



Investing

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# Code of Conduct

Model Document

# Code of Conduct for Syndicated Cross-border Investments

Dated as of [insert date]

The following Code of Conduct establishes a minimum set of principles and standards for the business angel, seed and venture capital industry, in order to build trustworthy and reliable relationships in the framework of cross-border syndicated investments.

## 1. Definitions

### *Investors*

- *Business angel*: Individual, who invests his/her own money into unquoted companies, and his/her time and expertise to the benefit of the Investee.
- *Early stage seed funds* (private or publicly funded): Financing provided to research, assess and develop an initial concept before a business has reached the start-up phase and start-up stages of a business<sup>1</sup>.
- *Syndicate of Investors*: Investments of more than one investor in the same financing round, in a cross border or national basis.

All of the above focused on equity stakes in early stage unquoted companies.

### *Lead investor*

Main Investor such as the entity/individual who has been appointed in writing by the Syndicate being assigned with the main responsibility of the investment (due to size of investment, skills or location).

### *Other investors*

Investors who are not assigned with a lead role in the investment process.

### *Third parties*

Experts and others which can be called to assist Investors, Entrepreneurs and/or Intermediaries when applicable or necessary.

### *Investees/Entrepreneurs*

Entrepreneurial company eligible or looking for investment in early stage equity stakes.

### *Intermediaries*

Financial intermediary hired or contracted to facilitate the investment process and supporting syndication of different Investors, such as Business angel networks and Early stage seed funds.

### *Recognized stakeholders*

Local and regional development support agencies, national public or private authorities or any other intermediary who is concerned with supporting the facilitation of the early stage investment market.

## 2. Ethical standards

Entrepreneurs, Investors, Intermediaries and Recognized stakeholders at all times shall:

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<sup>1</sup> See EVCA [www.evca.com](http://www.evca.com)

- Promote and maintain ethical standards of conduct, deal fairly, equally and honestly with each other and Third parties;
- Act candidly and in compliance with the principles of business ethics in their relations with each other;
- Act professionally and not allow the use of practices which, or call upon parties who, could damage the image and reputation of the Business angels, seed and venture capital industry;
- Retain a view of the long-term effects on the economy and on the world of Business angels, seed and venture capital industry and strive to realize long term results, rather than engage in short-term speculation;
- Not give access to their network or Syndicate or Investors to those who might invest equity of doubtful origin;
- When hosting events organised under a cross-border framework, ensure at all times that Investors do not have funds of doubtful origin;
- When using other direct/live matching instruments, online matching or cross border deal structuring, ensure that Investors participating are not of doubtful origin;
- Preserve the independence and impartiality of their relationship with the company, even if part of the remuneration of their activity is linked to a success fee depending on the outcome of that relationship;
- Seed funds, co-investment funds or early stage venture capital funds should not accept into their funds subscribed capital from unspecified sources and not represent major "blind" pools of capital.

### **3. Best practice in investment behaviour and syndication**

Syndicates at all times shall:

- Ensure that all the legal documents recommended under the EASY quality framework help defining their relationship to the investment and to the Investee (covering all aspects of the investment process, not limited to but including anti-dilution and exit provisions, all of which are included in the EASY quality framework);
- Clearly define terms of the Syndicate in a written contract, preferably previously submitted to Recognized stakeholders (or its competent and experienced member) approval;
- Settle the applicable legal jurisdiction to their relationship;
- Ensure that no inappropriate inducement are paid to any party for the purposes of exiting from an investment;
- Not slander or label each other or any Third party under any circumstances;
- Respect and promote the present Code of Conduct.

### **4. Investors' Financial Resources**

Investors entering into a Syndicate shall, in order to meet any potential negligence claims:

- Have adequate insurance against theft, fraud (including computer fraud) or appropriate professional indemnity insurance;

Ensure that they maintain adequate and sufficient financial resources to meet investment commitments.

## **5. Lead investor and Other investors' Relationship**

Investors recognise that their primary role is building the strength of the syndicated investment, which may result in capital gains in the long term.

Investors also recognise that:

- Investors may be ascribed different roles in the Syndicate and this role should be applied constructively (active or passive) to the benefit of the Syndicate;
- Lead investors and Other investors must understand their role and the requirements of respective syndicated investment, syndicated investment performance.

A written syndication and management agreement could be drawn up with the agreement of all parties detailing the basis on which the Lead investor is appointed and the syndicated investment performance and funds/assets management is followed/monitored should be prepared by them. Agreed standards should be met for:

- Record keeping, to ensure that proper records are kept to describe accurately, completely and fairly the capital and services provided based upon an agreed methodology and timing procedure;
- Investor reporting provided based upon an agreed methodology and timing procedure to ensure that each Investor receives a full, fair, timely and clearly stated account of the management of their investments. The reporting of syndicated investment performance should be comparable with that relating to other similar investment services or products and enable Investors to meet their regulatory requirements.

## **6. Entrepreneurs' responsibilities**

Entrepreneurs shall act in accordance to the relevant legal documentation (as set out in the EASY quality framework).

Any conflicts of interest that arise as a result of the Lead investor carrying out the agreed role on behalf of the Syndicate and representing their interests, shall be declared to the relevant parties.

Entrepreneurs shall adopt standards for measuring and reporting syndicated investment performance that conforms to the valuation Guidelines adopted by Recognized stakeholders, including:

- Clear and fair statements of what is being measured, how it is being measured and over what time periods it is being measured;
- Clearly stated and reasonable assumptions in projecting future performance;
- Supply of up-to-dated information about their company as may be reasonably requested by Recognized stakeholders, namely statistics report regarding details of current investment performance and previous completed transactions (respecting confidentiality requirements). The report should include any useful information on potential exit routes for current Investors and contacts with follow-on Investors;
- Inform the Lead investor about any changes in the agreed legal documents affecting the investment;
- Have written procedures in place for handling complaints that are available on demand.

## **7. Investors and Intermediaries' responsibility**

The role of business angels networks, early stage seed funds and early stage venture capital funds is to act as a conduit for the Investee/Entrepreneur to relevant opportunities for transnational investment. Key services that should be provided by intermediaries or funds

acting as intermediaries to support this process should include the following in relation to Investees/Entrepreneurs seeking for international investment:

- Evaluate the track record of a company or sector to establish their readiness to access international markets and their level of experience and understanding of cross-border investment (for example using the EASY IR Diagnostic tool for international investment readiness);
- Identify opportunities to access relevant cross-border investment opportunities, including cross border investment presentation events;
- Support the identification of a potential Lead investor which will be responsible, being closer to the Investee, for leading the negotiation on behalf of an European or international Syndicate;
- Provide information on the legal and fiscal framework for investments in the country and other necessary regulatory issues;
- Provide relevant advice and support to due diligence to the Syndicate.

Intermediaries and Recognized stakeholders shall:

- Provide clear information on fee charges;
- Disclose all fees that are to be charged before any contract is entered into with the syndication.

## **8. Confidentiality**

Entrepreneurs, Investors, Intermediaries and Recognised stakeholders shall:

- Do their utmost to preserve the confidentiality of technical or financial information obtained in the course of the syndicated negotiation process on potential syndicated investment or in the ordinary course of business or syndication;
- Take all reasonable precautions to protect themselves against penetrations of their information collection and processing systems;
- Fully brief the involved parties about the extent of the circulated information that they agree formally to its disclosure;
- Use circulated information solely for the purpose of raising finance and not exploit it or otherwise apply it in any way;
- Information given to Recognized Network shall be disclosed only to that network's membership, unless explicitly authorized disclosure to Third parties;
- Return on demand any written information or other material provided;
- Ensure the protection of the information subject of confidentiality from inappropriate disclosure even after exiting from an investment.

The above undertakings do not apply to information shared between syndicated Investors on the same company obtained insofar nor to any information which is in the public domain or which subsequently becomes publicly known.

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

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