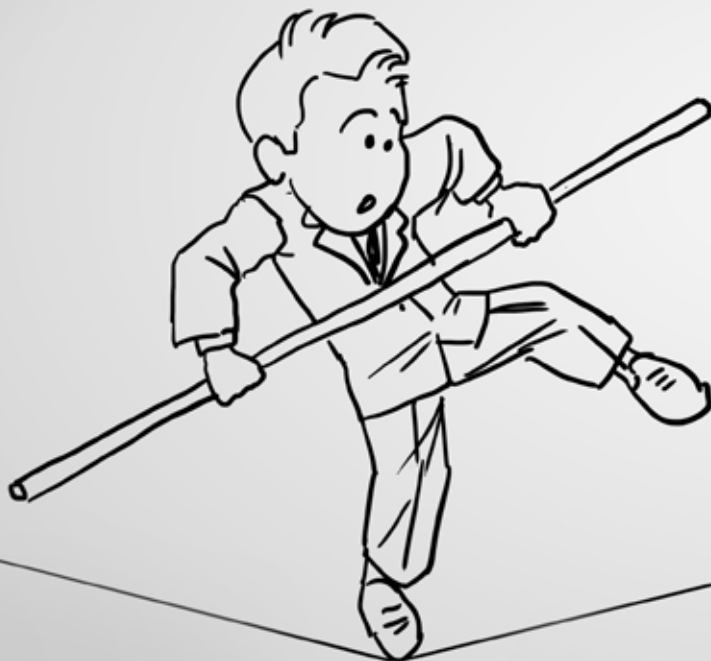


---

# Investing in Private Companies

## Insights for Business Angel Investors



**HBAN** Halo  
Business  
Angel  
Network

HBAN is a joint initiative of  
Enterprise Ireland & InterTradeIreland



## About Halo Business Angel Network (HBAN)

HBAN is a joint initiative of InterTrade Ireland and Enterprise Ireland, dedicated to the all-island promotion of business angel investment.

The HBAN umbrella group supports the early stage entrepreneurial community across the island of Ireland and actively works to increase the number of angel investors investing in early stage companies. The all-island umbrella group works on a regional basis to support the formation of new angel networks and works with existing angel networks to develop their capability and capacity, and across a range of industry sectors. HBAN also acts as a voice to Government, stakeholders, business and the media to promote the interests and needs of the wider angel investment community. HBAN is managed by Dublin BIC in partnership with the regional Irish BICs in Cork, Galway & Waterford. HBAN works in partnership with Halo NI & InvestNI in Northern Ireland. Further information is available at: [www.hban.org](http://www.hban.org)

Copyright © HBAN 2012-2016

*This booklet was created by HBAN with the kind assistance of Bob McGowan-Smyth of IntertradeIreland*

## Contents

	Page
<b>1. Executive summary</b> .....	<b>4</b>
<b>2. Introduction</b> .....	<b>6</b>
<b>3. Equity raising process</b> .....	<b>9</b>
<b>4. Top three investment criteria</b> .....	<b>15</b>
<b>5. Company executive summary &amp; business plan</b> .....	<b>18</b>
<b>6. Funding requirements</b> .....	<b>21</b>
<b>7. Valuation and terms of investment</b> .....	<b>23</b>
<b>8. Angel syndicates</b> .....	<b>30</b>
<b>9. Tax Incentives for Business Angels &amp; Entrepreneurs</b> .....	<b>32</b>
<b>10. Conclusion</b> .....	<b>35</b>

## Appendices

<b>A. Sample commercial and legal due diligence questionnaire</b> .....	<b>36</b>
<b>B. One page investment summary example</b> .....	<b>41</b>
<b>C. Sample term sheet</b> .....	<b>42</b>
<b>D. Sample syndicate charter</b> .....	<b>52</b>

# 1. Executive summary

This guide has been prepared to demystify investing in private companies for private investors (known as business angel investors). Investing in private companies is very different to investing in other asset classes.

## The following tips are developed further in this guide:

- The most likely outcome of any one angel investment is failure. However studies show, overall, business angel returns are enhanced by using a portfolio approach to investing;
- It is important at the outset for you to decide how you determine success;
- The relationship between investor and entrepreneur is like a marriage but one with a planned divorce;
- Start the process of relationship building well ahead of when the money is needed;
- You should undertake due diligence on the company prior to deciding to invest;
- Entrepreneurs can also undertake due diligence on you, checking your record of support or otherwise, so be prepared for this...;
- You should commit to a non-executive director or advisory role but not an executive role;
- Make sure that every contact with a company addresses the top three investment criteria in some form;
- The best exit is a trade sale for cash...it usually maximises value for all shareholders;
- The revenue potential of the company must demonstrate a scalable business that is capable of producing significant returns for you;
- The best business plans have a great executive summary – the point of an executive summary is to succinctly sell the investment opportunity, not to just describe the business;
- A compelling and fully costed business plan is essential;
- It is important that the company's management team understand and be on top of the numbers;
- Investors rarely want to 100% fund a business and will take comfort from other funders;

- Founders should have ideally had made or intend to make a cash equity investment in the company, i.e. have 'skin in the game';
- Have a realistic valuation expectation – entrepreneurs have to be incentivised;
- An equity deal is not just about the headline valuation;
- An apparently unattractively high valuation can be mitigated by a liquidation preference;
- When considering an investment, you need to take into account any potential future funding rounds and the effect that may have on your ultimate shareholding and returns;
- Whilst there have been many successes by individual investors, participating in an angel syndicate can have significant benefits; and
- Syndicates need to be well managed to take advantage of the benefits and mitigate the pitfalls; the best syndicates use a charter.

Investing in private companies, whilst high risk, can be rewarding and worthwhile with positive financial and non-financial outcomes. If it accelerates the growth of company then entrepreneurs will reap similar rewards.

This is a win-win.

## 2. Introduction

This guide has been prepared to demystify the equity investment process. It has a particular focus on what business angel investors should look out for when considering investing in a private company.

### Equity capital

Equity capital in this guide refers to equity invested in unquoted private companies<sup>1</sup>. It is not a loan, it is an investment.

You buy shares in a company in exchange for a cash injection. It is unsecured and is permanent capital in a company. You share the risks and rewards with the other shareholders.

Equity capital accelerates growth, adds credibility and inspires confidence amongst customers, suppliers, staff and other funders.

### Business angel investors

Business angel investors are high net worth individuals who provide smaller amounts of finance (€25,000 to €250,000) at an earlier stage than many venture capital funds are able to invest. They are increasingly investing alongside the seed venture capital funds on the island.

Angels usually contribute much more than pure cash – they often have industry knowledge and contacts that they pass on to entrepreneurs. Angels will often take non-executive board positions in the companies in which they invest.

The importance of business angels to the equity capital industry has grown significantly in recent years.

With the recent formation and growth of angel syndicates<sup>2</sup>, equity from business angels is becoming more and more important to the equity capital industry in Ireland and Northern Ireland.

<sup>1</sup> Investors usually only invest in limited liability companies so that having a limited company is a pre-requisite to raising investment. Investors do not invest in sole traders or partnerships with unlimited liability.

<sup>2</sup> More than one private investor investing in a company

### Rewards

Investing in private companies is very high risk. There is very little data on returns for angel investment.

Recent studies in both the United States and the United Kingdom have indicated that angel investing can generate significant returns through portfolio investing (i.e. investing in more than one company).

A study conducted for ACA<sup>3</sup> showed that overall returns in the US for angel investment were 2.6x<sup>4</sup> in 3.5 years<sup>5</sup>.

The following three core factors led to an improved rate of return:

1. Increased due diligence prior to investment;
2. Experience of the angel investors; and
3. Active involvement in the company once the investment has been made.

A similar UK study<sup>6</sup> by the same researchers showed that the overall return was 2.2x with a holding period of about four years resulting in a 22% internal rate of return ('IRR'). It also showed that 56% of the companies fail<sup>7</sup> and 9% generate a return of more than 10x.

Both studies also showed that investing in follow on rounds often had lower returns. This could be related to the difficulty investors have in determining when to exit investments, particularly ones that do not appear to be successful. It can be a more of a challenge to admit to other syndicate members that an investment has failed and should be written off.

***The most likely outcome of any one angel investment is failure. However studies show, overall, business angel returns are enhanced by using a portfolio approach to investing***

<sup>3</sup> Angel Capital Association

<sup>4</sup> 'x' is times the original investment – anything less than one is a loss

<sup>5</sup> Source: OECD (2011), Financing High-Growth Firms: The Role of Angel Investors, OECD Publishing

<sup>6</sup> Source: OECD (2011), Financing High-Growth Firms: The Role of Angel Investors, OECD Publishing

<sup>7</sup> A definition of 'failure' was not provided but it would be reasonable to assume that it means the investors received less than their money back or, at worst, zero proceeds

Angels do not necessarily measure success purely by return on investment. An individual investor determines success according to personal interests and needs.

**These could include a mix of:**

- 4. Return,
- 5. Satisfaction from having helped other entrepreneurs ('giving back' – perhaps reminding them of themselves when younger),
- 6. Interest in a business model or sector, etc.

*Tip: It is important at the outset for you to decide how you determine success*

Currently there are no studies on returns achieved by angel investors in Ireland or Northern Ireland.

**Key strategic choices are significantly related to better investment outcomes<sup>8</sup>**

- Angels with entrepreneurial expertise outperformed those without it, especially in earlier-stage opportunities.
- More than half of the investments were very early-stage, going into pre-revenue ventures.
- Those who invested in opportunities where they have specific industry expertise failed significantly less.
- Those who perform at least some due diligence, even just 20 hours, experienced fewer failed investments.
- After the investment is made, some involvement with the venture was related to improved investment outcomes. However, failure was greater where investors were perhaps too involved, specifically when they held management roles.
- Exits where the business angel investor had made follow-on investment in the venture were significantly less successful.

<sup>8</sup> Source: NESTA Research Report: Siding with the Angels, 2009

### 3. Equity raising process

Investing equity in a private company is an all-consuming exercise for you as a private investor.

You have to be prepared to put in considerable effort into the process: before, during and after the actual deal is done.

**'A marriage with a planned divorce'**

The equity process can be described as a marriage although a marriage with a difference, one with a planned divorce (the exit). Therefore, the level of commitment to this business relationship is high.

You are likely to want to join the board of directors of the company and take an active part in the development of the business. Entrepreneurs will need to welcome this participation.

Since your investment is unsecured, you need to become very comfortable with the people you are backing.

**'Dating' process**

The process starts, to borrow the marriage analogy, with the 'dating' process. This is about you building a robust business relationship with the entrepreneur.

Like the real dating process, attractiveness helps build relationships whilst 'neediness' usually does the opposite. Ironically, when an entrepreneur actively asks you for money, it can come across as 'needy'.

When an entrepreneur goes into a meeting with you seeking money, he will often come out with advice instead. It might be that if an entrepreneur goes into a meeting with you seeking advice, he may come out with money. The former approach may be considered 'needy' whilst the latter is more attractive.

This means that the equity raising process is not like raising debt, e.g. a mortgage for a house purchase, which is more mechanistic.

*Tip: start the process of relationship building well ahead of when the money is needed*

**Understanding what you find attractive**

Like any relationship, it is essential that you understand what you find attractive.

It is important that you decide what your personal criteria are when assessing an opportunity. There is more about this later in this guide.

## A typical angel investment process



Source: OECD (2011a), summarised from ACA, EBAN and Tech Coast Angel materials<sup>9,10</sup>

<sup>9</sup> Intellectual property

<sup>10</sup> A term sheet outlines the main terms of a proposed investment including amount and percentage shareholding for the investor(s)

## Investor Due Diligence

The studies discussed earlier underlined the advantage in undertaking due diligence prior to making an investment.

**Tip: Consequently, you should undertake due diligence on the company prior to deciding to invest.**

Due diligence is a process that verifies and confirms statements and views about a business and its prospects. Due diligence reduces the risks of an investment.

Every deal has risks attached to it so that you need to understand what risks to accept and which demand more detailed investigation.

### A due diligence programme should help to answer the following questions:

- What is critical to the investment decision?
- Which sources of value need to be underpinned?
- Which risks must be mitigated?

## Key areas subject to Due Diligence

The top three main criteria used by venture capital investors (and therefore broadly applicable for business angel investors) in assessing a potential investment are:

1. management;
2. exit; and
3. revenue potential.

Therefore, a due diligence programme should focus on addressing these key criteria.

### Management due diligence

Management is a key area to undertake due diligence. As an investor, you will be working closely with the management team for up to several years therefore it is essential that you are as comfortable as possible with the management team.

Spending as much time as possible with management will help you form a view about the team and their capability to execute the business plan successfully.

Taking up references from as wide a circle as possible is ideal, e.g. from previous employers, customers (past, present and potential), suppliers, funders and anyone that may have a business relationship with members of the management team.

**Exit due diligence**

Understanding the potential exit opportunity is the second key area. The most likely exit is a trade sale to another player in the market. This could be a customer, supplier or other partner.

Assessing the likelihood that the potential company could be a target for a takeover can be challenging, particularly with a young start-up company perhaps entering a new and growing market. Nevertheless, it would be worth spending some time considering this issue since an exit route is the key to successful investing.

The assessment may include ‘what does the company need to look like?’ in order to be purchased. This could include required future levels of turnover, employment, technical know-how, intellectual property protection and profitability – some or all of these elements may make a company an attractive takeover target.

An intellectual property based sale can be attractive since significant commercial scale is usually not required.

**Revenue potential due diligence**

See the table below under ‘commercial and operational’.

**Due diligence areas**

**Due diligence falls into the following main areas:**

Area	Issues
<b>Commercial and operational</b>	<ul style="list-style-type: none"> <li>Company’s strategy for delivering identified revenue enhancement and/or cost savings</li> <li>Technical merits of product/service offering</li> <li>Strengths of customer and supplier relationships</li> <li>Competitive positioning</li> <li>Market outlook</li> <li>Ability to influence the market</li> <li>Possible synergies</li> <li>Whether appropriate licences and consents are in place for that company to operate its business properly</li> <li>Whether the company has any history of supplying defective goods or sub-standard services</li> <li>Whether the company is bound to any unusual or particularly onerous contracts</li> <li>Whether key personnel are bound by employment/service contracts (with appropriate non-compete and non-poaching restrictive covenants on leaving the company)</li> <li>Whether the company is involved in any significant disputes with employees</li> <li>Whether the company has full title to the premises it operates from (if it owns such premises) or whether an appropriate lease(s) is/are in place providing security of tenure</li> </ul>
<b>Management</b>	<ul style="list-style-type: none"> <li>Assessment of capability – management interviews</li> <li>Identification of gaps and future plans</li> <li>Take up references from previous employers, customers, suppliers and funders</li> </ul>
<b>Financial including tax and pensions</b>	<ul style="list-style-type: none"> <li>Historic financial performance</li> <li>Current financial position</li> <li>Whether any debt finance and security is already in place (e.g. in favour of a bank)</li> <li>Financial model and projections</li> <li>Tax: all taxes (corporation tax, VAT, employment taxes, rates, stamp duty, import duties, etc.) including deferred tax provided in balance sheet</li> <li>Pensions: adequate provision in balance sheet</li> <li>IT status and future requirements</li> </ul>

<b>Environmental</b>	<ul style="list-style-type: none"> <li>Environmental risk of a company's site(s)</li> <li>Highlight any non-compliance with environmental regulations or company's own policy</li> <li>Assessment of any 'contaminated land'</li> </ul>
<b>Risk management and insurance</b>	Assessment of any present, future and past exposures
<b>Legal</b>	<ul style="list-style-type: none"> <li>Legal compliance with statutory obligations</li> <li>Ownership of company's IP including patents</li> <li>Shares properly issued</li> <li>Assessment of any shares 'promised' to current or former promoters and/or employees</li> <li>Whether the company is involved in any disputes/litigation which could potentially damage its brand/financial position</li> <li>Whether all of its shares and key assets are unencumbered</li> </ul>

**How much is appropriate?**

Not all of this will be applicable to a start-up or young company but they should be at least considered.

**Sample commercial and legal due diligence questionnaire**

A sample commercial and legal due diligence questionnaire is in Appendix A.

# 4. Top three investment criteria

A survey<sup>11</sup> amongst venture capital investors revealed the top three criteria that are used in assessing the attractiveness of a proposition. Business angel investors are probably no different.

**The top three criteria arising from the survey<sup>12</sup> were:**

1. Management team;
2. Exit opportunity; and
3. Revenue potential.

*Tip: make sure that every contact with a company addresses the top three investment criteria in some form*

From the above, it is worth noting that venture capital investors are not overly focused on what the company does (the product or service is not in the top three criteria). They are interested in how they will make money from their investment.

Whilst business angel investors tend to focus more on what the company does and aim to add their relevant domain experience to the opportunity, the 'sell' to you is not a 'product sell' but a 'commercial opportunity sell'. Entrepreneurs often miss this point as they are passionate about their product.

<sup>11</sup> InterTradelreland, May 2011, survey of venture capital fund managers on the Island  
<sup>12</sup> Health warning: some investors do take a different view on the top criteria - you should decide what is important to you

**Management team**

This is the number one, most important criterion for investors. People (investors) invest in people.

*Question: how well would you need to know someone before you gave them €100,000 of your own money?*

Investors spend a great deal of time becoming comfortable with the management team and the business. They will assess management's knowledge of the market, the opportunity and management's ability to execute the business plan. The management team's track record will be assessed.

Using advisors and/or non-executive directors will add further credibility to a proposition.

A management team consists of more than one person - investors do not usually back one-man bands.

They usually also avoid family businesses with family members (husbands, wives, brothers, sisters, etc.) being actively involved in the management of the business. Investors do not want to add the potential for family relationship breakdown to their list of risks.

Investors like to see at least the core of a developed management team. Early stage businesses in particular often do not have a full time team. Therefore the business plan needs to address how the company plans to fill the gaps in the management team as the business grows and develops.



**Exit potential**

This is another critical criterion, the second most important.

It is important to recognise that investors want to make as much money as possible from their investment. That is the business that you are in.

Typically an investor will seek to invest at €1 per share and sell at €7 or more per share. Whilst that is the usual aim, outcomes can be lower than this (see earlier discussion on rewards<sup>13</sup>).

Most investors invest for a capital gain at the end of the investment. They do not want to be locked into a company 'forever'. Venture capital funds have a typical life of ten years so that they must make and realise their investments in that time frame. Business angels do not have the same constraints but they still wish to realise their investment, typically in a five year time frame.

Consequently investors seek capital plays rather than income plays (e.g. annual dividends).

**There are three main investor exits. They are a share buyback, an Initial Public Offering ('IPO') and a trade sale.**

- **A share buyback** is where the company or the other shareholders buy the investor's shares. It is the most unattractive option as it will lead to the investor and the other shareholders being in serious conflict at exit: the investor wants the company to be valued as high as possible whilst the other shareholders will want the company valuation to be as low as possible. Share buybacks do happen but are not preferred at the outset by investors;
- An **IPO** is listing the company's shares on a recognised stock exchange and, in theory, the investor is free to sell its shares on the open market. However, selling a significant amount of shares in a relatively young thinly-traded<sup>14</sup> public company is likely to have a hugely negative impact on its share price (it will bomb!) and is, therefore, usually not a cash exit for investors; and
- Usually the best exit option to maximise investment sale proceeds is a **trade sale for cash**, where all shareholders exit at the same time as the entire company is sold to a third party (usually another corporate). This alignment of interest means everyone wins and is in stark contrast to the share buyback mentioned earlier. The business plan should mention any mergers and acquisitions (M&A) activity in your industry that would give some substance to the trade sale aspiration.

<sup>13</sup> Source: OECD (2011), Financing High-Growth Firms: The Role of Angel Investors, OECD Publishing

<sup>14</sup> Thinly traded means that the volumes of shares traded each day is low compared to the number of shares in issue

Other exits exist (such as secondary buy-outs<sup>15</sup>, management buy-outs (MBOs) and liquidation (both solvent and insolvent)) but the one that maximises value for all is the trade sale.

---

**Tip: the best exit is a trade sale for cash...it usually maximises value for all shareholders**

**Revenue potential**

This is the third most important criterion.

The revenue potential needs to demonstrate that the business is scalable; scalable enough to yield the significant return sought by you.

**Anything that you identify that demonstrates this is important:**

1. The scale of existing orders and sales funnel<sup>16</sup>;
2. The size of the market - it needs to be big enough (usually involving international sales) to build a significant business; and
3. Evidence of any other business in the industry showing similar growth to the growth that is being planned.

---

**Tip: the revenue potential of the company must demonstrate a scalable business that is capable of producing significant returns for an investor**

<sup>15</sup> Secondary buy-out: where another investor buys the existing investor's shares

<sup>16</sup> Also known as the sales pipeline

## 5. Company executive summary

The executive summary is the most important part of any business plan.

It should be prepared last and should summarise the main points of the investment proposal to potential investors. It is the hook that should attract your attention and get you to want to read further.

**Tip: The best business plans have a great executive summary – the point of an executive summary is to succinctly sell the investment opportunity, not to just describe the business**

Ideally the executive summary should be no longer than one to two pages long. The summary should set out clearly and concisely the main aims and purpose of the business. It should answer your basic questions in a clear, concise and punchy manner.

The summary should address the issues clearly upon which the decision to invest will be made.

If, after reading the executive summary, you understand what the business is about and are keen to know more, then the summary has done its job.

The critical points of the financial projections should be addressed in the summary – breakeven points, maximum funding requirements, etc.

It should set out the key strengths of the business be it management, product benefits or market sector. It should detail whether any events such as product licensing or regulatory approval are necessary in order for the business to succeed. It should also address the key risk factors of the proposed venture.

### Key elements

**Here is the advice given to entrepreneurs.**

**The key elements are:**

1. The Opener: start with the most convincing statement of why they have a great idea. Often this is about the uniqueness of their solution to address a big problem. Keep it specific and not woolly. If they are already working with world class people, companies or founders that have done it before then mention them here;
2. The Problem: explain clearly the pain point (could be current or emerging) being experienced by their customers that they are proposing to solve. This gives the context to establishing their value proposition;
3. The Solution: state what they are offering to whom. Is it software, hardware/product, service or a combination? Do not use acronyms but explain in plain language what they have that provides a compelling solution to the problem identified. They may need to explain how they fit into the value chain or distribution channels and why the players in their industry will be keen to work with them. If they have customers and revenue then state that clearly. If not then state when they will;

4. The Market Opportunity: explain the market (segmentation, size in value, growth, drivers and influences, how many customers and competitors). Targeting a reasonable percentage of a well-defined growing market will be more compelling than a micro percentage of a very large mature market. Make sure that any values stated are about the target addressable market in which they are operating;
5. Competitive Advantage: they have competition – if they do not then there is no market for their solution. As a minimum they are competing with the way business is currently being done. Someone, somewhere in the world, is probably doing what they are proposing to do. So, they need to state clearly what their sustainable competitive advantage is. 'First mover advantage' as their sole competitive advantage rarely convinces investors; they need to state clearly their unique benefits and advantages;
6. The Business Model: state how they are going to generate revenue and from whom. They need to demonstrate how their model is scalable and how (what metrics? – customers, licences, units, revenues, margins) the business will be assessed. State what levels will be reached in three to five years;
7. The Management Team: the number one criterion used by investors. Explain why their team is destined to succeed. Avoid summary CVs – relate individual team member's experience to the factors that will make the business flourish. Name drop big branded companies that any of team has worked for if they can;
8. The Reward: the summary financial projections need to demonstrate that a significant return will be achieved for their investors' capital. If these are not believable then everything that they have done is wasted. They should show, in summary form, three to five years revenue, overheads, losses/profits, cash balances and headcount – in some cases, it may make sense to include a key driver like number of customers or units shipped; and
9. The Funding Requirement: state how much they are raising now. This should be enough money to enable you to reach the next significant milestone. If there will be a future funding round then give an indication of the scale of that round.

The executive summary should not be an extended contents page. It should engage the reader and encourage them to read more. It has to convey the message of the business idea concisely and clearly, missing nothing out and adding nothing new in.

It is exactly what it says – it is a concise summary of the business plan.

An executive summary can also be very useful when an entrepreneur wishes to give someone with limited time a flavour of their business.

A brief, punchy executive summary that grabs the attention could lead to an investment or, indeed, any beneficial business relationship.

Entrepreneurs could send you a one page flyer, based on the executive summary, as a useful 'teaser' document. The format of a sample Investment Summary used by HBAN is included in the Appendix B.

## Business plan

**Tip: A compelling and fully costed business plan is essential.**

Investors recognise that the outcome may be different, particularly so in 'start-up-land'<sup>17</sup>. However, it remains important to write down plans and goals.

There are plenty of standard business plan templates available. Some of these take the form of a series of questions that the promoter answers and, quite honestly, they look exactly like a set of answers. Sometimes the promoters even leave the questions in as well...not impressive...

It is better to use a methodological approach to preparing the business plan, perhaps using a tool like the Business Cube to answer the fundamental questions.

The Business Cube<sup>18</sup> uses a set of related topical questions that, when considered, come together to complete a section of the plan.

Other methodologies and templates are available including a business plan template from the Dublin Business Innovation Centre<sup>19</sup>.

A well thought through business plan makes for a credible proposition as it demonstrates careful consideration has been given to the business and its plans for growth.

<sup>18</sup> More information on the Business Cube:  
<http://www.intertradeireland.com/media/InterTradeIrelandBusinessPlanningCubeGuide.pdf>

<sup>19</sup> Visit [www.dbic.ie](http://www.dbic.ie) for further information

<sup>17</sup> New young companies in the early stages of development

## 6. Funding requirements

Most companies lose money in the early years - this is not unusual.

More recently, the cost of building a business has fallen so that the funding requirements should not be as high as they used to be.

### Historical trading information

Standard financial information in the business plan would be summary historical profit and loss accounts and balance sheets for the years of trading to date, if available, with a brief commentary on them.

Detailed accounts should be included in the business plan appendices.

### Financial projections

The business plan should include projected profit and loss accounts and projected balance sheets along with cash flow statements. Again, these should be summarised in the main text of the business plan along with a commentary.

Projections need to be realistic and stated monthly for the first year and either quarterly or annually after that (detailed projections should be included in the business plan appendices).

Crucially, the assumptions underlining the projections need to be clearly stated.

**Tip: It is important that the company's management team understand and be on top of the finances or financial projections.**

This does not mean that the CEO needs to become an accountant but it is vital that when questioned on the numbers, the CEO and management team are able to know what is being asked and to satisfy the investor that they are on top of the numbers.

### Professional help with projections

It is worthwhile for entrepreneurs getting professional assistance from an accountant to prepare financial reports and the projections but entrepreneurs still need to know what they mean.

### How much to raise?

With an early stage company, a rule of thumb would be to raise 18 months' worth of cash. This provides 12 months to achieve whatever milestones are required to support a further funding round and another six months to raise that funding round.

This ideal may be too high and, therefore, is not always possible to raise. However it can be a useful target.

Costs are generally known but future revenue is not guaranteed so that any formula used to calculate monthly cash burn<sup>20</sup> should give some assurance that the amount being raised will last 18 months.

Therefore, the definition of one month's cash burn is:

Gross costs per month less secured-only revenue<sup>21</sup> per month

**Use of funds table**

**For what the money being sought will be used should be clearly stated. An application of funds table like the following would benefit a proposition:**

Use of funds	€000s <sup>22</sup>
Development costs	250
Working capital	100
Business development	200
Capital expenditure	150
Headroom (contingency)	150
<b>Total</b>	<b>€850</b>

<sup>22</sup>

<sup>20</sup> Cash burn refers to the amount of cash being used by a business

<sup>21</sup> Cash received from customers

<sup>22</sup> The figures are illustrative only and do not represent a recommended use of funds allocation - this will vary with each different business

**Source of funds table**

Equally a source of funds table like the following would be helpful.

*Tip: Investors rarely want to 100% fund a business and will take comfort from other funders.*

Source of funds	€000s <sup>23</sup>	Status
Promoters	250	Committed
External equity - private investors	250	Pitching
External equity - Enterprise Ireland	250	Subject to matching
Government agency - grant	50	Subject to others
Bank debt	50	Credit committee
<b>Total</b>	<b>€850</b>	

<sup>23</sup>

Both of these tables' totals should equal.

You will want promoters to have 'skin in the game' with a cash equity investment in the company. Founders working for nothing or low salaries are 'givens' for young companies and will be reflected in the company's valuation.

*Tip: Founders should have ideally had made or intend to make a cash equity investment in the company, i.e. have 'skin in the game'*

<sup>23</sup> Again, the figures are illustrative only and do not represent a recommended source of funds allocation - this will vary with each different business and whether the company is in Ireland or Northern Ireland

# 7. Valuation and terms of investment

Valuing young companies is very challenging and is very much an art rather than a science.

The valuation needs to be low enough to ensure you can achieve an attractive return. It needs to be high enough to keep existing shareholders incentivised.

Valuing a company is how an equity deal is 'priced'. Valuation is not the only issue - the terms of an investment are also important.

**Degree of influence**

You will want to have influence, supported by your percentage equity stake, in a company. Therefore, very low percentages of the equity on offer are unlikely to be attractive to you.

Many equity deals are for between 20% and 40% of the equity with 25% to 30% being common.

*Tip: Have a realistic valuation expectation - entrepreneurs have to be incentivised*

**Valuation multiples/metrics**

Where there is revenue and/or profits, various multiples or metrics can be applied to establish a valuation.

These metrics can also be applied to future revenue and/or profits and discounted back to today's value.

**Examples include:**

- A multiple of recurring revenue;
- A multiple of EBITDA<sup>24</sup>;
- A multiple of profit after tax; and
- A value for every active user/customer.

Investors are very interested in the potential future value as discussed earlier in the Exit section.

Therefore, any multiples and metrics arising from companies being sold in the industry are important to highlight if available.

Studying companies sold in the company's industry may reveal what multiples are relevant. Public companies have to disclose transaction details but private companies do not. As a result, gaining close examples to the company may be a challenge.

However, an entrepreneur knowing something about this is likely to impress on you that he understands your needs.

<sup>24</sup> EBITDA - earnings before interest, tax, depreciation and amortisation

A simplistic example of a valuation based on future profitability is set out in the table below.

Valuation based on future value – illustration only	€000s <sup>25</sup>
Future EBITDA	3,000
Multiple <sup>26</sup> – say	4
Future enterprise value <sup>27</sup>	12,000
Future debt – say	2,000
Future equity value <sup>28</sup>	10,000
Return required – say	10 times
Therefore, value today	1,000
Equity amount sought – say	300
Therefore, equity stake required (300/1000)	30%

<sup>25 26 27 28</sup>

In this example, the valuation of €1 million is the post-money valuation, i.e. the value after your cash investment is made.

The pre-money valuation (i.e. the value of the company’s equity prior to your investment) is, therefore, €700,000.

### Terms of investment

The principal terms and conditions of an equity investment are usually stated in a term sheet (See Appendix C for a sample HBAN term sheet).

**Tip: An equity deal is not just about the headline valuation**

Valuation is important but the other terms of an investment are important too.

#### Investment terms and conditions include the following:

- Amount and use of investment;
- Percentage ownership;
- Equity and debt structure;
- Dividend and interest (if applicable) rights;
- Voting rights;
- Management incentive schemes;
- Exit arrangements;
- Management changes;
- Investor board representation;
- Investor veto rights;
- Reporting requirements and consequence of failure;
- Costs and confidentiality; and
- Steps to closing.

<sup>25</sup> The figures are illustrative only and do not represent any preferred outcome – this will vary with each different business

<sup>26</sup> The potential multiple is specific to a particular industry and a company’s stage of development – multiples can be lower or higher than the four in this example

<sup>27</sup> Enterprise value is the value of company (i.e. before the deduction of debt)

<sup>28</sup> Equity value is the value of the entire issued share capital of the company and is the value attributable to shareholders

### Legal agreements

It is essential that the terms of your investment is outlined in appropriate legal agreements.

#### The principal legal agreements are:

- Investment agreement (sometimes called a shareholders agreement);
- Articles of association (as amended); and
- Directors’ service agreements

### Liquidation preference

A term that is common in venture capital deals is a liquidation preference. Some angel deals now include it.

Despite its name, this is not exclusively about when the company goes into liquidation.

In this case ‘liquidation’ refers to any liquidity event (e.g. when any of the exit mechanisms discussed earlier occurs or when the company goes into liquidation).

#### There are two types of liquidation preference:

- ‘Soft’ liquidation preference<sup>29</sup>: on a liquidity event, the holder of shares having a soft liquidation preference will have the right to receive the higher of their money back or the percentage shareholding that they hold in the company;
- ‘Hard’ liquidation preference<sup>30</sup>: on a liquidity event, the holder of shares having a hard liquidation preference will have the right to receive their money back plus the percentage shareholding that they hold in the company.
- Angels investing under EIS (in the Republic of Ireland) and EIS/SEIS (in Northern Ireland) should note that they can not take shares which give them a preference in the event of a company being wound up. This is regarded as providing additional down side risk and is against EIS rules.

<sup>29</sup> ‘Soft’ liquidation preference is not a term in general use but is used here for convenience

<sup>30</sup> ‘Hard’ liquidation preference is not a term in general use but is used here for convenience. This type of liquidation preference is commonly called a ‘double dip’

As an investor, if a liquidation preference is being sought then a hard liquidation preference is better for you. However, a hard liquidation preference is harder to defend than a soft liquidation preference.

The following table illustrates how each works. As the exit proceeds increase, the effective percentage of total proceeds attributable to you will fall.

Therefore, whilst a liquidation preference can increase your share of the proceeds, it is generally considered to be a downside mechanism by investors as it attempts to return at least the original amount invested.

€2,000 investment	No liquidation preference €000s <sup>31</sup>	'Soft' liquidation preference €000s <sup>32</sup>	'Hard' liquidation preference €000s <sup>33</sup>
Equity exit – total proceeds	3,000	3,000	3,000
Liquidation preference (1X)	Nil	2,000	2,000
Proceeds after preference	3,000	1,000	1,000
Investor's share – say 50% <sup>34</sup>	1,500	Nil	500
Total investor proceeds	1,500	2,000	2,500
<b>Investor proceeds as a % of total proceeds</b>	<b>50%</b>	<b>66.7%</b>	<b>83.3%</b>

As the table implies, the liquidation preference may be higher than 1X (one times investment). Deals have been completed at 2X, 3X, 4X and higher.

**Tip: An apparently unattractively high valuation can be mitigated by a liquidation preference**

<sup>31</sup> The figures are illustrative only  
<sup>32</sup> Again, the figures are illustrative only  
<sup>33</sup> Once again, the figures are illustrative only  
<sup>34</sup> This assumes that the investor has a 50% equity stake

### Instruments – types of shares

Cash is invested in a company through one or more financial instruments. A financial instrument is the form that an investment takes.

If you are investing under a government tax incentive scheme then the instrument type you can use may be restricted so that seeking professional tax advice before completing a deal would be essential if you are investing in this way.

#### The principal instruments are:

##### Ordinary shares

This is the most basic form of shareholding in a company. Ordinary shares receive any dividends and exit proceeds after all creditors, debt and other share classes are paid. The amount received per share is pro-rata to the total number of ordinary shares in issue.

The total number of ordinary shares that you hold divided by the total ordinary shares in issue gives your percentage ownership of the company.

##### Preference shares

Preference shares provide the holder with a preference to dividends and exit proceeds over ordinary shareholders. This preference is usually fixed although a variable element can be used.

##### Preferred ordinary shares

Venture capitalists use this type of share to provide the benefits of ordinary shares and preference shares in one instrument.

Liquidation preference rights (see above) are usually provided for in preferred ordinary shares.

##### Convertible loans

Cash can be invested as a loan that can be converted, usually at the holder's option, into shares (usually ordinary shares) at some point in the future. The loan can also carry an interest rate although any payment of interest is usually rolled up to a future date.

The basis of conversion (i.e. valuation of the company) can be set at a later date. For example, the valuation used by a future equity funding round (sometimes at a discount to compensate for the 'early risk' taken by the investor) could form the basis for the conversion.

##### Anti-dilution protection

Particularly in the case of an agreed high valuation, you can seek anti-dilution protection if there is a future 'down round'.

A 'down round' is where a subsequent valuation per share is lower than the previous valuation. In case this, anti-dilution protection re-prices the previous round to the new round's valuation and you will receive extra shares (at a nil or nominal price) as compensation.

Angels investing under EIS/SEIS cannot use preference shares of any type. Similarly anti-dilution protection will disqualify EIS/SEIS relief.

### Drag and tag provisions

These provisions apply where shares are being sold post investment. Usually drag and tag provisions go hand-in-hand.

A **drag provision** compels other shareholders to sell their shares at the same price as the selling shareholders.

For example, 51% of shareholders wish to sell their shares to a third party and as long as 51% is at or higher than the trigger level<sup>35</sup> then the remaining shareholders can be compelled to sell on the same terms and conditions.

A **tag provision** provides other shareholders with the ability to sell their shares at the same price as the selling shareholders.

For example, 40% of shareholders wish to sell their shares to a third party and as long as 40% is at or higher than the trigger level<sup>36</sup> then the remaining shareholders can join the selling shareholders and can sell their shares on the same terms and conditions.

### Multiple funding rounds

When funding young companies, further funding rounds are almost a certainty. As discussed earlier, studies have shown that participating in further funding rounds can reduce investment performance.

Having a reasonable shareholding at the outset based on a reasonable valuation can help to mitigate this problem and leave you freer not to participate in a future round.

*Tip: When considering an investment, you need to take into account any potential future funding rounds and the effect that may have on your ultimate shareholding and returns.*

If the valuation of the company is increasing at each funding round then this is not as great a concern as if the valuation was static or falling.

<sup>35</sup> The trigger can be any agreed percentage

<sup>36</sup> As previous footnote

### Further funding example - increased valuation

In the following example, an angel investor has invested €100,000 for 25% of the equity and a new investor later invests €200,000 for 25% of the equity.

The original angel investor does not participate in this round (although it is important to note that new investors will expect existing angel investors to invest again unless the circumstances for them not doing so are compelling). In this case, whilst dilution is suffered from 25% to 18.8%, the value of the angel's shares has increased by 50% from €100,000 to €150,000.

Capitalisation table	Existing %	First angel invests %	New angel invests %
Management	90.0	67.5	50.6
Staff	10.0	7.5	5.6
First angel investor - €100,000	-	25.0	18.8
New angel investor - €200,000	-	-	25.0
<b>Total</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>
Company valuation - post money		€400,000	€800,000
Value of original angel's shares	-	€100,000	€150,000

### Further funding example - decreased valuation<sup>37</sup>

In the following example, an angel investor has invested €100,000 for 25% of the equity and a new investor later invests €200,000 for 35% of the equity.

Again, the angel investor does not participate in this round. In this case, dilution is suffered from 25% to 16.2% and the angel's share value has fallen below cost.

Capitalisation table	Existing %	First angel invests %	New angel invests %
Management	90.0	67.5	43.9
Staff	10.0	7.5	4.9
First angel investor - €100,000	-	25.0	16.3
New angel investor - €200,000	-	-	35.0
<b>Total</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>
Company valuation - post money		€400,000	€571,429
Value of original angel's shares	-	€100,000	€92,857

<sup>37</sup> Also called a 'down round'

## 8. Angel syndicates

When investing on your own, angel investment is high risk.

*Tip: whilst there have been many successes by individual investors, participating in an angel syndicate can have significant benefits*

### Business angel syndicates

Syndicates are two or more private investors working together to share the risks and rewards of investing together in private companies.

Syndicates can be formal and informal. There are several formal syndicate groups (some with more than 10 members) forming across the Island, most of which are facilitated by HBAN.

### Benefits of syndicates

The principal benefits of participating in an angel syndicate are:

1. **Diversified portfolio:** portfolio investing (i.e. investing in more than one company) is a lower risk approach to investment compared to the higher risk 'all eggs in one basket' approach of investing in just one or two companies;
2. **Pooling of economic resources:** pooling of funds provides the opportunity to invest in several companies and/or in larger deals;
3. **Pooling of skills, contacts and experience:** syndicate members will benefit from each other's skills, networks of contacts and experience. This all enhances the possible success and returns of investing; and
4. **Due diligence:** ability to undertake a greater level of due diligence.

### Challenges of syndicates

The principal challenges of participating in an angel syndicate are:

1. **Challenges in agreeing goals and actions:** members may have differing goals for investment (e.g. exit time frame) and/or actions when things are going wrong with an investee company. Therefore, it is important that a syndicate agrees at the outset issues like the exit time frame and the approach to taking action when challenges arise;
2. **Time and costs:** there remains a significant time commitment. There can be some costs like membership fees that are payable – these costs are generally not significant; and
3. If you do not invest for a prolonged period of time then **you may be asked to leave the syndicate.**

### Syndicate charter

*Tip: Syndicates need to be well managed to take advantage of the benefits and mitigate the challenges; the best syndicates use a charter*

The best syndicate groups do this by establishing and agreeing a charter amongst the members.

**A Charter will address the following principal issues:**

- Standard of conduct of members;
- Confidentiality and conflicts of interest;
- Participation and on-going responsibilities of members including actively participating in pre-investment due diligence and post-investment monitoring and support; and
- Modus operandi including minimum amount that individual investors are expected to invest in any given deal.

A sample charter is included in Appendix D.



# 9. Tax Incentives for Business Angels & Entrepreneurs

Unlike many countries around the world, both Ireland and Northern Ireland have tax incentives for individuals making investments in private companies. It usually falls to the company to ensure that appropriate approvals are sought, granted and the necessary certificates are issued to investors.

## Summary of the principal schemes (as at October 2015)

	Ireland	Northern Ireland
Scheme name	Employment and Investment Incentive ('EII')	Enterprise Investment Scheme ('EIS') and Seed EIS ('SEIS')
Max investment(s) attracting relief in any one tax year	€150,000	£1 million (£100k SEIS)
Min investment attracting relief	€250	None (£500 before 6 April 2012)
Relief available on	New ordinary shares only	New ordinary shares only but may carry very limited preferential dividend rights
Maximum shareholding by any one investor	30%	30%
Maximum investment by all investors in one company	€5 million subject to €5 million in any one year	£5 million in total in any 12 month period
Initial income tax relief rate	30%	30% (50% for SEIS)
Minimum shareholding period	Four years	Three years
Further income tax relief if employment created after three years	10%	None
Investor requirements	<ul style="list-style-type: none"> <li>Resident in State for tax year</li> <li>Not connected to the company</li> </ul>	<ul style="list-style-type: none"> <li>Individuals tax resident in UK</li> <li>Not connected with the company</li> </ul>

Company requirements	<ul style="list-style-type: none"> <li>Micro or SME incorporated in the State or European Economic Area State</li> <li>Complies with EU General Block Exemption Rules (unlisted SME, less than 7 years trading, with some limited exceptions)</li> <li>Resident in State or other EEA State and carrying on business in the State</li> <li>Most trading activities are allowed but there are exclusions</li> <li>Qualifies for tax clearance cert</li> </ul>	<ul style="list-style-type: none"> <li>UK resident private company or company listed on AIM or PLUS Markets</li> <li>Gross assets less than £15 million prior to share issue and less than 250 employees (lower for SEIS)</li> <li>Most trades qualify but some do not</li> </ul>
Capital gains tax ('CGT') and relief	Gains taxed but capital losses not allowable for CGT purposes	Gains are free of CGT and any losses (less income tax relief given) is an allowable loss for income tax

Note: this is a brief summary of the tax incentives and provided for guidance only. The above schemes and rates are subject to change. There are detailed provisions (available from each Revenue's website) that should be considered before investing under these schemes. Specific tax advice should be sought in all instances.

## Seed Enterprise Investment Scheme ('SEIS')

In Northern Ireland, there is also tax relief available under SEIS. It is designed to help small, early stage companies raise funds from the issuing new ordinary shares. It complements EIS summarised above and the same rules generally apply.

Income tax relief is given at 50% on a maximum annual investment of £100,000. The Company must have fewer than 25 employees and no more than £200,000 in gross assets. The Company may not receive more than £150,000 under SEIS.

Capital gains can be rolled into investments such that it is theoretically possible for investors to only be risking approximately 20 pence in the Pound.

## EIS and SEIS across the border

UK investors can take advantage of EIS and SEIS when investing in any other EU country in some circumstances. In essence the company in which investment is being placed must have a presence in the UK. Professional advice is particularly important for investments of this type.

## Overview of the SURE Scheme (ROI)

This new Start Up Relief for Entrepreneurs (SURE) replaces Seed Capital relief. It could be relevant to an employee, an unemployed person or a person made redundant recently who has mainly paid tax under PAYE and is interested in starting their own business. They may be entitled to avail of a refund of up to 41% tax paid in previous years if they invest their own funds by way of shares in a qualifying new company and satisfy other conditions. The minimum investment is €250 and the maximum is €100,000 p.a.

## Further detailed information

Legislation relating to such tax incentives changes from time to time and further detailed information can be found by searching one of the following two websites:

☐ If you are tax resident in Ireland:  
<http://www.revenue.ie>; or

☐ If you are tax resident in Northern Ireland:  
<http://www.hmrc.gov.uk>.

Separate tax advice should be sought about specific circumstances.

# 10. Conclusion

Investing in private companies is very different to investing in other asset classes.

### Here is a reminder of the tips:

- The most likely outcome of any one angel investment is failure. However studies show, overall, business angel returns are enhanced by using portfolio approach to investing;
- It is important at the outset for you to decide how you determine success;
- The relationship between investor and entrepreneur is like a marriage but one with a planned divorce;
- Start the process of relationship building well ahead of when the money is needed;
- You should undertake due diligence on the company prior to deciding to invest;
- Entrepreneurs can also undertake due diligence on you, checking your record of support or otherwise, so be prepared for this;
- You should commit to a non-executive director or advisory role but not an executive role;
- Make sure that every contact with a company addresses the top three investment criteria in some form;
- The best exit is a trade sale for cash...it usually maximises value for all shareholders;
- The revenue potential of the company must demonstrate a scalable business that is capable of producing significant returns for you;
- The best business plans have a great executive summary – the point of an executive summary is to succinctly sell the investment opportunity, not to just describe the business;
- A compelling and fully costed business plan is essential;
- It is important that the company's management team understand and be on top of the numbers;
- Investors rarely want to 100% fund a business and will take comfort from other funders;
- Founders should have ideally had made or intend to make a cash equity investment in the company, i.e. have 'skin in the game';
- Have a realistic valuation expectation – entrepreneurs have to be incentivised;
- An equity deal is not just about the headline valuation;
- An apparently unattractively high valuation can be mitigated by a liquidation preference;
- When considering an investment, you need to take into account any potential future funding rounds and the effect that may have on your ultimate shareholding and returns;
- Whilst there have been many successes by individual investors, participating in an angel syndicate can have significant benefits; and
- Syndicates need to be well managed to take advantage of the benefits and mitigate the pitfalls; the best use a charter.

Investing in private companies, whilst high risk, can be rewarding and worthwhile with positive financial and non-financial outcomes.

If it accelerates the growth of the company then entrepreneurs will reap similar rewards.

This is a win-win.

## APPENDIX A

### Sample Commercial and Legal Due Diligence Questionnaire

*This sample due diligence questionnaire is designed for larger venture capital deals and, therefore, may be considered a superset of what an angel investor would seek.*

*It is recommended, on a case by case basis, that you request only information that logically makes sense in the circumstances and that is appropriate to the stage of the development of the company.*

#### STANDARD LEGAL AND COMMERCIAL DUE DILIGENCE QUESTIONNAIRE PROPOSED INVESTMENT IN INVESTEEO LIMITED

Please supply the following information in respect of [NAME] Limited and each of its subsidiaries (each such company being referred to in this questionnaire as “the Company”). We suggest that you retain photocopies of the documents you send us, so that the two sets of copy documents can in due course be incorporated (where appropriate) in the Disclosure Letter.

##### Company Details

1. Please supply details of:-
  - (a) the Company’s registered number;
  - (b) its registered office;
  - (c) the full names and addresses of its directors; and
  - (d) its accounting reference date;
2. Please supply details of any shareholdings which the Company has in any other companies.

##### Shareholders

3. Please confirm that none of the Shareholders or directors has an interest in any company or business which competes with the Company’s business.

4. Please supply details of:-
  - (a) any loan by or to the Company,
  - (e) any guarantee given by the Company, and
  - (f) any other contract involving the Company, in which any of the Shareholders or Directors or managers of the Company or any persons connected to them has a personal interest.
5. Are all of the issued shares fully paid up? If not, please provide details.
6. Are there any agreements, arrangements or informal understandings between the Company, the Directors its shareholders or any person connected with them relating to the management of the Company or its affairs? If so, please give details.

##### Plant and Equipment

7. Is the Company’s plant and equipment register up to date? Please supply a copy or confirm that it is available for inspection.

##### Property

8. Please supply details of all freehold and leasehold property in which the Company has an interest (including any licences to occupy), together with copies of all relevant title deeds and documents and (where relevant) authority to inspect the register.
9. Please supply copies of any valuations of such property.
10. Please confirm whether all necessary planning and other consents have been obtained in respect of such property and its current use and supply copies of all consents.
11. Please supply details of any leases, tenancies or licences granted by the Company in respect of such property and copies of the relevant agreements.
12. Please supply details of any leasehold property in which the Company has had an interest in the past.

##### Intellectual Property

13. Please identify details of all trademarks, trade names, service marks, patents, registered designs, design rights, copyright, knowhow and other intellectual property owned or used by the Company in connection with its business.
14. Please supply copies of all Registration Certificates, specifications and all other documents evidencing such intellectual property. Please also supply copies of all agreements relating to the licensing or use of such intellectual property (both to and by the Company).
15. Please provide any patent infringement analysis carried out by the company or any third parties, including search reports from the relevant Patent Offices.
16. Please provide details of any intellectual property infringement claims made either by the Company or against the Company.

**Employees**

- 17. Please supply full details of the Company's employees, and of all terms and conditions relating to their employment, including: a list of all employees, giving their names, job titles, ages, dates of commencement of employment, notice periods, salaries and other benefits (including any commission or bonus arrangements, fringe benefits, share incentive and similar arrangements).
- 18. Please identify employees who are spouses or co-habitees, parents, grandparents, children or grandchildren (including step and adopted) or otherwise related to the directors of the Company.

- 19. Are there any outstanding claims against the Company from any past or present employee or officer?

**Insurance**

- 20. Please supply details of the Company's insurance arrangements (including a schedule stating the insurers, the risks covered, the sums insured and the premiums).

**Financing**

- 21. Please supply details of the Company's financing arrangements, including copies of any loan agreements or facility letters (with details of agreed overdraft limits).
- 22. Please supply copies of any mortgages, charges or other security documentation affecting the Company, and a copy of its register of charges.

- 23. Please supply details of any government or other grants to the Company, including any terms under which they may be repayable.
- 24. Please supply details of any factoring or similar arrangements relating to the debts of the Company.
- 25. Has the Company exceeded its agreed banking facilities within the last 12 months?
- 26. Has the Company borrowed or raised any money or taken any financial facility beyond its overdraft facility as at its last financial year end or has it agreed to do so?

**Contracts and General Business Matters**

- 27. Please supply details, including copy documents, relating to any of the following:-
  - (a) long-term arrangements (i.e. which may last for more than six months) relating to supplies by the Company;
  - (g) long-term arrangements relating to purchases by the Company;
  - (h) agency, distributorship, franchising or similar arrangements relating to the Company.
- 28. Please supply details (including copies) of any other contracts relating to the Company which are of particular significance or of an unusual nature.
- 29. Please supply details of any quotations or tenders by the Company including:
  - (a) the total current order book; and
  - (i) the total current sales pipeline with a percentage chance of closing each opportunity.

- 30. Please supply a list, with contact details, of the Company's major customers (i.e. more than 5% of turnover) and their related turnover and major suppliers (i.e. more than 5% of goods or services supplied). If applicable then please also supply contact details of customers currently trialling your product/service.

- 31. Please supply copies of all licences or consents necessary to carry on the business of the Company (e.g. Consumer Credit Act licences).

- 32. Please supply details of:-
  - (a) any arrangements for the exclusive supply of goods or services to or by the Company; and
  - (j) any contracts or practices of the Company which are or may be within the ambit of the Restrictive Trade Practices Act or any other legislation relating to competition.

- 33. Are there any outstanding judgements or court orders outstanding against the Company?

- 34. Please provide details of any arrangements that involve (or may involve) obligations or long term liabilities which may impose an undue burden on the Company or which by reason of its nature duration or magnitude may impose an undue burden on the Company.

- 35. Please provide details of any agreement which is liable to be terminated by another party or under which the rights of any person are liable to arise or be affected as a result of any change of control management or shareholders of the Company.

- 36. Has any event occurred or are you aware of any event which may occur which would constitute a default under any agreement or arrangement and which would have a material adverse effect on the business or prospects of the Company?

**Environmental and Health & Safety**

- 37. Please supply details of any licences or authorisations which the Company has in respect of environmental matters.

- 38. In respect of any health and safety matter affecting the Company, details of, and copies of all documents relating to:
  - (a) any notification or complaints to any regulatory authority;
  - (b) any investigations, enforcement action or legal proceedings threatened or taken by, or any current discussions with, any regulatory authority; and
  - (c) any complaints or legal proceedings threatened or taken by any employee (including both current and former employees and contractors).

**Disputes**

- 39. Please supply details in relation to the Company of any of the following which are current, or which are known to be possible:-
  - (a) litigation or arbitration proceedings (whether as plaintiff or defendant);
  - (d) prosecution; and
  - (e) investigation by a governmental body.

- 40. Please supply details of any complaints by, or disputes with, the Company's customers, suppliers, employees or otherwise which have occurred since the last accounts date or (if longer) during the last six months.

- 41. Please supply details of any known failure by the Company to comply with any relevant statutory requirements.
- 42. To the best of your knowledge has any event occurred which would be likely to give rise to any industrial or trade dispute?

**Recent Events**

- 43. Please supply details of any of the following which have occurred in relation to the Company since the date of the last accounts:-
  - (a) any acquisition or disposal of fixed assets;
  - (f) any proposal relating to capital expenditure;
  - (g) the declaration or payment of any dividend or other distribution; and
  - (h) the loss, or anticipated loss, of any major customer or major supplier or any significant change in the terms on which a major customer or major supplier does business with the Company.

**Accounts and Tax**

- 44. Have the Audited Accounts for the last financial year been prepared on a basis consistent with the accounts for each of the preceding years including the valuation of stock and work in progress?
- 45. Have the Audited Accounts for the last financial year been affected by any extraordinary exceptional or non-recurring items or by any other circumstance which make the profit or losses for the period of the accounts unusually high or low?

- 46. Is the trading position of the company fully and fairly represented by the latest management accounts?
- 47. Have such management accounts (a copy to be attached to your reply) been prepared on the basis of the accounting policies disclosed in the last Audited Accounts?
- 48. Has the Company carried on its business profitability, in the ordinary and usual course and without interruption or alteration in the nature scope or manner of its business?
- 49. If the Company has stock and work in progress then has any obsolete or redundant stock been written off and is the stock and work in progress valued at the lower of cost and net realisable value?
- 50. Has the Company paid all amounts to its creditors as and when they fall due?
- 51. Are there currently any outstanding amounts owed by the Company to its creditors which are overdue for payment?
- 52. Please supply details of who is responsible for tax compliance and tax planning for the Company and details of external advisers used.
- 53. Please provide confirmation that tax payments have been paid on time and appropriately accounted (i.e. ROS printouts).
- 54. If relevant, please supply copies of recent tax audit reports and announcement of tax audits as well as details regarding ongoing tax audits (list of current findings).

**APPENDIX B**  
**One page investment summary example**  
**Company Profile: Attractive Company Limited**

<b>Company:</b>	Attractive Company Ltd
<b>Stage of Development:</b>	Start-Up
<b>Investment Required:</b>	€750,000
<b>Sector:</b>	Technology-Software
<b>Skills Sought:</b>	Finance; Marketing
<b>Revenues:</b>	2012: €213,000 2013: €2,475,000 2014: €6,511,000

<b>P&amp;L Summary</b>			
'000s	2012	2013	2014
Total Sales COS & Overheads	xxx xxx	xxx xxx	xxx xxx
<b>EBITDA</b>	<b>xxx</b>	<b>xxx</b>	<b>xxx</b>
Margin	-	xx%	xx%
Employees	10	17	24

**One Line Pitch:** Attractive Company Limited (ACL) is seeking equity funding of €750,000 for sales & marketing expansion and for the hiring of key staff to build an affiliate network for international sales.

**Business Summary:** ACL provides cost effective solutions to customers with a well understood need. Using the cloud, customers experience benefits faster and more efficiently than other solutions on the market.

**Present Position:** The product has been developed and has undergone pilots in Ireland. The system is fully functional in Ireland and the UK and a new property can be switched on within a week.

**IPR Position/Strategy:** ACL has developed its own software and owns the IP. The intention is to establish and grow the ACL brand rapidly in its key markets.

**Sales & Marketing:** ACL will focus on its target customers with Ireland, UK and USA being targeted initially. For larger customers there will be a direct sales approach with a list of prospects identified and engagement already progressing. Two experienced senior industry experts will be hired. For smaller customers ACL will conduct an extensive marketing campaign.

**Financial Information (EUR):** Customer pays €50 per month for entry-level system. The target number of customers will rise from 340 in 2012 to 4,088 in 2014.

**Target Market:** The Opportunity  
 There are 12,000 customers in the UK, 55,000 in the US and 900 in Ireland. In Europe, there are over 132,000 customers. Additional opportunities exist in other international markets.

**Management & Shareholding:**  
**John Experienced, Founder & CEO:** 25 years' experience in global sales & service management with BigCo. Founder of innovatio **Joe Brains, CTO:** Over 20 years' experience on CRM and mobile projects working with private and public organisations.  
**Mary Smith, COO:** Over 25 years' experience in ramping and running technology businesses.

## APPENDIX C

### Sample Term Sheet<sup>38</sup> (no values)

*This sample term sheet and accompanying guidance notes are for guidance only and neither HBAN nor Alan O'Driscoll of Flynn O'Driscoll (who has prepared this sample term sheet for HBAN) shall have any responsibility or liability for actions taken based on the information contained in this document or any loss or damage arising out of use of this document.*

Flynn O'Driscoll ([www.fod.ie](http://www.fod.ie)) is a business law firm focused on achieving practical business solutions for its corporate and private clients, with a particular focus on the angel, start-up and venture capital sectors.

This sample term sheet is prepared on the assumption that the investment will be a straightforward equity investment for the same class of share as the promoters, and it does not contain any provisions dealing with investment by way of convertible loan notes or subscription for different classes of shares with enhanced/differing rights.

### DRAFT - SUBJECT TO CONTRACT TERM SHEET ([NAME] Limited "the Company")

Proposed investments in the Company by [Investor1] [Company] Limited [Name] of [address] [The lead investor(s)], [Investor2] & [Investor3], (each an "Investor" and together the "Investors")<sup>39</sup>. [The lead investor(s) shall be authorised to represent the interest of the investors collectively in relation to the Company.]

<sup>38</sup> This sample term sheet was prepared in compliance with Irish law. Northern Ireland law is similar but there are some differences, particularly around tax relief for individuals making investments in private companies.

<sup>39</sup> It is common for angel syndicates to use a nominee company for the investment which would hold the legal ownership of the investment shares with the beneficial ownership and interest in the shares at all times held by the individual investors.

### Details of Proposed Investments

**Investment Amounts:** €[NUMBER] to be invested by [NAME], €[NUMBER] to be invested by [NAME], €[NUMBER] to be invested by [NAME] and €[NUMBER] to be invested by [NAME].

**Investment Instrument:** [The investment by [NAME] will be by way of subscription for [NUMBER] [ordinary] shares of €[NUMBER] each in the capital of the Company ("Shares"), subscribed for at a premium of €[NUMBER] per Share.]

**Valuation / Ownership:** The pre-money valuation (per the Company's own valuation) is €[NUMBER]. The post-money valuation is therefore €[NUMBER], excluding the intended ESOP.]

The investment of €[NUMBER] will correspond to [NUMBER]% (excluding interest) ownership of the Company[, allowing for the intended 10% ESOP].

Please see the attached Appendix containing a proposed capitalisation table for further detail.

**[Additional Investment:** A further investment of up to €[NUMBER] in aggregate, will be considered by each of the Investors at their discretion, at the agreed pre money valuation of €[NUMBER] (or such lower valuation at which the Company may be raising capital at that time) , but subject to the Company making satisfactory progress and in particular achieving the following milestones within the 12 month period from completion of the investment:

[Milestones to be inserted].

Some or all of the above milestones may be waived by the Investors in their sole discretion.

The Company shall not be required to accept any such additional investment where no funding is required by the Company to achieve its agreed business targets. However should further funding be required by the Company at any time up until the [two] year anniversary of completion of the investment, the first €[NUMBER] of such funding (or part thereof) may be provided by some or all of the Investors in their absolute discretion. This further investment shall split between the Investors pro rata by the amount of their investment or as otherwise agreed by the Investors. Where there is a funding requirement for in aggregate in excess of €[NUMBER] and the investors have invested in aggregate €[NUMBER] any such additional amount may be raised by the Company at the highest possible valuation achievable in the market.

**Investment Pre-Conditions:**

- Investors to be satisfied with personal references.
- Completion by the Investors of satisfactory financial due diligence (general examination of the Company’s audited accounts and management accounts).
- Completion by the Investors of satisfactory legal due diligence (compliance audit of taxation, company law and other relevant legal matters).
- Satisfactory bank facilities to be confirmed.
- Management emoluments and employments to be agreed.
- Employment and consultancy contracts are in place for [NAMES] (the “Promoters”), and are on market terms that are satisfactory to an Investor Majority and the Promoters.
- Keyman insurance in the sum of €[NUMBER] (payable to the Company) to be put in place in respect of the relevant Promoters, in each case on terms satisfactory to the Investors.
- The Investors to be satisfied that (i) the Company has in place acceptable proprietary information and invention assignment agreements with all relevant employees, as well as acceptable post-termination restrictive covenants (non-compete and non-solicitation agreements); and (ii) that none of the Promoters are subject to any non-compete restrictions.
- The Company to adopt a business plan in an agreed form in advance of completion.
- The existing shareholders of the Company waiving any and all pre-emption rights which any of them may have in relation to the subscription for and the allotment/issue of the Shares.
- The Investors to be satisfied that the Company owns or is licensed to use all intellectual property intended to be exploited by the Company in the proposed business.
- Investment Committee approval of each Investor.

**Investment Documents:** The investments will be made on foot of a Share Subscription Agreement between the Investors, the Company and its existing shareholders a new constitution of the Company.

A non-exhaustive and non-binding indication of some of the matters to be provided for in these documents is set out in the remaining provisions of this Term Sheet.

**Rights attaching to the Shares**

**Pari Passu:** The Shares shall rank pari passu with one another in all respects.

**Voting:** The holders of the Shares will be entitled to receive notice of and attend and vote at general meetings of the Company. One Share shall carry one vote.

**Dividends:** The holders of the Shares shall be entitled to receive any dividends declared pro rata in relation to the number of Shares held.

**Redemption:** The Shares shall not be redeemable.

**Conversion:** The Shares shall not be convertible.

**Return of Capital:** On a liquidation, winding up or dissolution of the Company, the Investors shall be entitled to receive an amount equal to the amount paid up on such Shares. If, after such distributions, the Company still has assets remaining, the holders of Shares will receive the proceeds of such assets pro rata to the number of Shares held.

**Investor Protections and Other Terms**

**Use of Proceeds:** The Company shall use the monies subscribed by the Investors solely for the purposes of the Company’s business as outlined in the revised Business Plan and other financial budgets approved from time to time by the Board.

**Warranties:** The Investors shall be afforded the following warranty protection:

- Full joint and several warranties from the Company and the Company’s shareholders in relation to its share capital structure, business plan, liabilities, capacity, title to premises etc.
- Personal liability of promoters to be capped at [two times] annual remuneration.
- General warranties survive until the [second] anniversary of Completion.
- Warranties in relation to capacity and title are unlimited; taxation warranties survive until the fifth anniversary of completion of the investment.

**Board Matters:** Subject to the Investors together continuing to hold Shares which would equate to at least 5% of the Company’s issued voting share capital, the Investors shall each have the right to nominate one person to act as director of the Company (the “Investor Directors”), but should they indicate an intention not to do so they shall instead each be entitled to appoint an observer to the board.

[The Company will appoint an additional director with strong industry contacts three months from investment completion.]

The number of directors shall not exceed [NUMBER].

There shall be at least [NUMBER] board meetings per year. The quorum for board meetings shall be [NUMBER], which must include the Investor Director (for so long as there is an Investor Director). The chairman [shall/shall not] have a casting vote.

**[Investors’ Fees:** A monitoring fee of €[NUMBER] (plus VAT) per annum shall in aggregate be payable to [NAMES] [(split pro rata by the amount of their investment).]

[A management fee of [NUMBER]% of the sum invested by [NAME] (plus VAT where applicable) per annum shall be payable to [NAME].]

The first year’s fees (which will be in respect of the period from completion to 31 December) are payable on completion of the investment. Subsequent years’ fees are payable in advance on 1 January of the year to which they relate.]

**Conduct of Business:** The Company shall enter into the following covenants regarding the conduct of its business:

- The Company shall carry on its business in an effective and business-like manner in accordance with the revised adopted Business Plan and to its commercial advantage.
- Any action undertaken by the Company will be done in the ordinary course of business and in contemplation of the direct benefit of the Company.
- If any intellectual property right is established as a result of the work carried out by or for the Company, the intellectual property shall be owned by the Company and the Company shall not alienate, assign, part with the possession or otherwise dispose of the intellectual property without the prior written consent of the Investors.



**Investor Consent Matters:** The Share Subscription Agreement will set out a list of actions/matters which the Company shall not undertake without the prior written consent of a majority in value of the Investors subscribed in respect of the Shares (“Investor Majority”). The list will include (but will not be limited to) the matters listed in the Schedule to this Term Sheet.

**Investor Information Rights:** The Company shall provide the Investors with audited accounts annually within 90 days of year-end and monthly management accounts within 15 days of month-end, plus such other financial information as the Investors may from time to time request.

**Restrictive Covenants:** The Promoters shall be required to enter into customary non-compete and similar restrictive covenants for the benefit of the Company and the Investors. Such covenants will enter into force on completion of the investment and continue for two years after the date on which the relevant Promoter ceases to be a shareholder in the Company. Where reasonable Promoters existing interests shall be carved out and no Promoter shall be precluded from seeking alternative employment in their chosen fields provided it is not in direct competition with the business of the Company.

**Down Round Provisions:** The parties agree that where the issue price for any shares in the Company issued after the issue of the Investor shares, is lower than the price at which the Investor shares are issued, being €[NUMBER] per share, (“Down Round”) then the Company shall issue to each Investor for cash at par or subject to compliance with the Companies Acts by way of bonus shares, such number of additional ordinary shares as is required to maintain the percentage

which that Investor’s shares represented to the total issued equity share capital of the Company, immediately prior to the issue of shares constituting the Down Round.

**[Exit Preference:** In the event of a: (i) sale; (ii) listing; or (iii) exclusive license or other disposal of substantially all of the equity or assets of the company, the Investors shall be entitled to receive the higher of:

- the amount of €[.] being the amount invested by the investors plus any declared but unpaid dividends; or
- the investors’ pro rata share (based on their proportionate ownership of shares) of such assets or proceeds.]
- Share Capital and Related Matters

**Share Transfers:** The following shall apply to any proposed share transfers:

- Promoter lock-in: none of the Promoters may transfer any shares without the prior written consent of an Investor Majority.
- Offer-round: on any proposed transfer of shares by a shareholder, the proposing transferor will be required to observe a standard offer-round procedure. This will not apply to intra-group or inter-portfolio transfers by an Investor.
- Tag-along: a shareholder (other than with Investor Majority consent) who receives an offer for any of his shares may not accept such offer unless he procures from the intending purchaser an offer on the same terms for the corresponding proportion of the shares held by each Investor.

- Drag-along: if an offer is received for control of the Company, and the holders of not less than [75]% of the issued share capital of the Company (including the Investors) should wish to accept the offer, such holders may require all other holders of shares in the Company to sell to the intending purchaser on the same terms.
- Breach of Agreement: a material breach by a shareholder of the Investment Agreement may result in mandatory share transfer.

**Share Issues:** Standard pre-emption rights in favour of existing shareholders will apply on any allotment of new shares (or convertible securities) by the Company.

**[Creation of ESOP Pool:** An Employee Share Option Plan pool, representing [10]% of the Company’s share capital, will be created for the allocation of options and/or shares to management and employees.]

**[Vesting - Promoters’ Shares<sup>40</sup>:** The shares held by the Promoters shall be subject to a [2/3] year quarterly reverse vesting schedule (i.e. such that shares vest quarterly over [8/12] quarters from the completion of the investment).

- Any Promoter who ceases to be a fulltime employee of or consultant to the Company at any time during the [three]-year vesting period must transfer all of his then unvested shares back to the Company (or the other shareholders, as the board shall direct).
- If the Promoter is a good leaver (i.e. his departure is due to death, disability, or unfair dismissal), he will receive fair value for those of his shares which he is required to transfer.
- If the Promoter is a bad leaver (i.e. his departure is due to any reason other than death or disability), he will receive nominal value (or fair value if this is lower) for those of his shares which he is required to transfer.]

**[EIS Relief**

The Company will provide confirmation that the investment in the Company will qualify for EIS relief.]

**Exit**

In the event of a sale of the Company the Investors shall not be required to give any warranties or indemnities in connection with such sale other than in respect of title to the shares being sold by each Investor and individually/ severally their ability and capacity to enter into any documents relating to any such sale.

<sup>40</sup> Reverse vesting may not always be appropriate particularly where the investee company is no longer a start-up or early stage company or where it has previously taken investment.



**General**

**Non Binding:** This Term Sheet creates no liabilities or obligations, except for the obligations set forth below in the paragraphs entitled "Confidentiality", "Exclusivity" [and "Break Fee"]. No party shall be otherwise bound unless and until definitive agreements are executed.

**Confidentiality:** The proposed investments outlined above are of the utmost confidentiality. Accordingly, neither the Company nor its directors or employees shall make any disclosure regarding the terms of this Term Sheet or the conduct or status of the negotiations in relation to this proposal unless it has first obtained written consent of the Investors (save as required by law or regulatory authorities). This paragraph is legally binding.

**Exclusivity:** By signing this Term Sheet, the Company undertakes that it shall not (either directly or indirectly) solicit offers or otherwise negotiate terms with any other investor or potential investor in the Company, or entertain any enquiries or proposals relating to such an investment, or make available any information for the purpose of such an investment for a period commencing on the date of signing hereof and expiring 30 days thereafter or such later date as the parties may agree by mutual consent. This paragraph is legally binding.

**[Break Fee:** On signing this Term Sheet, the Company will forward €[NUMBER] to the [INVESTOR NAME]'s appointed lawyers. If the Company declines to execute the transactions contemplated by this Term Sheet within [NUMBER] days of the date of signing this Term Sheet (or such longer period as the Investors

(acting reasonably) may allow), these funds will be retained to cover legal and other costs. This paragraph is legally binding.]

**Costs:** The Investors' professional fees shall be [borne by the Company and paid at Completion]. Each Investor shall endeavour to ensure that the professional fees payable to its advisors do not exceed €[NUMBER] (plus VAT and disbursements).

**Expiry:** The non-binding indicative investment proposals set out in this Term Sheet shall expire at midnight on [DATE] if this Term Sheet has not by that time been signed on behalf of the Company by a duly authorised officer.

.....  
Signed: For and on behalf of  
**[Insert Name of Syndicate/ Investors or the Nominee Company]**

.....  
Date:

.....  
Signed: For and on behalf of  
**[Insert Name of Investee Company]**

.....  
Date: The above terms are agreed and accepted.

**SCHEDULE**  
**Indicative (Non-Exhaustive) List of Matters requiring Investor Consent**

**The Company shall not (and shall procure that no Subsidiary shall) without the consent in writing of an Investor Majority:**

- except for the issue of validly created option shares pursuant to the Employee Share Option Plan, create or issue or agree to create or issue any share or loan capital or give or agree to give any option in respect of any share or loan capital, or purchase or redeem its own shares;
- consolidate, sub-divide or alter any of the rights attaching to any of its issued shares or reduce its share capital or repay any amount standing to the credit of any share premium account or capital redemption reserve fund or capitalise any reserves or redeem or buy back any shares or otherwise reorganise its share capital in any way or create any new class of shares;
- alter its Memorandum or Articles of Association or the Company's Constitution in any way;
- register any transfer of shares other than in accordance with the Investment Agreement and the Articles;
- enter into any contract or transaction whereby its business would be controlled otherwise than by the board of directors;
- enter into any scheme of arrangement with its creditors or take steps to effect a members' voluntary winding-up;
- permit Borrowings (as defined in the Investment Agreement) to exceed €50,000;
- create, agree to create or suffer to exist any charge mortgage lien or other encumbrance on or over the whole or any part of its present or future undertaking or assets (including, without limitation, Intellectual Property);
- make, give, enter into or incur a guarantee, indemnity, undertaking other material commitment on capital account or unusual liability outside the ordinary course of business;
- establish a retirement, death, disability, benefit scheme or any share option, profit sharing or other employee incentive scheme;
- dispose of any shares or otherwise reduce the percentage shareholding held by it in any companies nor whether by one transaction or by a number of transactions (whether related or not and whether at one time or over a period of time) sell, transfer, licence or otherwise dispose of the whole or any substantial or material part of its assets (including fixed assets) or undertaking;
- dispose of or factor any of its book debts otherwise than to another of the Companies, other than in the ordinary course of business;

- save in respect of transactions between any of the Company's Subsidiaries make any loan or advance in excess of €5,000 or permit the aggregate of all loans and advances made by it and all other companies to exceed at any time €10,000;
- change its auditors or its financial year end or alter the basis of the accounting principles upon which its accounts have been consistently prepared for all prior years;
- appoint its auditors to provide any non-audit services;
- pass any resolution of its members in general meeting the effect of which would be to alter in any material way the nature of such company and/or its business as envisaged by this Agreement;
- promote or otherwise acquire any Subsidiary;
- acquire any proprietary or participating interest in any other business;
- enter into any partnership or joint venture other than in the ordinary course of business;
- pay or agree to pay any royalty or similar payment;
- save as otherwise expressly provided herein, approve or pay any fees, pensions or emoluments to any director or former director of any of the Companies save such amounts as shall have been approved by the Board which shall be paid to persons by reason of their being or having been employees of the Companies;
- employ any person at an annual basic salary of in excess of €50,000 with the exception of the CEO whose annual salary will not exceed €100,000;
- appoint or remove any chairman, director or other senior executive;
- delegate any powers under a power of attorney;
- save as respects transactions between the Company and its Subsidiaries enter into any contract or transaction (written or unwritten) except in the ordinary course of its business and upon an arm's length and commercial basis;
- declare or pay any dividends or other distributions in respect of any of its issued shares;
- obtain a listing of the Company on any stock exchange;
- transfer, assign, licence or otherwise dispose of any Intellectual Property rights of the Company and its Subsidiaries to any third party or accept a licence of Intellectual Property rights from any third party other than in the ordinary course of business; or
- make any other major decision which would materially affect the Companies (or any of them).

## Appendix - Capital Structure before and After Completion

### Part A: Capital Structure before Closing

Shareholder	Class of share	No. of shares	Issue Price	Shareholding
Founder 1			•	•%
Founder 2			•	•%
Founder 2			•	•%

### Part B: Capital Structure After Closing

Shareholder	Class of share	No. of shares	Issue Price	Shareholding
Founder 1			•	•%
Founder 2			•	•%
Founder 3			•	•%
Investor 1			•	•%
Investor 2			•	•%
Investor 3			•	•%
ESOP			•	•%

## APPENDIX D Sample Syndicate Charter

*The following sample charter should be tailored to the individual circumstances of each syndicate. It is recommended, in the interests of transparency, that a syndicate would share this charter with potential investee companies. It may even consider making its charter available on its website.*

### Syndicate Charter [HBAN Syndicate Name] (the "Syndicate")

This Charter summarises the basic rules that will govern how the Syndicate will conduct its business. Running a successful angel group requires a commitment to significant work by the members. It is critical to the success of the group that ALL members share this workload.

#### Best Practice

- 55. Members shall conduct their business in a professional manner and will not engage in practices, which would be damaging to the image of the business angels and/or the reputation of the Syndicate.
- 56. Members shall promote and maintain ethical standards of conduct and at all times deal fairly and honestly with all parties.

### Confidentiality and Conflicts of Interest

- 57. Members undertake to take all reasonable precautions to keep the investee company's (including potential and declined investee companies) information private and confidential. Members will use investee company's information solely for the purpose of evaluating any investment by the Syndicate and not exploit it or otherwise utilise it in any way. If a member has a potential conflict of interest, they must declare same at the start of the meeting and decide whether to remove themselves from that part of the meeting or stay in the room.
- 58. Members undertake to return to the investee company on request, any written information or other materials.
- 59. The above undertakings do not apply to any information that is in the public domain or is already in the possession of the members or that subsequently becomes known to Members independently.
- 60. By signing this Syndicate Charter you confirm your agreement to these confidentiality clauses.

### Participation and On-going Responsibilities of Members

- 61. Syndicate meetings will normally be held monthly with the exception of the months of July and August each year.
- 62. Members are expected to **commit to attend** a minimum of **70% of the meetings** and members must attend a minimum of six meetings in a calendar year.
- 63. Members agree to actively participate in the vetting process of prospective companies.
- 64. The Syndicate will have three sub-groups: Steering, Membership and Due Diligence. Members of the steering and membership sub-groups will be identified and will change from time to time. Due diligence sub-groups will be formed to investigate potential investee companies of interest to the Syndicate. An individual Member will partake in due diligence at least once per year.

### Modus Operandi

- 65. One member will be elected annually to act as Chair of the Syndicate in order to assist with the efficient operation of the syndicate, its meetings and overall activities. A member cannot serve more than two continuous terms as Chair. The Syndicate may also opt to elect a member to act as a Vice Chair to support the Chair. A member cannot serve more than two continuous terms as Vice Chair.

- 66. A quorum for holding a valid meeting of the Syndicate will be decided from time to time by a simple majority of the Members. In the event that no such quorum is present at any meeting, which was previously adjourned due to the absence of a quorum, then the quorum will be [five] members attending in person or by proxy.
- 67. The Syndicate will register its name as a trade mark and its website domain address shall also be registered to the Syndicate.
- 68. In the event, following a presentation by a potential investee company to the Syndicate, that the Syndicate wishes to further explore the possibility of an investment, then a sub-group will be established for this purpose and a representative will be nominated as the liaison person with the investee company. The liaison person will communicate in a reasonable timeframe with the investee company ensuring the actions and thus the reputation of the syndicate is highly professional at all times.
- 69. The decision to invest in a proposal and the structure of the deal will be the responsibility of the specific group of members investing in that deal.
- 70. Each individual investing member acknowledges that a decision to invest is a personal decision and that no responsibility for the consequences of that decision is accepted by the Syndicate or any other member of the Syndicate.

- 71. Minimum investment level for each investor is likely to be €/ $\text{£}25\text{k}$ <sup>41</sup> however the average investment level is expected to be €/ $\text{£}50\text{k}$  per investor per deal and overall €/ $\text{£}100\text{k}$ -€/ $\text{£}250\text{k}$  per deal.
- 72. A due diligence sub-group will be established for each particular investment under consideration by the group. Members must give an indication to the Syndicate of the amount that they are likely to invest, subject to the results of the due diligence investigation, prior to the commencement of any due diligence by the Syndicate.
- 73. Most investments will qualify for Employment Investment and Incentive Scheme ('EIS') or Enterprise Investment Scheme ('EIS') tax relief (supporting evidence of eligibility should be sought from the investee company in advance).
- 74. [Members will decide on whether the identity of the Syndicate's members will be made publicly available on the Syndicate website in due course.][No member shall be obliged to have their identity revealed.]
- 75. The Syndicate is interested in opportunities across a broad range of sectors with a primary focus on early revenue opportunities and some high growth opportunities.
- 76. [Confirm annual membership fees which should be subject to review or confirm that the Syndicate may decide to charge an annual membership fee - if so specify the fee here.]
- 77. In the event of the Syndicate's termination, any shares held by the Syndicate as nominee (where applicable) in any investee companies will be transferred to the relevant individual member(s). In the event of the Syndicate's termination, any shares held by the Syndicate as nominee (where applicable) in any investee companies will be transferred to the relevant individual member(s). The Syndicate shall ensure that such transfers are permissible under each investment agreement entered into by the nominee.
- 78. No member or group of members may use the name of the Syndicate or its logos, designs or documentation or any similar name or logo or design, for a separate or similar purpose to that of the Syndicate, unless this has been first approved in accordance with the Syndicate Agreement (as defined below).

<sup>41</sup> Delete the currency symbol as appropriate depending on whether the syndicate is based in Ireland or Northern Ireland

### Syndicate Agreement

- 79. The agreement between the Syndicate's members which details the rules around appointment and duties of any syndicate representatives, what approvals are required from the syndicate members in terms of any decisions made by the syndicate representatives, provisions governing meetings of the Syndicate's members and other general matters is known as the "Syndicate Agreement".
- 80. All members must sign the Syndicate Agreement as a condition of membership.
- 81. Once members have indicated that they wish to invest in a deal, a representative will be elected by the investing syndicate members authorising him or her to agree to all matters and to make all decisions on behalf of the investing members of the Syndicate in connection with a particular investment.
- 82. The Syndicate representative so appointed must seek the approval of the relevant % majority (as detailed in the Syndicate Agreement) of the investing members in respect of any matter, which requires their consent as a group, under the investment documentation for each particular investment.
- 83. Where an individual member wishes to leave the Syndicate, the Syndicate Agreement sets out the rules around disposing of the relevant securities and investments held by that member in respect of that member's particular investments.

### Declaration

- I acknowledge that I am a sophisticated investor and that a decision to invest in a target company is a personal decision of mine and that no responsibility for the consequences of that decision is accepted by the Syndicate or any of its members or by any of its directors, employees, consultants or other members.
- I acknowledge that I am not receiving investment advice or recommendations from the Syndicate and I waive all claims in relation to any information provided by the Syndicate or any of its members in connection with the investment.
- I acknowledge that in making my own decision to invest in a target company, I have been afforded an opportunity to ask questions of the target company. I acknowledge that no warranty, representation or indemnity (express or implied) has been given to me, and no responsibility or liability is accepted, by any other Syndicate member or the Syndicate.
- I acknowledge that as a member of the Syndicate, I will receive confidential information about other members of the Syndicate and target companies that other Syndicate members are looking to invest in or have invested in. I agree to keep such confidential information secret and not to disclose such confidential information to any third party who is not a member of the Syndicate without the prior written consent of all other members of the Syndicate or of the target company as appropriate.

- I acknowledge that investment, whether in new or existing businesses, carries high risks as well as the possibility of high rewards. I acknowledge that it is consequently very speculative and I am/are aware that no established market exists for the trading of shares in private companies, and such shares are not easily realisable. I appreciate that there could be difficulty in selling such investments at a reasonable price and, in some circumstances, it may be difficult to sell them at any price. Accordingly I acknowledge that I have considered very carefully whether such investments are suitable in the light of my circumstances, commitments and financial resources, and I accept that engaging in any business angel investment activity may expose me to a significant risk of losing all of my investment.

- Other than as disclosed above, I am not aware of any other fact or matter which might be damaging to the image or the reputation of the Syndicate or which might reasonably affect the willingness of the Syndicate to accept me as a member.

- I confirm that where I am an individual I have not made or offered any arrangement or composition with my creditors and that no petition or receiving order in bankruptcy has been presented or made against me; OR I confirm that where I am a signing on behalf of a company that the company is not in liquidation (whether compulsory or voluntary) nor has it entered into any agreement or arrangement with its creditors for the liquidation or sale of its assets by composition or otherwise.

- I agree to be bound by the Syndicate's Charter.

.....  
Signature:

.....  
Date:

.....  
Print Signature:

## HBAN Investment Process Flowchart

Deals can take between 3-12 months to reach completion stage, the below flowchart illustrates the typical investment stages.



**Stay connected with us for more useful  
business angel resources:**



**[www.HBAN.org](http://www.HBAN.org)**



**[info@hban.org](mailto:info@hban.org)**



**[@HalolIreland](https://twitter.com/HalolIreland)**



**[tinyurl.com/  
HBANLI](http://tinyurl.com/HBANLI)**



**[tinyurl.com/  
HBANYoutube](http://tinyurl.com/HBANYoutube)**

**[www.HBAN.org](http://www.HBAN.org)**

ACTIVE INVESTORS, FUNDING INNOVATORS

---



[www.hban.org](http://www.hban.org)

# Matching private investors with pre-screened investment opportunities