

Investment guideline

Private Equity Thüringen GmbH & Co. KG

in the version of 27.06.2007

1. Objectives and legal principles

The guideline describes the framework of the equity investment decisions to be made by Private Equity Thüringen GmbH & Co. KG in terms of content and thus serves the company as an orderly and regular application of the decisive provisions with regard to the investees.

The following are taken into consideration below:
The letter of authorisation of the European Commission dated 19.08.2004 C (2004) 3285, Staatliche Beihilfe (State Assistance) Nr. N 266/2004 - Deutschland "EFRE-Risikokapitalfonds Thüringen (EFRE Risk Capital Fund Thuringia)", ABl. C 95, dated 20.04.2005, the Guidelines of the European Community for state subsidies to promote risk capital investment in Small and Medium-sized Enterprises (RKLL) dated 18.08.2006, and ABl. C 194/2, dated 18.08.2006, in combination with the letter from the Federal Government to the European Commission, dated 11.10.2006, seeking consent to the taking of appropriate measures as set out in Number 7.3 of the guidelines.

2. Investees and purpose of use

Private Equity Thüringen GmbH & Co. KG has as its target groups both already existing SMEs that are seeking to expand their business activity within the compass of an existing fund of equity capital but are unable to finance this expansion, and start-ups, especially in the area of research and in human capital intensive areas.

Decisions to invest are made exclusively in favour of profitable (later-stage) or potentially profitable

(early-stage) investments in small and medium sized enterprises (SME) headquartered in Thuringia. Decisions to invest in SME that are not headquartered in Thuringia must relate to business premises in Thuringia.

The fund invests in SME that are in the start-up or early development phase (early-stage investments) and in SME that have reached the growth or expansion phase (later-stage investments).

The classification of an enterprise as SME is governed by the definition by the European Commission in the currently valid version (currently the recommendation of the Commission 2003/361/EC, dated 06.05.2003, ABl. L 124 dated 20.05.2003).

Shareholdings must not be taken in

- Firms in difficulties as defined in the relevant valid guidelines of the Community on state assistance for the rescue and restructuring of enterprises in difficulties (currently ABl. C 244 of 01.10.2004),
- SME in the agrarian sector as set out in Art. 32 of the EU Treaty and enterprises in the shipbuilding, coal and steel industrial sectors as defined in No. 2.1 of the RKLL of 18.08.2006, ABl. C 194/2.

There is no legal obligation to enter into an investment.

3. Form and scope of the investments

Until 1.12.2008 (the financing phase), Private Equity Thüringen GmbH & Co. KG can make investments in the form of open (active) and silent (non-active) [see **translator's note 1**] investments.

In total the open and silent investments may not amount to more than 5 million € per investee.

When adding up the share of the financing allotted to the private partners by Private Equity Thüringen GmbH & Co. KG and any other financing sums

from other private sources of capital, the proportion of the privately contributed investment capital may not be less than 40% of the investment decision. In the case of an open investment by Private Equity Thüringen GmbH & Co KG, any contribution that may be required from external third parties must also consist of an open investment, until the 40 % threshold is reached. In the case of a silent investment by Private Equity Thüringen GmbH & Co KG, the amount that can be required from external third parties can be freely structured, provided it is ensured that the injection of capital takes place simultaneously with the injection of capital from Private Equity Thüringen GmbH & Co KG.

In the framework of a risk capital subsidy through an exclusively open investment, an open investment in combination with a silent investment or a silent investment with the character of an investment by Private Equity Thüringen GmbH & Co. KG, the recipient of the investment must be provided with at least 70% of its total budget as an investment or investment-like financing instrument as understood by No. 2.2 j) RKLL of 18.08.2006. Silent investments by PET GmbH & Co KG, as understood by No. 3.2 section 2, and also other credit finance instruments by third parties do not represent investment-like financing instruments and are therefore included in the remaining 30% of the total budget, in cases when they are combined with investments or investment-like financing instruments. The total budget comprises only the monetary resources required for the financing or partial financing of a specific investment and thus as a rule will consist of only a part of the total financing of the enterprise.

3.1 Open investments

Open investments are only entered into as minority investments (less than 50 % of the nominal *Stammkapital* or *Grundkapital* [see **translator's note 2**]). Investments as a partner with personal liability do not come into consideration.

The individual investment tranches cannot exceed 1.5 million € per twelve-month period and investee.

Private Equity Thüringen GmbH & Co. KG shares in the profits and losses of the investee firm in proportion to its stake.

The investment horizon for early stage financing is approximately seven years, for late stage financing from three to five years. The duration of the investment cannot extend beyond the point of time established in the partnership agreement (*Gesellschaftsvertrag*) for the winding up of Private Equity Thüringen GmbH & Co. KG.

Risk capital subsidies in the form of open investments (participations, shareholdings) or silent investments with characteristics of shareholdings are admitted only on the condition that the investors who wish to use these funds for the financing of initial investments or to support other costs that qualify for subsidy undertake to notify other providers of subsidy of the investment/participation. In addition, the investors have to authorise a reduction by 20 % in the first three years of the relevant upper limit for the subsidy or the highest amounts qualifying for subsidy as a proportion of the total amount. This signifies a reduction by 20% of the other subsidies granted in addition to the risk capital subsidy for an investment project, the amount of the reduction in this case being limited to the amount of the risk capital subsidy. The only subsidies excluded from these reductions are subsidies according to the community framework for state subsidies for research and development or their continuation programmes or group exemptions in these areas.

The termination of the investment takes place under market conditions.

3.2 Silent investments

Silent investments are made on market terms for unsecured long-term loans. They are restricted to a total amount of up to 5 million € per investee.

Accordingly the investee company pays an annual investment fee for silent investments without a subordination agreement of at least 400 basis points above the reference interest rate established by the European Commission, which fee will partly depend on the investee company's profits. In calculating the minimum fee for the investment, an agreed profit-dependent remuneration will be appropriated to half of it.

If the silent investments are linked with a subordination agreement, which, in the event of the investee's insolvency, permits Private Equity Thüringen GmbH & Co. KG to satisfy its claim to repayment of its injection of capital only after all other third party creditors but before or on equal rank with the partners, the fee for the investment is to be increased by a further 200 basis points.

Silent investments are entered into for ten years as a rule. The period of the investment must not extend beyond the point of time established in the partnership agreement for the winding up of Private Equity Thüringen GmbH & Co. KG.

4. Procedure

An investment committee will decide on the investments of Thüringen GmbH & Co. KG as set out in § 6 of the partnership agreement of Private Equity Thüringen GmbH & Co. KG and on the basis of this guideline.

The investment committee decides on the following measures (investments)

- Entering into investments
- Participation in reductions and increases of capital
- The disposal of investments, if losses are realised by doing so.

Decisions will be made concerning the individual investments from a commercial point of view, on the basis of a solid business plan.

The investment committee also decides on whether a contribution brought in from an outside third

party to secure the minimum share of private capital as set out in No. 3 of this guideline will be accepted as a co-investment.

When the individual investments are entered into, arrangements for the eventual sale are considered. The following routes are considered, for instance: repurchase of the shares in the firm by the founder of the business (buy-back), sale to an industrial investor (trade sale), sale to a financial investor (secondary purchase) and sale of the shares when the firm is first introduced to the stock market (going public).

If the demand for investment capital from Private Equity Thüringen GmbH & Co. KG should exceed its financing capacity up to the end of the investment period, the selection of investments will depend chiefly on considerations of profitability.

5. Final clauses

This guideline enters into force as soon as the EU Commission has agreed the changes in it relevant to the law on assistance as compared to the letter of authorisation of the EU Commission of 19.08.2004. It applies for all investment decisions to be made by the investment committee according to it.

Changes to this guideline require the previous consent of the Thuringian Finance Ministry.

Erfurt, 27.06.2007



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for information: the above mentioned investment directive has not been approved yet.

Translator's note 1

- a) An open investment is the purchase/acquisition of shares in the *Stammkapital* of a GmbH or the *Grundkapital* of an AG with all the associated rights and obligations. The partnership agreement (*Gesellschaftsvertrag*) or constitution (*Satzung*) governs participation in profits, right of conferring and inspection (of accounts etc) between the investing company and the other partners. The shares are returned after the common goals have been achieved by repurchase by the original partners or by the management team, by sale to other investors, sale via the stock market or in pre-flotation trading.

- b) In a silent investment an injection of capital is provided without acquiring any shares in the *Stammkapital* or *Grundkapital* of the business. Because of the subordination that is as a rule agreed, the capital injection has the same status as company capital (*Eigenkapital*) as far as liability is concerned. The proprietor retains his freedom of action in relation to business decisions since the silent partner has no voting rights. The investing company obtains an agreed fixed fee, which is above the capital market level on account of the lack of security. It is usual for the investing company to share in the profits in addition to the fee. In principle the silent investment is returned to the investor company when the investment term expires.

Translator's note 2

In the case of a GmbH (limited liability company), the capital contribution to be made by the partners is known as *Stammkapital*. It is to be distinguished from *Grundkapital*, which is to be contributed in the case of the *Aktiengesellschaft* (Joint Stock Company).