

CLARIFICATION ON THE CALL FOR EXPRESSIONS OF INTEREST No. JER-004/1

to select Financial Intermediaries that will receive resources from the European Investment Fund acting through the JEREMIE Holding Fund for Lithuania to implement the following Financial Instruments:

Risk Capital Fund and Business Angels Co-investment Fund (Pilot Scheme)

Reference number: Call for EoI No. JER-004/1

The Deadline for the submission of Expressions of Interest is the **19th of March, 2009**.

Question 1 (Q1): Management company and/or Risk Capital Fund or Angels Co-investment Fund (referred to as " Funds" below) incorporation. Are there any restrictions/requirements as to where the management company of the Fund has to be incorporated?

Can Financial Intermediary or a Fund be registered in different country than Lithuania, as long as it will invest only in SMEs whose primary place of business is in Lithuania?

EIF Answer: There are no specific restrictions or set expectation as to where the Financial Intermediary or the Fund has to be incorporated. Financial Intermediary or the Fund may be registered in different country than Lithuania, as long as compliance with all policies and guidelines applicable from time to time to EIF's activities is ensured and it will invest only in SMEs whose primary place of business is in Lithuania.

Q2: Annex 2 (Risk Capital Fund Financial Instrument: Description and Selection Criteria) describes Fund Manager as Financial Intermediary selected by JHF. Can you confirm that Financial Institution as described in the law of Financial Institutions of the Republic of Lithuania may be the applicant, i.e. asset management company license is not required at the moment of application? If not, please clarify the legal requirements for the company as applicant.

EIF Answer: There is no set expectation on legal form of management company at time of application as long as compliance with all policies and guidelines applicable from time to time to EIF's activities is ensured. Nevertheless, any authorisations and licences required under any applicable law have to be in place.

Q3: Can Financial Intermediaries applying for Risk Capital Fund Financial Instrument be represented by the Consortia? Consortia is the group of the fund management team and fund management company established according to Lithuanian laws. In this case who would be the winner - Consortia or fund management company established acc. to Lithuanian laws?

EIF Answer: There is no set expectation on legal form of management company as long as compliance with all policies and guidelines applicable from time to time to EIF's activities is ensured. The Applicant has to indicate the envisaged legal structure and the legal entity that will sign on fund manager's behalf.

- Q4: Can a newly established company (e.g. subsidiary) be eligible as Financial Intermediary? If yes, can the establisher (the future shareholder) apply for Expression of Interest on behalf of the company (subsidiary) that will be established in the future?
- EIF Answer: There is no set expectation on legal form of management company as long as compliance with all policies and guidelines applicable from time to time to EIF's activities is ensured. Expression of Interest can be submitted by other legal entity, clearly outlining intention to set up new legal entity as well as its envisaged ownership structure. Until signature of Operational Agreement the legal entity submitting the Expression of Interest will be deemed liable to EIF for the information and confirmations, undertakings, representations etc. declared in the Expression of Interest. Any entity who applies is liable vis-à-vis EIF for all declarations etc. expressed in the Expression of Interest.
- Q5: What should be the legal form of a newly created Fund?
- EIF Answer: There is no set expectation on legal form of the Fund as long as compliance with all policies and guidelines applicable from time to time to EIF's activities is ensured.
- Q6: Could you please provide additional clarification regarding the requirement to describe governance and legal structure in the Management section of the project description (appendix 2 to Expression of Interest):
- Is there any legal structure already in mind?
 - Could the issue of legal structure be left open in the proposal?
 - Are there any specific requirements (taxation, etc.) for the legal structure?
- EIF Answer: There are no specific requirements as regards governance and legal structure, but EIF expects Applicant to propose efficient structure complying with best market practice.
- Q7: Appendix 2 to Expression of Interest, Terms and Conditions – How is funding provided to the Financial Intermediaries? Would the Funds be funded through capital commitments from JHF or would the moneys be transferred to the Funds upon signature of the Operational Agreement?
- EIF Answer: It is expected that funding is provided basing on FI drawdown requests corresponding to planned investments in specific SMEs or to cover management fee.
- Q8: Can you please clarify what you mean for "*capital contributed*" ("For the duration of the fund, fund management costs can not exceed, on a yearly average, 3 per cent of the capital contributed, ...")? Does "capital contributed" means "total capital committed to the fund" or "capital invested in the portfolio companies, i.e. deployed"?
- EIF Answer: During investment period it refers to capital committed, after which the management fee would be expected to be calculated on capital deployed.
- Q9: Could you be more specific on how the total amount of funding foreseen for the Risk Capital Fund Financial Instrument (23.2 MEUR) be changed due to the nature/strategy of the selected proposals?
- EIF Answer: There is no set expectation, but change may be considered if the demand significantly deviates from EIF's expectations, including quality of the Expressions of Interest, number of applicants and other market factors.
- Q10: Could you explain in more details "Funds' distribution cascade"?
- EIF Answer:
1. First, distributions will be made to all investors until they receive their initial investment, including the fund management costs; thereafter
 2. Investors will receive returns up to a 6 per cent from initial investment yearly; thereafter
 3. The remaining distributions will be divided between the private investors and Financial Intermediary.

- Q11: Does the fund have to pay distributions every year? Or after closing fund? And if the fund didn't get 6 per cent annual return, how much would we pay for holding fund?
- EIF Answer: It is expected that the fund pays distributions as soon as distributions are available.
- Q12: Is required 6% hurdle rate net of taxes that might be deducted by Lithuanian state, or gross?
- EIF Answer: The tax implications of any particular proposal will depend on how that proposal is structured.
- Q13: What are the returns that have to be generated by the Financial Intermediary to the JHF from the future investments under the Business Angels Co-investment Fund?
- EIF Answer: JHF expects appropriate risk related returns from the investments made, given that they are made on a pari passu basis with private investors.
- Q14: What are the liabilities before the JHF if an investment in SME fails? Does pari passu under the Business Angels Co-investment Fund mean that pain and gain is shared equally between JHF and private investors?
- EIF Answer: Yes.
- Q15: How and when the loan must be repaid to the JHF?
- EIF Answer: The JHF funds will be committed to Fund in form of equity, not loan.
- Q16: In the Annex 2 and Annex 3 it is stated that "duration of the fund is 10 years with the possibility to extend for 2 years". Could you please explain in more detail what will be the after 10 (+2) years – will the money have to be returned to JHF and the fund will have to be closed?
- EIF Answer: Yes.
- Q17: Appendix 2 to Expression of Interest, Terms and Conditions – Could you indicate a timeframe to raise money from private investors? (i.e. – 3 months from signing Operational Agreement).
- EIF Answer: Proposed timeframe will be assessed on a case by case basis as part of the due diligence process.
- Q18: Is there an upfront legal liability by the applicant to commit or raise the remaining 50% capital under Business Angels Co-investment Fund? Is there an upfront liability for 5% capital by the financial intermediary? If so, what are liabilities by the applicant vis a vis EIF if such liability is not honoured in the future?
- EIF Answer: These are legally binding upfront requirements, which will be in place upon signature of a fund agreement as final legally binding terms. IF Financial Intermediary defaulted on its obligations then it would become a defaulted investor the consequences of which would be detailed in the Operational Agreement.
- Q19: Can the remaining 50% private capital under Business Angels Co-investment Fund Financial Instrument be debt related, or it must be equity, and debt goes on top of them?
- EIF Answer: It is required to be equity or quasi equity.
- Q20: Appendix 2 to Expression of Interest, Terms and Conditions – regarding capital raising from private investors – if there is a plan to raise money through an investment bank or placement agent, should a binding agreement with such partner be submitted, or it's enough to disclose that in fundraising plan?

- EIF Answer: Information on private investors has to be provided, including any already existing firm commitments, serious negotiations and fund-raising plan. All relevant and up-to-date information should be submitted and will be assessed accordingly.
- Q21: Fund management cost. There are certain limits for the management costs of the Fund set ["For the duration of the fund, fund management costs can not exceed, on a yearly average, 3 per cent of the capital contributed, unless a higher percentage proves necessary"]. Does "management costs" in this case mean "management fee" or "total management costs of the fund"?
- Does in 3 per cent management fee is included payment for the auditors, central securities depository and etc.? Or is this maximum 3 per cent management cost for all the expenditures?
- EIF Answer: Limitation set in the Art 43 of the Reg 1828 refers to the total management costs of the fund.
- Q22: Are management warrants for a particular SME investment included in 3% management fee? According to EIF policy, in what instances are warrants justifiable for a financial intermediary?
- EIF Answer: Warrants to the Financial Intermediary are not expected, as Financial Intermediary operational costs should be covered by the management fee.
- Q23: Fund transaction costs. Upon execution of investments, certain transaction services of external professionals, such as lawyers, accountants, industry consultants or investment bankers may have to be contracted in order to insure e.g. quality of due diligence and transaction documentation. If such services are necessary, would corresponding costs arising from purchasing such services be attributable to the Funds, or would those be expected to be covered from the management fee?
- EIF Answer: The proposals are expected to detail expected costs and how they would be covered. This detail would be assessed in terms of the overall final proposal, including its investment strategy and in-house capabilities.
- Q24: In the Annex 2 it is stated that "remuneration of the financial intermediary is linked to the fund's performance". Does it mean that in case of negative profitability of the fund (which is highly probable in the first years of fund existence due to specifics of investments) the remuneration of the financial intermediary will be 0 (zero)?
- EIF Answer: During the earlier years of the fund, the Financial Intermediary would typically only be remunerated by the management fee, as the fund would not have been able to realize investments yet.
- Q25: Investment Strategy. Annex 1, Appendix 2 requests to provide description of the investment strategy including the fund focus on a sector. Are there any specific economy sectors which EIF or the Government of Lithuania are interested to promote more than others, and would consider proposals focusing on such priority sectors more favourably?
- EIF Answer: There are no set specific priority sectors set neither by EIF nor by the Government of Lithuania.
- Q26: Is it allowed to invest in retail and wholesale sectors?
- EIF Answer: There are no such limitations set in this Call.
- Q27: Appendix 2 of the Annex 1 to the Expression of Interest – could you elaborate what information should be provided regarding „Detailed description of the addressed market segment“ under section Market?
- EIF Answer: It means market segment in which the fund intends to invest (generally and specifically in Lithuania).

- Q28: How precisely should we describe investment strategy? For example do we have to give names of the particular companies we plan to invest or we just have to describe the sector?
- EIF Answer: Applicants are requested to be concise. Names of the companies are not required at this stage.
- Q29: Appendix 2 to Expression of Interest, Terms and Conditions – how firm should be indicative investment from the Applicant to the fund? (For example, we could commit 10% of planned fund size, but if capital raising from private sector goes well, could this amount be decreased later? (or increased, if private sector commits less money than planned?)
- EIF Answer: It is an indicative investment which may change. Applicants are encouraged to be as firm as possible.
- Q30: Could you inform how much of equity could venture capital fund control?
- EIF Answer: There are no limitations on how much equity (share of ownership) venture capital fund can control in any investee company.
- Q31: We understand that the primary investment focus of the Risk Capital Fund Financial Instrument under the JHF initiative is investments in SMEs during early growth stages (seed, start-up and expansion phases). Do the JHF regulations foresee the purchases of existing shares (buy-outs) and, if yes, up to what level?
- EIF Answer: No, buy-outs are prohibited according the regulations under which this Financial Instrument operates.
- Q32: What happens if a company, that Fund has invested in, goes bankrupt? How assets of such company will be distributed? Does it mean that JHF money would be lost as well as other investors?
- EIF Answer: JHF will be treated in the same way as other investors, in event of losses.
- Q33: There are certain limits regarding the investment amount into any single enterprise set [“Within the Risk capital funds investments in one enterprise can not exceed 1 500 000 euro during any period of twelve month. During the fund’s operation, investments in one enterprise typically will be limited to 3 000 000 euro.”]. Do the limits indicated therein relate to the portion of the Fund’s capital contributed by JHF (i.e. EUR23.2m) or the total amount the Fund invests in a target company?
- EIF Answer: According to the state aid rules, the limitations apply to the total amount of investments into a target company.
- Q34: Is the Fund allowed to use leverage? If yes, whether the above indicated limit (EUR1.5m and EUR3m) refers to the equity portion of the Fund’s investment or equity and debt combined (i.e. total investment in any single enterprise, including debt)?
- EIF Answer: It is expected that the fund will make equity or quasi-equity investments.
- Q35: The requirement regarding Investment amount into an enterprise for Business Angel Co-Investment Fund Financial Instrument says "<..> within the Fund investments in one enterprise generally will not exceed 400 000 eur". Does this amount contain JHF amount, Business angel's amount and 5% of financial intermediary (FI) amount? In the case FI would like to invest larger amount (more than 5%), does it mean the amount per company to be invested by the Fund and BA will be less, i.e. 400 000 minus FI share?
- EIF Answer: Yes.
- Q36: Submission. In Appendix 3 of Annex 1 it is required to provide “Appropriate evidence of the representative’s authorization to act for and on behalf of the Applicant (signatory powers)”.

Could you please confirm whether Extract from the Register of the Legal Entities of Lithuania confirming evidence of the representative's authorisation to act for and on behalf of the Applicant in Lithuanian language is sufficient to be attached to Expression of Interest (Appendix 3, List of Documents Attached) document No 4)) or it should be translated into English?

EIF Answer: Copies of the official documents, namely Applicant's registration Certificate and Applicant's VAT Certificate or Extract from the Register of the Legal Entities of Lithuania as evidence of the representative's authorization to act for and on behalf of the Applicant (signatory powers), as long as those are in English or Lithuanian would be sufficient at this stage.

Q37: Annex 2 to the Call for Expression of Interest No JER-004/1 states that "The Expression of Interest specifies at least the items included in Article 43.2 of EC Regulation 1828/2006", which among other items requires "the by-laws of the financial engineering instrument". Annex 1 (Appendix 3 to Expression of Interest) does not specify such a requirement.

What kind of documents should be provided if a new fund management company is to be established:

a) draft of by-laws for the fund management company that would be set up in case of success? If affirmative, which language should be used for provided by-laws (Lithuanian or English)?

b) by-laws of a company that will be a major shareholder in future fund management company (and co-investor in proposed fund) that would be set up in case of success? If affirmative, which language should be used for provided by-laws (Lithuanian or English)?

c) skip requirement of by-laws?

EIF Answer: The requirement of the by-laws of the financial engineering instrument is covered in the Section "Management" in the Appendix 2 of the Annex 1.

In the case when a new company is to be established, a draft of the by-laws in English should be provided. By laws of majority owners are of advantage, but not necessary.

Q38: Could you provide/post on the website not only pdf, but Word templates to fill?

EIF Answer: Annex 1 to the Call for Expression of Interest is provided in the Word format as well.

Q39: In the first page of the Annex 1 it is mentioned that Deadline for submission of Expression of Interest is March 18th, 2009, but in other documents March 19th. Is there any kind of differences between these two dates?

EIF Answer: Deadline for submission of Expressions of Interest is March 19th. The error of technical nature has been corrected.

Q40: Funding Agreement. Could the text of the Funding Agreement of 1 October 2008 between the Ministries of Finance and Economy of the Republic of Lithuania and EIF be made available for review for potential applicants?

EIF Answer: No, Funding Agreement is not publicly available.

Q41: Operational Agreement key terms. Could a draft or sample Operational Agreement made available for potential applicants? What would be its key terms?

EIF Answer: No draft or sample is made available at this stage.