Company), under the terms set forth in Section __ below. The Development Fund will provide up to one times the investment in the fund by local or provincial government sources, and up to two times the investment in the fund by non-government sources. The fund manager will be responsible for arranging the investment by sources other than the Development Fund.

No additional Government funds will be contributed beyond the 2:1 ratio of the agreed level of capital. The SETC encourages competitive bids from applicants involving the amount of capital they will source from the other investors, up to a maximum Development Fund participation of two-thirds of the fund total.

The ESF pilot program will be administered by the SETC, and will have a life of ten years.

9. In establishing the *ESF program*, the *SETC* is concerned to establish a framework which offers compatible operating structures and procedures with those offered to the venture capital industry generally.

Structure

10. The Development Fund may lend or guarantee loans to the *licensed funds* through a wholly-owned company.
11. The role of the fund manager will be to identify likely investees and investigate all aspects of their businesses and their potential for growth in global markets. The fund managers will make the investment decisions. The *licensed funds* will invest in companies permitted by these guidelines, by purchasing newly issued *equity* or providing long term debt financing, so that the money provides the necessary cash for the company's development and expansion.
12. SETC expects a fund manager to behave and manage the fund using its best commercial endeavours lawfully, ethically and within the Guidelines, licence agreement and other agreements.

13. The Development Fund and other investors will not generally have any rights to make investment (or divestment) decisions.
14. The fund manager's primary roles will be to:
 - a) raise provisional capital commitments from the non-government and local government sources;
 - b) apply for licensing under the ESF;
 - c) establish and organize the Fund;
 - d) identify potential SME investments;
 - e) screen and select potential investment candidates;
 - f) perform financial analysis and due diligence review of potential investees;
 - g) negotiate, structure and close investments of the fund;
 - h) provide management and strategic planning assistance to investees;
 - i) provide other direct or arranged assistance in key areas of the investees business;
 - j) monitor investments;
 - k) assist investees in procuring additional investment or loans;
 - l) determine and implement of exit strategies for investments; and
 - m) provide on-going, regularly-scheduled reporting to the SETC and the other investors and cooperate with the SETC as otherwise agreed.
15. The fund manager will be bound by the requirements of the licensing agreement with SETC and it is primarily through this agreement and this relationship with the fund manager that the SETC will exercise its regulatory role.
16. The fund manager, through the fund's constituent documents, will manage the commercial operations of the fund on behalf of the investors.
17. The fund manager will also have a significant relationship with each of the fund's investees.
18. The successful applicants may include some management groups new to the Chinese venture capital market. While the management team of the successful applicants is expected to include experienced financial and business professionals, the *SETC* expects, in accordance with the policy objectives of the *ESF program*, that the successful applicants will be committed to training and developing the skills of Chinese based staff in all aspects of venture capital investment activities in small, early stage companies. Applicants

should indicate their commitment to utilize available training courses and mentoring opportunities in staff development.

19. The *licensed funds*' investments are expected to have a duration of up to ten years, although this may vary depending on the rate of development of the individual investees.
20. A *licensed fund*'s committed investment will be drawn down by the manager as it is needed for investment in eligible investees. Proceeds from the sale of investments will not be available for reinvestment by the manager.

Management assistance and expertise

21. The critical element of venture capital investing that distinguishes this activity from other investment activities is the provision of management assistance to investees. The fund manager's role will include the provision of advice, guidance and assistance on many aspects of the investees' business activities. This management assistance complements the capital invested in the investees and increases the likelihood of the investees' eventual success in global markets.

Areas in which the fund manager may typically provide assistance include:

- a) business and financial planning;
- b) design and implementation of financial controls;
- c) design and implementation of marketing strategies;
- d) improvement of terms and conditions of sales and purchasing agreements;
- e) cost accounting and pricing;
- f) preparation of product catalogues and trade fair presentations;
- g) preparation of licensing agreements;
- h) selection of, and introduction to, purchasing agents;
- i) growth management;
- j) human resources management; and
- k) restructuring and/or negotiation of bank debt.

Management fees and profit sharing

22. In considering bids from prospective fund managers, the SETC will take into consideration the proposed management fee to be paid to the fund manager. These management fees are intended to cover the fund manager for the operating costs of the *licensed fund*, although some expenses may be directly recoverable by managers from the fund in addition to their fees.
23. The proceeds from the *licensed fund*'s investments will be distributed to the Development Fund, the non-government and local government investors and the manager of the fund in accordance with clause 158.

Administration

24. The *ESF program* will be administered by the *SETC* through its Fund Management Committee (**FMC**). The *SETC* is to receive all reports and information provided to investors.

Licensing process

25. The *SETC* will advertise for licence applications. The *SETC* will undertake a rigorous assessment of applications, with particular emphasis on the skills, experience and track records of the proposed management personnel of each applicant in managing venture capital funds specialising in technology investments in small early stage companies. Consideration will be given not only to the quantum of management fees sought by each applicant but also the timing of their payment. The *SETC* may interview applicants whom the *SETC* considers display the highest level of relative merit.
26. The applicants to whom the *SETC* makes an offer will have six months in which to accept the offer, comply with any pre-conditions imposed and negotiate and agree with the *SETC* the contractual documents necessary to establish the operational framework of the individual *licensed funds*. In certain cases, the *SETC* may grant an extension to one or more applicants if it considers appropriate. For the purposes of this clause 28, “**agree**” means finalise and execute to the satisfaction of the *SETC*.

Conflicts of interests

27. The Government and the *SETC* are concerned that all investment decisions and other decisions concerning transactions that may provide a benefit to any person are appropriate in the circumstances and do not give rise to any conflict of interest.
28. A *licensed fund* must not adopt practices in relation to a taxation law or other law of the Development Fund or of a State or Territory that would or might bring the *ESF program* into disrepute. Accordingly, the *SETC* will not approve structures which are, or will be perceived to be, tax avoidance arrangements.

Definitions

29. In these Guidelines:

“**associate**” will have the meaning given in the *governing documents*. The *SETC* will require each document to include detailed and expansive provisions to ensure that relevant degrees of associateship are covered. Examples of associateship will include directors and employees and their relatives, and related companies and trusts.

“**SETC**” means the State Economic and Trade Commission of the Peoples Republic of China, or its successors.

“**Development Fund program capital**” means amounts loaned to or loans guaranteed to a licensed fund under the ESF program by the Development Fund.

“**committed capital**” means amounts of capital that the Development Fund or another investor undertakes to invest in or provide to a licensed fund, conditionally or unconditionally, including both loans and equity investment.

“**control**” means the possession, directly or indirectly, of decision making

powers relating to the management, direction and policies of a licensed fund or other business entity. This can be either through the ownership of voting securities, position on the Board of Directors, contract or otherwise.

“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 specified in clause 91.

“equity” includes any form of debt financing that is approved by the *SETC* which does not compel the borrower or debtor to pay the interest, 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.

“FMC” means the Fund Management Committee and its successors.

“governing documents” in relation to a *licensed fund* means:

- (a) the licence agreement with the Development Fund;
- (b) the trust deed, constitution or other documents establishing the fund; and
- (c) any documents between the fund, its manager and the investors (or any of them).

“Development Fund sourced capital” means amounts invested by the Development Fund in a *licensed fund*.

“key personnel”, in relation to a fund manager, means those individuals determined by the *SETC* to be key personnel because of their level of technical and managerial expertise, time commitment and their day to day involvement in the management of the relevant licensed fund. This includes any additions or replacements to that team approved by the *SETC*.

“licensed fund” means a fund whose manager has been granted a licence under the *ESF program* in respect of that fund.

“licensing round” means the process of inviting applications for the grant of a licence, shortlisting applicants and (subject to clause 45) inviting offers to take up a licence from shortlisted applicants and awarding licences.

“local government sourced capital” and “local government capital” mean amounts invested by governmental bodies within China other than the Development Fund or any other agency of the central government.

“New Applicant” means an applicant for a licence under the *ESF program* who is not a Round One Licensee.

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

“non-government sourced capital” and “non-government capital” mean amounts invested in or provided to a *licensed fund* that are invested neither by the *Development Fund* nor any local government source.

“**R&D activities**” means systematic investigation or experimentation activities:

- (a) that involve innovation, technology transfer into China or technical risk;
 - (b) that are carried out in China; and
 - (c) the object of which is new knowledge (with or without a specific practical application) or new or improved materials, products, devices, processes or services.
30. A reference in these Guidelines to an Act or other instrument is a reference to that Act or other instrument as amended or replaced from time to time.
31. A reference to **SETC may** is permissive and not mandatory.
32. A reference to a **fund** may include a firm, body corporate, trust, partnership, joint venture or other structure.
33. References to **include, includes, including and in particular** do not limit the generality of the words which precede them or to which they refer.
34. A reference to an investor may include a physical person, a firm, body corporate, trust or other structure.

Guidelines not exhaustive

35. It should be understood that the documents regulating the operation of a *licensed fund* and its manager will contain substantial obligations in excess of those set out in these Guidelines. These Guidelines are a statement of policy only and should not be seen as a definitive statement of the Government’s requirements under the *ESF program*.

Part 3 - Application Process

36. The *SETC* will publicise any *licensing round* in the manner it determines from time to time. In doing so, the *SETC* will publicise the closing date for applications, the address for lodging applications, any application fee applicable to the *licensing round* and any other information which the *SETC* considers to be of relevance to potential applicants.
37. The *SETC* may levy fees to recover part or all of the costs incurred by the *SETC* or the Development Fund in assessing licence applications. Those fees will not be refunded to applicants under any circumstances. The *SETC* may refuse to consider a licence application until the relevant fee is paid.

Information to be included in applications

38. The purpose of each *licensing round* is to identify applicants with the capacity and capability to manage a *licensed fund* in such a way as to fulfil the objectives of the *ESF program*. To that end, it is the responsibility of each applicant to clearly demonstrate its capacity and capability. When it publicises a *licensing round*, the *SETC* will inform potential applicants of the information required by the *SETC* to consider an application, as set out in

Annexure A. The *SETC* may request additional information after the lodgement of an application in order to assist it in assessing the application.

39. The *SETC* will, subject to clause 42, establish a shortlist from the applicants in each *licensing round*. The shortlisted applicants will be provided with a copy of the model *governing documents* for the licensed fund and will be invited by the *SETC* to submit an offer for the grant of a licence. The applicant's offer must be in accordance with clause 60 and must identify the changes to the model documents proposed for their fund. The *SETC* will determine the form and timing of the invitation to submit offers.

Part 4 - Assessment Process

40. Subject to clauses 60 to 63, the *SETC* will assess applications (and offers for the grant of a licence) against the selection criteria outlined in these Guidelines. Subject to clause 42, applications will be assessed by the *SETC* as soon as practicable.
41. The *SETC* will assess applications on a competitive basis by reference to the selection criteria referred to in clauses 48 to 59. The *SETC* may interview any applicant as part of the assessment process.
42. The *SETC* is not obliged:
- (a) to shortlist an applicant or award a licence because an applicant satisfies these Guidelines or for any other reason; or
 - (b) to award a licence to any applicant in a *licensing round*.
43. Background checks, including checks of bankruptcy or criminal records of persons considered by the *SETC* in connection with the licensing of a licensed fund to be relevant to assessing an application, may be undertaken as part of the assessment process.
44. As part of the assessment process, the *SETC* may seek advice from external experts on specific areas of an application or offer to take up a licence. Those experts will be required to treat information provided to them as confidential.

Selection criteria

Management expertise and experience

45. Applicants must demonstrate that their proposed *key personnel* and management team are qualified and have the knowledge, experience, and capability necessary for developing and managing an investment portfolio of the kind contemplated by the *ESF program*, including:
- (a) expertise and experience in actively seeking and investigating potential equity investments in small, early stage companies;
 - (b) expertise and experience in developing and implementing equity investment strategies to achieve returns by investing in small, early stage companies;

- (c) expertise and experience in the development and implementation of successful growth and recovery strategies for small, early stage companies;
 - (d) expertise and experience in the successful management of investment portfolios;
 - (e) experience in providing financial management advice to small, early stage companies;
 - (f) expertise and experience in realising returns from investments through third party transactions such as later round investments, trade sales and initial public offerings; and
46. The *SETC* expects that licensed fund managers will:
- (a) demonstrate a commitment to training and developing the skills of China - based staff in all aspects of venture capital investment activities in small, early stage companies;
 - (b) have an appropriate ratio of investment managers to *committed capital* having regard to the size and type of the *licensed fund*;
 - (c) have a balance of relevantly qualified and skilled *key personnel*; and
 - (d) have developed a sound and satisfactory business plan.

Technological expertise and experience

47. If the fund proposes to make investments in companies based on advanced technology, the proposed *key personnel* must have an understanding of, and experience in dealing with, issues related to technology investments, products, services and markets, including:
- (a) demonstrated expertise and experience in any specific technologies which will be the investment focus of the *licensed fund*;
 - (b) experience in providing advice to technology-based businesses; and
 - (c) experience in commercialising technology investments.

Capital

48. In assessing this criterion, the *SETC* will consider:
- (a) the proposed size of the *licensed fund* including the amounts of local government and non-government *sourced capital*. The *SETC* will accept competitive bids from applicants matching the amount of investment they will source from non-government and local government sources, up to a maximum Development Fund to non-government investment ratio of 2:1, plus a maximum of Development Fund to local government sourced investment of 1:1;
 - (b) the applicant's ability to raise the level of non-government and local government investment proposed in the application, including any underwriting arrangements the applicant has in place. The *SETC* will

give greater weight to applications with underwritten capital than those without underwriting;

- (c) the applicant's ability to meet the capital investment requirements set out in these Guidelines, including the minimum capital investment requirements and management and ownership diversity requirements;
- (d) the proposed sources of capital; and
- (e) evidence of linkages with global capital markets.

49. The *SETC*:

- (a) expects that shortlisted applicants will provide the *FMC*, as a minimum, with letters of intent to commit the required level of non-government and local government capital, with preference given to applicants with underwritten funding commitments for their non-government and local government sector capital; and
- (b) encourages, to the extent permitted by law, raising from pension funds, insurance companies, other institutional investors, and foreign sources.

Quality of the application

50. Applicants must demonstrate through the application that the *licensed fund* will:

- (a) operate within these Guidelines; and
- (b) achieve commercial returns for its investors, and repayment of loans made or guaranteed by the Development Fund.

Financial reporting capability

51. Applicants must demonstrate experience in generating and maintaining a variety of financial data and reports on investment funds.

Investment policy

52. Applicants must demonstrate an investment policy which proposes a balance of investments across the seed, start up and early expansion stages. An investment policy may include a regional focus.

Intent of the licensed fund manager

53. Applicants must demonstrate a willingness to operate within the intent, and to promote the policy objectives, of the *ESF program*.

Business reputation

54. Applicants must demonstrate the good character and high ethical standards of themselves and their *key personnel*, including through their respective general business reputations.

Management fee

55. *SETC* will consider the amount, structure and timing of management fees sought by the fund manager.

Other matters

56. *SETC* may have regard to additional criteria and undertake other enquiries in order to consider the suitability of applicants and decide whether or not to accept an offer from shortlisted applicants to take up a licence.
57. In particular, *SETC* may take into account experience, expertise and abilities which, while not directly addressing the criteria, are relevant to the *ESF program*.
58. *SETC* may attribute a higher level of relative importance to one or more of the selection criteria.
59. *SETC*'s assessment of applications will be based on comparative merit.

Part 5 - Granting of Licences

60. *SETC* may invite those applicants whom it considers have the highest level of relative merit against the selection criteria, to submit offers to the *SETC* for the grant of a licence. An offer must:
- (a) be in writing in the form required by *SETC*;
 - (b) demonstrate to the *SETC*'s satisfaction that the investment by others than the Development Fund has been committed;
 - (c) contain an agreement by the applicant to sign a licence agreement and any other documents required by *SETC*, and specify any conditions to which that agreement is subject; and
 - (d) comply with any other requirements notified by *SETC*.
61. Particular conditions may apply to individual licensees, to be determined on the basis of their applications and offers and as part of the licensing process. These may include conditions relating to the consequences of the failure by the applicant to raise their proposed level of capital. In particular, *SETC* may require the applicant to proceed on the basis of the investment capital successfully raised by the applicant, matched by the Development Fund in the proposed capital ratio stated in the applicant's application (such an approach would result in a level of capital for the fund below that originally proposed in the applicant's offer).
62. *SETC* may accept or decline an offer to take up a licence at its absolute discretion. An offer to take up a licence will lapse if it is not accepted within six months of the offer being made, although the *SETC* may, with the consent of the relevant applicant, extend the time during which it may accept the offer if it considers appropriate to do so. If in any round an offer to take up a licence is declined, withdrawn or lapses, *SETC* may invite an offer to take up a licence from the next shortlisted applicant in the *licensing round* the licensing

of whom the *SETC* considers may best achieve the objectives of the *ESF program*.

63. Without limiting its rights, *SETC* may withdraw an invitation to make an offer to take up a licence if, at any time before the invitation expires, *SETC* is of the opinion that the person to whom it was made is not making a serious attempt to formulate and submit an offer within the period required by the invitation.

Part 6 - Structuring a Licensed Fund

Structure of licensed funds

64. The Development Fund will endeavour to establish a model structure (or structures) which seeks within Development Fund law to establish a venture capital market which is treated consistently between China and the rest of the world. In particular, the Development Fund seeks to facilitate the development of a viable venture capital market serving both traditional and technology-based industries.
65. A *licensed fund* may be a unit trust, company, partnership, joint venture or other structure approved by *SETC*. Unit trusts, partnerships and direct investments have been the structures previously preferred, provided they comply with all relevant regulatory requirements, but fund managers are encouraged to consider all possible structures. Whatever structure is adopted, all regulatory requirements applicable to the fund and its operations must be fully complied with.
66. No structure should:
 - (a) limit the fund manager's ability to carry out its functions as reflected in the selection criteria referred to in these Guidelines;
 - (b) limit *SETC* in the exercise of its powers in respect of the *ESF program*;
or
 - (c) risk bringing the *ESF program* into disrepute.
67. Where the *licensed fund* is structured as a trust which has both a trustee and a manager, the trustee must be fully independent of the fund manager and must not, without *SETC's* consent, be an *associate* of the fund manager, otherwise than as a *result* of their relationship under the trust deed.
68. Where a trust deed is in place which has both a trustee and a manager, the trustee's relationship with the relevant fund manager must not impair or detract from the Development Fund's desired level of management by the fund manager and the *SETC's* regulation of the fund manager.
69. The trustee of a *licensed fund* which is a trust must not have *control* over investees unless it is also the single responsible entity for that fund and then only in the circumstances and to the extent permitted by the *governing documents*.

70. By approving a structure, the *SETC* is not endorsing or providing a warranty for the structure in relation to other laws either at the present or in the future. The fund manager, the investors and the fund should seek independent advice regarding the fund's structure.

Restrictions on control of licensed funds

71. An investor in a *licensed fund* must not be in a position to influence the individual investment decisions of the *licensed fund* manager.

Identification as a licensed fund and representations to the public

72. A *licensed fund* may not represent or imply to anyone that the *SETC*, the Development Fund or anyone connected with them has endorsed any investments made by the *licensed fund* or guarantees its performance. A statement to that effect must be included in any solicitation to investors.

Part 7 - Capital

Minimum capital for licensed funds

73. The ratio of loans made or guaranteed by the Development Fund to the investment capital contributed to a *licensed fund* by non-government and local government sources will not exceed 2:1. The ration of such loans to investment capital contributed by government sources will not exceed 1:1.

Management and ownership diversity requirement

74. A *licensed fund* must source at least 30% of the non-government and local government investment capital from sources not legally *associated* with the fund manager.

Restrictions on third party debt of licensed funds

75. Except for loans made by or guaranteed by the Development Fund, a *licensed fund* must not raise money 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*. Short term debt must take the form of a borrowing, the features of which are as follows: the lender is a bank, and the licensed fund's total outstanding borrowings do not exceed 5% of its total committed capital at any time.

Part 8 - Management Services And Fees

SETC approval of management fees

76. The manager will be paid an annual management fee from the licensed fund, to be agreed by *SETC*.
77. The management fee is to remunerate the manager for all costs associated with the manager, trustee or *SETC* of directors, and the licensed fund, except for taxes payable by a manager in its capacity as manager of the licensed fund in respect of the fund's money, commissions and brokerage on the sale or other realisation of the fund's investments and the fund's audit fees. Apart from

those items, the fund must not reimburse expenses in excess of the management fee.

78. In considering applications for a licence under the *ESF program*, the *SETC* will take account of the amount, structure and timing of the fees and other incentives proposed by the applicant, having regard to the interests of prospective investors in the proposed fund and the fact that considerable management time and effort is likely to be required towards the end of the life of the fund as strategies are developed and implemented to exit investments.
79. A *licensed fund* may not require, as a condition of investing in an *eligible investee SME*, that the manager receive payment for services provided.

Part 9 - Operational Requirements of Licensed Funds

Activity test.

80. A *licensed fund* must invest, or be committed to invest, at least 60% of its *committed capital* within three years of the granting of a licence.

Restriction on investment of idle capital

81. *Drawdown capital* not invested in eligible investee companies, or otherwise expended, must be held as cash or on deposit at call with any bank.
82. Provisions to the effect of clause 81 must be included in the trust deed, constitution or other *governing documents* of the *licensed fund*.

Part 10 - Changes to Key Personnel

Replacement of key personnel

83. The licensed fund manager must obtain *SETC's* prior written approval for any changes to or replacement of *key personnel*. That approval is at the discretion of *SETC*, and the licensed fund manager must satisfy *SETC* that:
 - (a) the *key personnel* have appropriate skills and expertise and meet the requirements for the management team set out in the selection criteria;
 - (b) the management team will continue to possess an appropriate mix and appropriate levels of skills and expertise; and
 - (c) any other matter *SETC* considers relevant is satisfied.
84. A fee will be payable by a licensed fund manager to cover *SETC's* costs of assessing the manager's application. Any time limit within which the *SETC* is required to act will not begin to run until the fee has been paid.

Part 11 - Transfer or Sale of Capital

Transfer or sale by the SETC of Development Fund program capital in licensed funds

85. The Development Fund may sell, assign, transfer, or otherwise dispose of any equity or debt, or other security held by or on behalf of the Development Fund in connection with *Development Fund program capital*. In those cases, the non-government and local government investors in the particular *licensed fund* will have first right of refusal to purchase the Development Fund's loans.
86. The *governing documents* may include provisions relating to the disposal of interests in a *licensed fund* by the Development Fund and non-government and local government investors. The *SETC* will generally not restrict the sale or transfer of the other capital of the fund, providing the sale or transfer does not:
- (a) reduce the amount of total capital available to the *licensed fund*; or
 - (b) alter the composition of the investment capital or its sources in a manner which would be contrary to these Guidelines or the *governing documents*.

SETC approval of merger, consolidation, or reorganisation of licensed fund

87. A *licensed fund* must not change its structure without the *SETC's* prior written approval.
88. A *licensed fund* will be required to pay an application fee in connection with any application for approval by the *SETC* of any change in its structure. Any time limit within which the *SETC* is required to act will not begin to run until the fee has been paid.

Transfer of licence

89. A licensed fund manager may not transfer, sell or otherwise deal with, or mortgage, charge or encumber its licence.

Surrender of licence

90. A licensed fund manager may only retire as manager of the relevant *licensed fund* on giving the notice required by the *licensed fund's governing documents*.

Part 12 - Eligible Investee Companies

Definition¹

91. A *licensed fund* must invest in *eligible investee companies*. For a SME to be an *eligible investee company*, it must be:
- (a) subject to clause 92, a company which:

¹ The majority of criteria for a company to be an eligible investee company apply only at the date of the initial investment. The only criteria of ongoing application, where changes can affect a company's status as an eligible investee company, are those in paragraphs (a)(i) (see clause 91) and (iii)

Final Report 3534-PRC May 30, 2002

Appendix A Enterprise Start-up Fund Program- Pilot Program Guidelines

- (i) at the time the licensed fund first makes an investment in it is less than three years old, and incorporated under the relevant law and proposes to continue that incorporation, unless the *SETC* is of the opinion both that the investment would otherwise promote the objectives of the *ESF program*; and
 - (ii) at the time the *licensed fund* first invests in the company, its business activity, which the investment is intended to support and develop, is at the seed, start-up or early expansion stage of its development;
 - (iii) is providing all of the goods and services it produces to persons who are not *associates*;
 - (iv) has a majority of its employees (by number) and assets (by value) inside China at the time the *licensed fund* first invests in the company or will use the whole of the initial investment within China;
 - (v) at the time the *licensed fund* first invests in the company, has no more than 250 employees in the manufacturing sector or no more than 100 employees outside the manufacturing sector (unless approved by *SETC*).
 - (vi) at the time the *licensed fund* first invests in the company, is not, without the consent of the *SETC*, an *associate* of a company that does not meet the requirements of this clause 91,
 - (vii) but does not include a body described in clause 97; or
- (b) with the consent of the *SETC*, a company or other incorporated body which has a wholly owned subsidiary that satisfies paragraphs (a)(i)-(vi),

and in any case it must be the company directly into which the licensed fund is to invest or directly to which the licensed fund is to provide finance. Despite clause 91(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 *SETC* all or any part of 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*.

Attributes of seed, start-up and expansion stages

92. 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) the management team is beginning to form; and
- (d) any other matters *SETC* thinks fit.

93. Factors indicating that a company is in the start-up stage of development include:
- (a) that the investment is necessary for product development, staffing, initial marketing and other start-up costs;
 - (b) the 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 *SETC* thinks fit.
94. Factors indicating that a company is in the early expansion stage of development include:
- (a) that the investment will provide necessary 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 *SETC* thinks fit.
95. The early expansion stage of development can encompass an established business undertaking the commercialisation of *R&D activities*, the size and scale of which, in the opinion of the *SETC*, results in the company being at a similar stage of development.

Ineligible Investments

96. The *licensed fund* must not invest in, or provide finance to, companies:
- (a) whose primary business activity involves, directly or indirectly, providing capital to others, purchasing debt obligations or factoring;
 - (b) an investment in which (unless *SETC* has otherwise agreed) would involve the fund in a leveraged buy-out;
 - (c) which are passive companies. A passive company is a company:
 - (i) 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);
 - (ii) whose employees are not carrying on the majority of day to day operations, and the body does not provide effective *control* and supervision, on a day to day basis, over persons employed under contract; or
 - (iii) which *SETC* considers is likely to pass substantially all of the proceeds of the investment to another entity;
 - (iv) whose business is substantially that of mining or the development of buildings or other real estate.

- (d) in the seed stage, where the initial investment will be used primarily for a foreign operation;
- (e) which purchases, or will purchase, goods or services from a supplier who is an *associate* of a *licensed fund*, its manager or trustee, except under the following conditions:
 - (i) the amount of goods and services purchased (or to be purchased) from the *associate* with the investment, or with capital released as a *result* of the investment, is (or will be) less than 5% of the total amount of the investment;
 - (ii) the price of such goods and services is (or will be) no higher than that charged other customers of the *associate* or market price;
- (f) which is, or is the manager of, another *licensed fund*
- (g) which carries on business in the capacity of trustee of a trust or in any nominee or representative capacity;
- (h) which proposes to use all or any part of an investment made by the licensed fund to finance the acquisition of land used or intended to be used for agricultural, horticultural or forestry purposes; or
- (i) which is, or is in a class of companies, determined by *SETC* to be ineligible.

Determination of an eligible investee company

- 97. All investment decisions will be made by the licensed fund managers. Managers may apply to the *SETC* for a determination as to whether or not the *SETC* considers a company is an *eligible investee company*.
- 98. The *SETC* is not restricted in placing any conditions, qualifications or disclaimers on a determination as to whether a company is an *eligible investee company*.
- 99. A licensed fund manager will be required to pay an application fee in connection with any application for a determination of whether a company is an *eligible investee company*. The fee must accompany the determination request. The *SETC* may decline to provide a determination until the fee is paid. Any time limit within which the *SETC* is required to act will not begin to run until the fee has been paid.

Part 13 - Structuring Investments Made by Licensed Funds

Pre-licence investments

100. The *SETC* may make provision in the *governing documents* to recognise investments in *eligible investee companies* by a licensed fund made after the lodgement of an application but prior to the grant of a licence in respect of the fund.

Investments

101. A *licensed fund* must invest in *eligible investee companies* by means of *equity* purchase or convertible notes, except for short-term loans for temporary measures in circumstances where the *licensed fund* has already invested in the *eligible investee company*. Unless otherwise approved by the *SETC* the *equity* purchased must be a new issue and any conversion of notes must similarly lead to a new issue.
102. A *licensed fund* may not invest in an *eligible investee company* in such a way that the fund becomes or may become liable for the debts or liabilities of that company or any other entity.
103. A *licensed fund* must not invest in, or provide finance to, an *eligible investee company* by means of a leveraged buyout, or in a manner consistent with a leveraged buyout, unless the *SETC* otherwise agrees.

Restriction on interests obtained by a licensed fund's management and employees

104. The manager and the associates of it and a licensed fund may hold an interest in an *eligible investee company* only if:
 - (a) the *SETC* gives its prior written approval; or
 - (b) that interest represents compensation reasonably provided on an arms' length basis for services provided as a member of the *SETC* of directors of the *eligible investee company*.

Co-investment

105. Without the consent of the *SETC*, co-investment in an *eligible investee company* with other *licensed funds*, whether licensed under the *ESF program* or the *REEF program*, is limited to a total of 10% of the total *committed capital* of the funds investing in the company.

Portfolio diversification

106. A *licensed fund* must not invest more than 10% of the fund's total *committed capital*, whichever is the lesser, in any particular *eligible investee company*, unless the *SETC* agrees otherwise. In addition to considering whether or not to permit a greater level of investment in an investee company in a particular case, the *SETC* may from time to time issue determinations increasing the permitted level of investment in *eligible investee companies* generally or in particular classes of companies.

107. A *licensed fund* must not, without the prior written approval of the *SETC*, invest in, or provide finance to, an *eligible investee company* where:
- (a) the company is an *associate* of any entity which provides over 10% of the *non-government or local government capital* to the fund; or
 - (b) the company is controlled by an entity providing non-government *sourced capital* to the fund.
108. The total of all amounts invested by a *licensed fund* in *eligible investee companies* in which a non-government and local government investor in the *licensed fund* holds an interest must not exceed 20% of the *licensed fund's* total *committed capital*.

Change in activity of an investee company

109. If an investee company ceases to be an *eligible investee company* because of a change in its business activity:
- (a) the fund manager must notify the *SETC* within thirty days; and
 - (b) the *licensed fund* must not make any further investments in the company and must divest its investments in the company within two years or within any other period agreed by the *SETC*.

Investments which constitute conflicts of interest

110. To protect a *licensed fund's* investment, its manager may designate one or more persons (who may be *associates* of the manager) to serve as an officer, director, or other participant in the management of an *eligible investee company*. The manager must identify any such person in its records available for the *SETC's* review as part of the reporting requirements of the *licensed fund* and its manager. Without the *SETC's* prior written approval, the person must not receive any income or anything of value from the company unless it is for the benefit of the *licensed fund*, with the exception of properly reimbursable expenses incurred by that person in his capacity as a director, and distributions based upon the person's ownership interest in the *eligible investee company* (if any).
111. A fund manager may not exercise or concur in exercising any power or discretion it has as manager of the fund if the manager or any *associate* of the manager has a direct or indirect personal interest in or arising out of the exercise of that power or discretion.

Sale of investments to a licensed fund's associates

112. Except with the *SETC's* prior written approval, a *licensed fund* is not permitted to sell its investments in an *eligible investee company* (including assets acquired in a liquidation) to any *associate* of the manager or the fund (or, if the fund is a trust, of the trustee). As one of the prerequisites to such an approval, a *licensed fund* must satisfy the *SETC* that the proposed terms of disposal are at least as favourable to the fund as the terms reasonably obtainable were the sale to be made at arms' length to a third party, and that the assets are disposed of with the agreement of both the licensed fund manager and the *eligible investee company*.

Part 14 - Provision of Capital to Licensed Funds

Drawdown of capital

113. Except to the extent the *governing documents* provide to the contrary, the rights and obligations attaching to each unit, share or other equity interest (in the case of a *licensed fund* that is a trustee, company or other investment structure respectively) held by an investor in the fund are to be the same.
114. It is envisaged that *drawdown capital* will be invested or expended by the *licensed fund* within 30 days of the date on which the capital is provided. The *SETC* will develop provisions, to be included in the *governing documents* of a *licensed fund*, that deal with the treatment of any *drawdown capital* not invested within that period. At the time of each drawdown of investment capital, *SETC* will loan or guarantee loans in such ratio to local government-sourced and non-government sourced investment capital as has been agreed upon at the time of licensing.
115. Without limiting clause 122, a fund manager may not drawdown capital in advance of the *SETC* approving as an eligible investee company or as an eligible investment a company or investment (respectively) in relation to which the fund manager has sought and is awaiting the *SETC's* advice as to eligibility.
116. Where the *SETC* becomes aware that a *licensed fund* has made an investment in, or provided funds to:
 - (a) a company which is not an *eligible investee company* at a relevant time; or
 - (b) is otherwise ineligible according to clause 99,the *SETC* may require the fund manager not to make any drawdowns on capital in respect of its management fees or any further investment in that company.
117. Subject to clause 118, drawdown of fees may recommence after 120 days or earlier at the *SETC's* discretion. The management fees payable for the period may be recouped on the first drawdown following recommencement, if the *SETC* so determines.
118. If at or about the expiration of the 120 day period referred to in clause 125, the *SETC* is not satisfied that the *licensed fund* is taking appropriate steps to rectify the breach, the *SETC* may act to terminate the licence of the fund manager. The *SETC* may, but is not obliged to, consult with investors contributing investment capital (excluding the fund manager and its *associates*) prior to terminating a licence.

Part 15 - Reporting Requirements

General

119. All reports and financial statements to be provided to the *SETC* must be submitted to [insert appropriate office]. In addition to a hard copy, a *licensed*

fund must, if required by the *SETC*, submit all required documentation electronically or on disk.

120. A *licensed fund* must provide to the *SETC*:
- (a) a copy of the *licensed fund's* trust deed, constitution or other similar *governing documents* within 30 days of establishment of the fund;
 - (b) a copy of any amendments to the documents referred to in clause 120(a) within 7 days of making the amendment;
 - (c) a copy of the *licensed fund's* register of investors within 30 days of its establishment;
 - (d) a copy of any amendment to that register within 7 days of making the amendment;
 - (e) any report, application or document filed with any other government office, at the same time as it is filed;
 - (f) a copy of any report it furnishes to its investors, including any prospectus, letter or other publication concerning the *licensed fund's* financial operations or those of any *eligible investee company*. The copy must be provided at the same time as the report is furnished to the investors;
 - (g) reports for any litigation or other proceedings relating to the *licensed fund* or its manager describing the proceedings and identifying the other parties involved and the *licensed fund's* or its manager's relationship to them. Such a report must be provided within 30 days of the action being commenced. The proceedings covered by this paragraph include any action by a *licensed fund*, or by a *licensed fund's* security holder in a personal or derivative capacity, against an officer, director, investment adviser or other *associate* of the *licensed fund* for alleged breach of duty, but do not include litigation to which a manager and the Development Fund are parties in respect of which the manager would otherwise be entitled to claim legal professional privilege;
 - (h) copies of pleadings and other documents relating to any litigation or other proceedings as the *SETC* may specify. If any litigation or proceeding has been terminated by settlement or final judgment, the *licensed fund* must promptly advise the *SETC* of the terms. This paragraph does not apply to collection actions by a *licensed fund* or proceedings to enforce the *licensed fund's* ordinary creditor's rights; and
 - (i) any other reports as directed in writing by the *SETC*, including interim financial reports and other *governing documents*.

Maintaining accounting records

121. A *licensed fund* must establish and maintain accounting records using generally accepted Development Fund accounting principles and practices

consistently applied over time. The *SETC* may approve variations to those principles and practices generally or in a particular case.

Providing access to records

122. A *licensed fund* must keep and be able to provide the *SETC* with access to the following records:
- (a) all accounting and other financial records; and
 - (b) all documents and supporting materials related to, explaining or evidencing business transactions.

Preservation of records

123. Subject to clause 133, a *licensed fund* must preserve all documents relating to the fund for a period of at least 6 years.
124. Clause 131 applies only for the purposes of the *ESF program*. Where other Development Fund, State or Territory laws impose more stringent requirements, those requirements apply and take precedence.

Required reporting for each investment

125. A *licensed fund* must provide the following information to the *SETC* within 30 days of making an investment:
- (a) an eligible investee status declaration, executed by the *licensed fund's* manager certifying that the investee company is an *eligible investee company*;
 - (b) a declaration by the *licensed fund's* manager of the intended use of the proceeds, and
 - (c) a declaration by the *licensed fund's* manager that the nature and structure of the investment complies with the fund's *governing documents*.

Yearly and half yearly reporting requirements

126. A *licensed fund* must provide the following information to the *SETC* within 75 days of the end of the licensed fund's financial year:
- (a) audited financial statements and any supplementary information for the period of 12 months ending 31 December in that year. The financial statements must be audited by the fund's auditor;
 - (b) an assessment of the economic impact of each investment over that 12 month period, specifying export and domestic sales, import replacement activities, employment growth (direct and indirect), revenue growth and product development and commercialisation; and
 - (c) a portfolio valuation report for that 12-month period prepared in accordance with the *SETC's* valuation policy or other policy approved by the *SETC*.

127. A *licensed fund* must provide to the *SETC* unaudited financial statements and any supplementary information covering the financial affairs of the fund for the period 1 January to 30 June each year, within 45 days of the end of that 6 month period.

Examinations

128. The *SETC* will examine all *licensed funds* for the purpose of evaluating compliance with these Guidelines as and when it considers appropriate.
129. A *licensed fund* must make all books, records and other documents and materials requested by the *SETC* available for the examination. In addition, the appointment document appointing the *licensed fund's* auditor must provide that any information in the auditor's working papers in respect of the *licensed fund* be made available to the *SETC* or its examiner upon request.
130. A fund manager must obtain any information requested by the *SETC* or its examiner for the purpose of verifying the declarations made in the eligible investee status declarations. In this regard, a *licensed fund's* investment documents must contain provisions requiring *eligible investee companies* to provide the *SETC* or its examiner access to their books and records for that purpose.

Licensed fund's adoption of approved valuation policy

131. *Licensed funds* must use the valuation policy approved by the *SETC* in determining the value of their investments. Unless the *SETC* determines otherwise, the European Venture Capital Association Valuation Policy is the valuation policy approved by the *SETC*.
132. *Licensed funds* must conduct a valuation of their investments as at each 31 December and the end of each financial year.

Extension for date of Filing

If it is impracticable to submit any required report within the time allowed, a *licensed fund* may apply to the *SETC* for an extension of time. The request for an extension must:

- (a) be presented before the reporting deadline; and
 - (b) provide reasons for the late filing.
133. Extensions will normally only be allowed in extraordinary circumstances outside the *licensed fund's control*.
134. The *SETC* may accept or reject a request for an extension of time conditionally or unconditionally.

Late Filing

135. In the event of any late filing of documentation required under these Guidelines, the *SETC* may instruct the fund manager not to make any drawdowns on capital in respect of management fees without the *SETC's* consent.

136. Drawdowns in respect of management fees may recommence on filing of the documentation in a satisfactory form. The management fees payable for the period may be recouped on the first drawdown following recommencement, if the *SETC* so determines.

Disputes

137. The manager of a *licensed fund* must ensure that the document specifying the terms and conditions of the investment by a *licensed fund* in an *eligible investee company* contains provisions specifying the dispute resolution procedures to be followed in the event of a dispute between the company and the fund or the fund manager.

Part 16 - Default

Default

138. The *governing documents* must include default provisions relating to the manager, the trustee and the overall financial position of a *licensed fund*.
139. The consequences of default may depend on who commits the default and the circumstances in which it arises. For example, if a fund manager becomes insolvent, there will be a need to move swiftly to appoint a new manager.
140. In the case of some defaults, the *SETC* may allow a period of grace within which the defaulting party is given an opportunity to correct the default.

Licensed fund's Capital Impairment - definition and general requirements

141. A *licensed fund* is in a condition of capital impairment if, at any time after the third anniversary of its commencement, the amount remaining after deducting from the total *committed capital* of the fund the aggregate of:
- (a) the current value of all investments held at that date;
 - (b) the total of all distributions to investors and managers;
 - (c) the amount of any uncalled *committed capital* of the fund; and
 - (d) the amounts of paid annual management fees,
- is a positive number which is more than 30% of the total *committed capital* of the fund.
142. A *licensed fund* which is in a condition of capital impairment may be placed on a watch list with additional conditions of operation. Generally, these additional conditions will include more frequent reporting requirements, but may vary on a case-by-case basis.
143. If the amount calculated in accordance with clause 151 is an amount that is more than 50% of the total *committed capital* of a *licensed fund*, the *SETC* may consider replacing the fund manager.

144. The *SETC* may, but is not obliged to, consult with investors contributing investment capital (excluding the fund manager and its associates) prior to taking action of the kind referred to in clause 143 or 144.

Breach of licence and remedies

145. The *SETC* may revoke a licence if the manager is in breach of its conditions. The events giving rise to a right to terminate will be negotiated as part of the licensing process.
146. Examples of events which the *SETC* may consider sufficiently significant to warrant the revocation of a licence include unremedied or repeated breaches of the licence, insolvency of the manager and capital impairment of the fund exceeding 50% after 3 years.

Part 17 - Term, Distributions and Evaluation

Term of licensed funds and early liquidation

147. *Licensed funds* must have a term of 10 years. At the end of 10 years, a *licensed fund* must be wound up, although an extension for a period of up to 3 years may be allowed to permit the orderly and prudent disposal of assets. The *SETC* may require the *governing documents* to include provision for the early liquidation of the fund. Those circumstances requiring early liquidation will be set out in full in the *governing documents*. An example of a circumstance which the *SETC* will consider sufficiently significant to warrant the early liquidation of a fund is where the net asset value of the fund is a negative amount for a period of at least 6 months. Other examples may include:
- (a) the fund is required to be wound up by a court order;
 - (b) the fund is or becomes insolvent or suffers a substantial loss of capital; and
 - (c) the investors require the fund to be wound up.

Distributions and level of committed capital

148. The fund must make a distribution on the receipt of earnings or the realisation of investments in the following manner:
- (a) First, the total amount to be distributed shall be divided into two parts in the same proportion as the ratio of government investment plus related loans made or guaranteed by the Development Fund to non-government investment in the fund plus loans made or guaranteed by the Development Fund. For example, if the fund has an investment of 1 hundred million RMB from government sources and 2 hundred million RMB from non-government and local government sources, and loans have been made at the maximum ratio of 1:1 for government and 2:1 for non-government investment, for a total fund of 8 million RMB, 2/8 of the distribution shall be made to the first part, and 6/8 to the second part.

- (b) Second, for each part, interest shall be paid to the Development Fund or other lender guaranteed by the Development Fund on the amount of such loans related to government or non-government investment, as the case might be, calculated at the interest rate or discount rate on such loans to the date of the distribution.
 - (c) Third, the remaining amount to be distributed to each part shall be paid to the investors in that part (local government or non-government) and as repayment of loans applicable to that part, in the same proportion as the amount invested and the amount of loans then outstanding for that part. For the example set forth in (a) above, for the first part one half would be paid to the investors and one half applied to debt repayment; for the second part, one third would be paid to the investors, and 2/3 applied to debt repayment.
 - (d) Subsequent distributions shall be made in the same order as set forth above, until all loans have been repaid. Following debt repayment, distributions shall be made to the investors in each part in proportion to the total investment plus applicable loans related to that part. In the example of (a) above, 2/8 would be paid to the governmental investors, and 6/8 to the non-government investors. A portion of these distributions may be made to the Fund Manager as compensation (the "carried interest", in accordance with the agreement between the Manager and the investors in the Fund.
149. The Development Fund will not accept any in-specie or other in-kind distributions.

Evaluation

150. The *SETC's* focus will be on the overall performance of the fund, and not on the performance of individual investments per se.
151. A *licensed fund* must co-operate in the evaluation of the *ESF program*. This may include, but is not limited to:
- (a) facilitation of visits to investee companies by *SETC* members, or other representatives or consultants;
 - (b) distribution of information to investee companies;
 - (c) attendance by the fund manager or representatives of investee companies at evaluation meetings;
 - (d) provision of statistical or other information on the activities of investee companies; and
 - (e) provision of the terms and conditions of investment in investee companies.

ANNEXURE A

INFORMATION REQUIRED OF APPLICANTS

Filing an Application for the SETC's Consideration

An application for a licence to operate a fund under the ESF program must:

- (a) be filed by the publicised time and date;
- (b) include fifteen (15) single-sided copies;
- (c) be in a format which can be easily photocopied;
- (d) include an electronic version capable of being converted to a Word 7 document contained on a 3.5" disk, or any other form of electronic version the SETC requires; and
- (e) contain the following information.

Fund Manager Information

1. Full name, address (street and postal), telephone and facsimile numbers of the applicant.
2. Full name, address (street, postal and e-mail), telephone and facsimile numbers of the directors, senior partners and/or secretary of the applicant.
3. Full name, address (street, postal and e-mail) telephone and facsimile numbers of the auditor, banker and legal adviser of the applicant.
4. Full name, address, current occupation of each of the key personnel of the fund manager. Key personnel includes individuals whose expertise, experience or abilities are to be assessed in relation to the awarding of a licence to the fund manager. Applications should include the proportion of the time of each member of the key personnel that will be allocated to the fund.
5. Description of the role, responsibilities and terms of employment of those key personnel.
6. The qualifications, specific expertise, previous experience and skills of each of the key personnel, individually and as a team.
7. The following documents and information in respect of each of the key personnel:
 - (a) an up to date police report;
 - (b) confirmation that the person is not an undischarged bankrupt. For that purpose, **undischarged bankrupt** means a person who:
 - (i) under the applicable law, is a bankrupt in respect of a bankruptcy from which the person has not been discharged; or
 - (ii) under any other law (of China, or otherwise), has the status of an undischarged bankrupt,

and includes:

8. A summary of claims for the individuals in the team, and more detailed comments giving actual experience for each individual, in terms of the performance measures above. Details of the extent to which the individuals in the team have worked together, and their individual and collective commitment to the principles of the *ESF program*, should also be provided.
9. Full name, address (street, postal and e-mail), telephone and facsimile number of at least five referees who can substantiate the claims or facts contained within the application. The applicant should include details of the relationship between the fund manager or the key personnel and the referee.
10. A brief description of the organisational structure of the proposed fund manager. If the application is being made on behalf of several entities in partnership, joint venture or other arrangement, provide a brief description of each entity's role and responsibilities with regard to managing the proposed fund.

Expertise, Experience and Abilities of the Fund Manager

A description of the proposed fund manager's claims against the following criteria, including references to the relevant key personnel, relevant experience and/or qualifications and examples of previous dealings.

Management Expertise and Experience

1. Expertise and experience in actively seeking and investigating potential equity investments in small early stage companies.
2. Expertise and experience in developing and implementing equity investment strategies to achieve returns by investing in small, early stage companies.
3. Expertise and experience in the development and implementation of successful growth and recovery strategies for small, early stage companies.
4. Expertise and experience in the successful management of investment portfolios.
5. Experience in providing financial management advice to small, early stage companies.
6. Expertise and experience in realising returns from investments through third party transactions such as later round financing, trade sales and initial public offerings.
7. Commitment to training and developing the skills of Development Fund based staff in all aspects of making venture capital investments in small, early stage companies.
8. Appropriate ratio of investment managers to capital having regard to the size and type of the fund.
9. Balance of skills of key personnel within the management team.
10. Sound and satisfactory business plan.

Technological Expertise and Experience

11. If the Fund anticipates investments in technology-based companies, an understanding of and experience in dealing with issues related to Chinese and international technology investments, products, services and markets, including:
 - (a) demonstrated expertise and experience in any technologies that will be the focus of the fund;
 - (b) experience in providing advice to technology-focused companies; and
 - (c) experience in commercialising technology investments.

Capital Requirements

12. The proposed size of the fund including the proportions of non-government and local government sourced capital to Development Fund sourced capital. The SETC will accept competitive bids from applicants involving the amount of capital they will source from the non-government or local government sources, up to a maximum Development Fund to non-government capital ratio of 2:1 for non-government investment, and 1:1 for investment from local government sources.
13. The applicant's ability to raise the level of non-government or local government capital proposed in the application, including any underwriting arrangements the applicant has in place. The SETC will give greater weight to applications with underwritten capital than those without underwriting.
14. Ability to meet the capital requirements set out in these Guidelines, including the minimum capital requirements and management and ownership diversity requirements.
15. The proposed sources of capital.
16. The SETC:
 - (a) expects that applicants who are shortlisted for interview should provide as a minimum, letters of intent, with preference given to managers with underwritten funding commitments from their potential non-government and local government investors; and
 - (b) encourages capital raising from non-government and local government sources, to the extent permitted by law, from institutional investors and foreign sources.

Quality of the application

18. That the licensed fund will operate within the *ESF program* and these Guidelines.
19. That the licensed fund will achieve commercial returns for its investors.\

Financial Reporting Capability

20. Experience in generating and maintaining a variety of financial data and reports on investment funds.

Investment policy

21. An investment policy which proposes a balance of investments across the seed, start up and early expansion stages.
22. The fund manager's commitment to invest at the seed and start up stages.
23. An investment policy may include a regional focus.

Intent of the Fund Manager

24. Demonstrated willingness to operate within the intent of the *ESF program*.

Business Reputation

25. Demonstrated good character and high ethical standards, including general business reputation of key personnel. The applicant should include details for each of the key personnel of any memberships of professional organisations, regulatory licences and any other regulatory checks.

Management Fee

26. The SETC will consider the amount, structure and timing of management fees sought by the fund manager. The SETC expects flexible and competitive management fee structures under the ESF program.

Business Plan

Provide a business plan that includes:

1. The proposed structure of the fund (eg unit trust, company, listed or unlisted, proposed trustee, SETC of Directors etc). Provide a diagrammatic representation indicating relationships (eg ownership, control, contracts and/or agreements), flow of funds and/or information.
2. The field of technology specialisation (if any) for the proposed fund, including geographic and sector. The applicant should include a brief description of the nature of this field and any characteristics which impact upon investment decisions, the forecast profit and loss statement, balance sheet and cash flows.
3. The proposed manner and terms on which the non-government and local government capital has been sourced, including the identity of the potential investors. The applicant should include a brief description of any risks and/or costs associated with the proposed manner in which the capital has been sourced.
4. Details of the degree and nature of the fund manager's role in investee companies (eg through Board representation, shareholders agreements, consultancy etc). The applicant should include details of any remuneration

which would be expected to be received by the fund manager for these services.

5. Details as to proposed investment strategy, including the nature and timing of investments (eg ordinary shares, convertible notes, convertible preference shares, level of control at each funding round etc), criteria for the selection of investments and the investment exit strategy.
6. Details of the proposed terms of investment with investee companies. The applicant should include details such as protective covenants, provision of funding and veto rights.
7. The level of annual fund management fees (ie the annual management fee paid to the fund manager by the fund), having regard to clause 55 of these Guidelines. Competitive management fees will be considered by the SETC.
8. The scope of the management services to be provided to the fund for the fund management fee. The scope of management services should be clear, concise and comprehensive. In addition, identify any routine costs to the fund which are not included in this fee.
9. The projected costs of the fund manager to manage the licensed fund. The applicant should include projected overheads, salaries and costs associated with seeking and making investments.
10. Details of the performance monitoring strategy for the portfolio (eg milestones, objectives etc).
11. Details of any financing arrangements for co-investment with other sources of funding.
12. A forecast of profit and loss statement (including a forecast internal rate of return and sensitivity analysis), balance sheet and cash flow for the proposed fund. Where applicable, include the impact of taxation and distribution on these statements.
13. Proposed training and skills development program for staff involved in the management of the fund.