National Centre for Research and Development

Pilot Undertaking

„Public-Private Funding of Commercialization of R&D Results

with Participation of Capital Funds"

Investment Component Brief

Change log			
Rev.	Change	Date	Developed by
1.0	Initial version		Michał Jasiorkowski

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1. Negotiations and cooperation agreement

1 The agreement to be concluded for the joint undertaking called „Public-Private Funding of Commercialization of R&D Results with Participation of Capital Funds" (hereinafter „**Joint Undertaking Agreement**") shall be quadrilateral, which means that it shall be binding upon the Centre, Managing Entity[1] (paragraph 3), Polish Fund, Global Fund[2]. The agreement shall be deemed trilateral if only one of the aforementioned funds is requested to join the undertaking. In such a case, parties to the Agreement shall include: the Centre, the Fund (either Polish or Global), Managing Entity. No new venture capital fund will be created as an result of Undertaking.

2 At the stage of negotiations conducted by the Centre and funds/fund, a briefing will be drawn up which will focus on the number of R&D projects to undergo the selection process, number of R&D projects to receive the funding, number of those likely to turn out successful etc. Those data shall be the grounds for benchmarks of the undertaking according to which the progress of the undertaking works (their quantity) shall be measured (the compliance with benchmarks shall be assessed to the level agreed upon with the funds/fund at the negotiation stage). The Centre shall not be involved in the evaluation of the quality of works performed by the funds/fund as, in our opinion, the only benchmark of importance will be the financial result of the undertaking.

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[1] The entity appointed or indicated by the funds/fund, having the legal capacity to contract obligations and to be subject to laws, whose purposes shall include among others: to handle the process of acquisition and selection of R&D projects likely to receive funding, to manage startup companies included in the portfolio of the joint undertaking, to conclude agreements with startup companies etc., who will be a party to the cooperation agreement.

[2] Polish Fund and Global Fund as defined in the *Regulations of Selection of Partners to the Pilot Undertaking „Public-Private Funding of Commercialization of R&D Results with Capital Funds"*.

2. Organizational framework

3 Prior to conclusion of the joint undertaking agreement, the funds/fund appoint/s or indicate/s an entity with the legal capacity to contract obligations and to be subject to laws)[3], whose purposes shall include among others: to handle the process of acquisition and selection of R&D projects likely to receive funding, to manage start-up companies included in the portfolio of the joint undertaking, to conclude agreements with start-up companies etc. (hereinafter "**Managing Entity**").

4 NCBR reserves the right to delegate its representative to the Managing Entity's supervisory body.

5 The operational diagram for the Investment Component[4], taking into account the Managing Entity, is shown in the Figure no. 1. The Figure no. 2 reflects the flow of funds according to the aforementioned configuration.

6 The Managing Entity's activities are co-funded by the Centre and the funds/fund, proportionally to the financial contribution to the undertaking made by either Party. It is assumed that the Centre shall contribute no more than 3% of the financial resources the Centre promised to allocate for the undertaking[5], to the funding of the Managing Entity's business activities. The financing of the Managing Entity follows the sequence defined in paragraph 9. The Managing Entity can be paid by start-up companies for the services provided to them[6]. The revenues generated this way shall not reduce pooled resources allocated by the Centre for financing the Managing Entity's activities.

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[3] E.g. a limited joint-stock partnership (spółka komandytowo-akcyjna) or limited partnership (spółka komandytowa).
[4] The investment component is defined in the Regulations of Selection of Partners to the Pilot Undertaking „Public-Private Funding of Commercialization of R&D Results with Capital Funds".
[5] In their Investment Offer the funds can come up with other operational costs for the Managing Entity which will be assessed throughout the Selection process
[6] Price of the services might not differ from market prices, start-up companies, have right to choose different provided of those services.

7 Strategic decisions (including investment-related ones) shall be made by the investment committee (hereinafter “**Committee**”) which will include a representative/representatives of the funds/fund and of the Centre. Investment-related decisions shall be taken by the Committee unanimously and the Centre shall accept those investment-related decisions which most of the Committee’s members agree with. The Centre reserves the right to veto any decision made by the Committee whenever the planned investment project does not comply with the undertaking’s goals[7] and whenever that decision goes against the interest of the Centre or of the Republic of Poland. Decisions which can be vetoed by the Centre refer to the following areas:

1) threat to national security;
2) threat to public safety and order;
3) threat to human health and life;
4) need for protection of national artistic, historic and archaeological heritage;
5) compliance of the planned investment with the undertaking’s purposes (e.g. project which the Centre’s resources are to be allocated for, does not represent highly advanced technologies and/or does not include any R&D component) or with the legal provisions in force in the Republic of Poland.

8 Each investment decision of the Committee obligates the funds/fund and the Centre to transfer resources to a given start-up company.

3. Investment process

9 Financial resources are transferred to the start-up company as a result of an investment-related decision made by the Committee. To all and any payments made for and to the benefit of start-up companies applies the principle according to which the Centre transfers the resources due to that company no earlier than after a recorded transfer of those resources by the funds.

[7] The Investment would refer to a project other than industrial research and development and/or outside of the highly advanced technologies sectors.

10 The beneficiary of non-refundable subsidies granted by the Centre at the pre-incubation stage is the start-up company, under terms and conditions set forth in paragraph 9. The subsidies granted at the pre-incubation stage are not returnable to the Centre.

11 Refundable subsidies granted by the Centre at the incubation and acceleration stage are transferred to start-up companies, under terms and conditions set forth in paragraph 9. It is the Managing Entity which assumes the liability for the refundable subsidy, while the funds/fund guarantee(s) that the liabilities contracted by the Managing Entity towards the Centre will be discharged. Refundable subsidies shall be returned by the Managing Entity when the undertaking is exited from.

12 It is assumed that maximum value of investment into one project (co-financed by Centre), must not exceed:

1. 1 million PLN in the pre-incubation phase.
2. 7 million PLN in the incubation phase.
3. 15 million PLN in the post-incubation phase.

13 All investments above that ceiling require authorization from the Centre.

14 An example of the investment structure at each stage of the lifecycle of investment projects as seen by the start-up company is shown in the figure no. 3.

4. Exit from the Joint Undertaking

15 The Centre and the funds/fund shall exit from the joint undertaking once the time frame determined in the agreement has expired. All and any settlements between the Centre and funds/fund shall occur the date of exit (the profit/loss generated by the investment in each of startup companies makes an integral part of the financial result generated by the joint undertaking at the exit stage).

16 The basis for the aforementioned financial settlements is the pool of financial resources generated by the investment funded within the confines of the joint undertaking (hereinafter „**Revenues**”). All the operations described below shall be financed up to the amount of revenues generated as of the exit date. The Centre and the funds/fund shall satisfy their financial claims arising from the operation of the joint undertaking solely with the Revenues.

17 Firstly, the Revenues are used to repay the capital invested by the funds/fund, as well as the capital raising fee paid by the funds/fund (hereinafter „**Capital Cost**”). The amount of this Capital Cost is determined by the funds/fund at the stage of collection of investment offers and shall be taken into account in the assessment of potential represented by each fund with regard to performance of the joint undertaking.

18 Secondly, the Revenues are used to repay the capital allocated by the Centre for the joint undertaking in the form of refundable subsidies, increased with the cost of granting of refundable subsidies, whose amount is calculated in accordance with the principles set forth in the Communication from the Commission no. 2008/C 14/02 on the revision of the method for setting the reference and discount rates (hereinafter „**Refundable Subsidies Cost**”), on the basis of the financial standing of the funds/fund.

19 Thirdly, the Revenues are used to return the minimum profit earned by the funds/fund on their investment in the joint undertaking (hereinafter „**Minimum ROI**”). The amount of the Minimum ROI is determined by the funds/fund at the stage of collection of investment offers and shall be taken into account in the assessment of potential represented by each fund with regard to performance of the joint undertaking.[8]

20 The remainder of the Revenues (hereinafter **„Remaining ROI”**) is prorated and goes to the Centre and the funds/fund. Prorations of the Remaining ROI are determined by the funds/fund at the stage of collection of investment offers and shall be taken into account in the assessment of potential represented by each fund with regard to performance of the joint undertaking.

[8] Minimum ROI can be 0; then, the profit earned by the funds is paid from the remaining ROI.

21 Whenever, granted with the Centre's consent, the funds decide, for reasonable economic reasons, not to exit from some of the start-up companies, an external evaluation of the value of those companies shall be performed as of the end of the joint undertaking and its result shall be deemed Revenue.

22 While the joint undertaking is under performance, it is possible to re-invest resources earned from the previously exited (and sold) investment projects provided that all the investment projects have been sold or valuated as of the end of the joint undertaking.

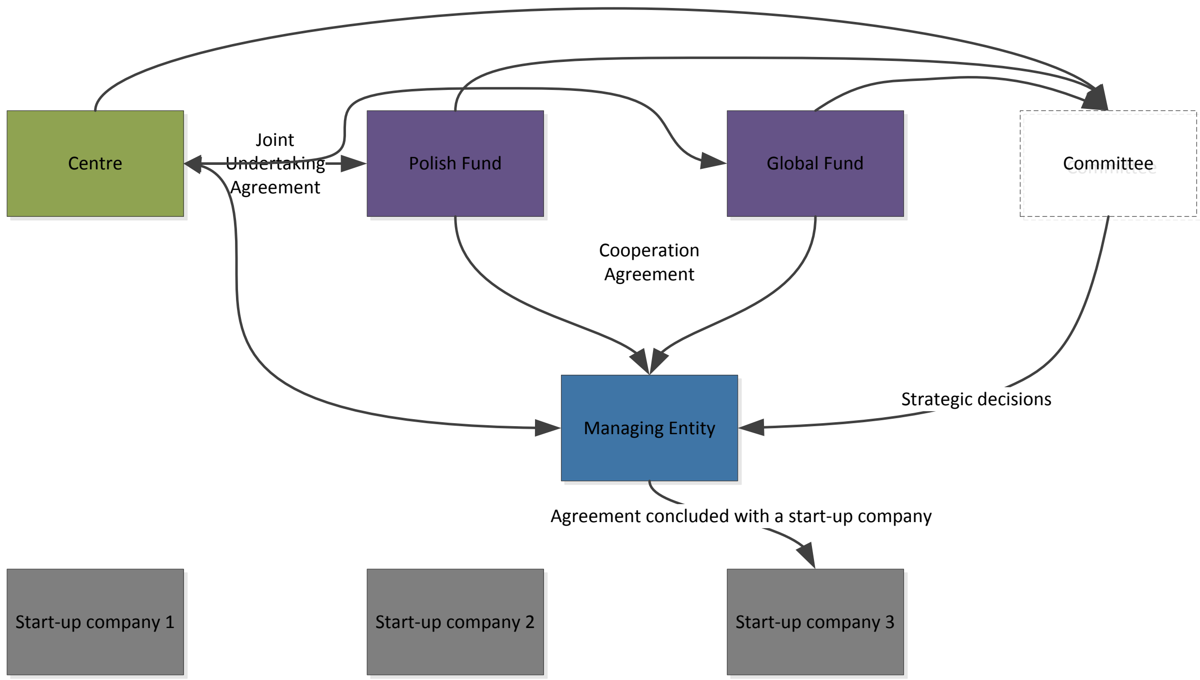
5. Termination of agreements

23 Should any of the funds fail to follow the provisions of the Joint Undertaking Agreement or intend to leave the undertaking before the scheduled exit date (hereinafter „Leaving Fund", the other fund[9] (hereinafter **„the Other Fund"**) or the Centre[10] can decide to exclude that Fund from the undertaking.

24 In such a case, the Other Fund acquires the Leaving Fund's shares in start-up companies and enters into its rights and obligations related to the participation in the undertaking for the amount contributed by the Leaving Fund to the undertaking or for the value of those shares valuated as of the exit date, whichever is lower. The Leaving Fund can also find another fund interested in acquiring its shares in start-up companies, as well as the rights and obligations in the undertaking. Such a fund must be approved by the Centre and the Other Fund[11].

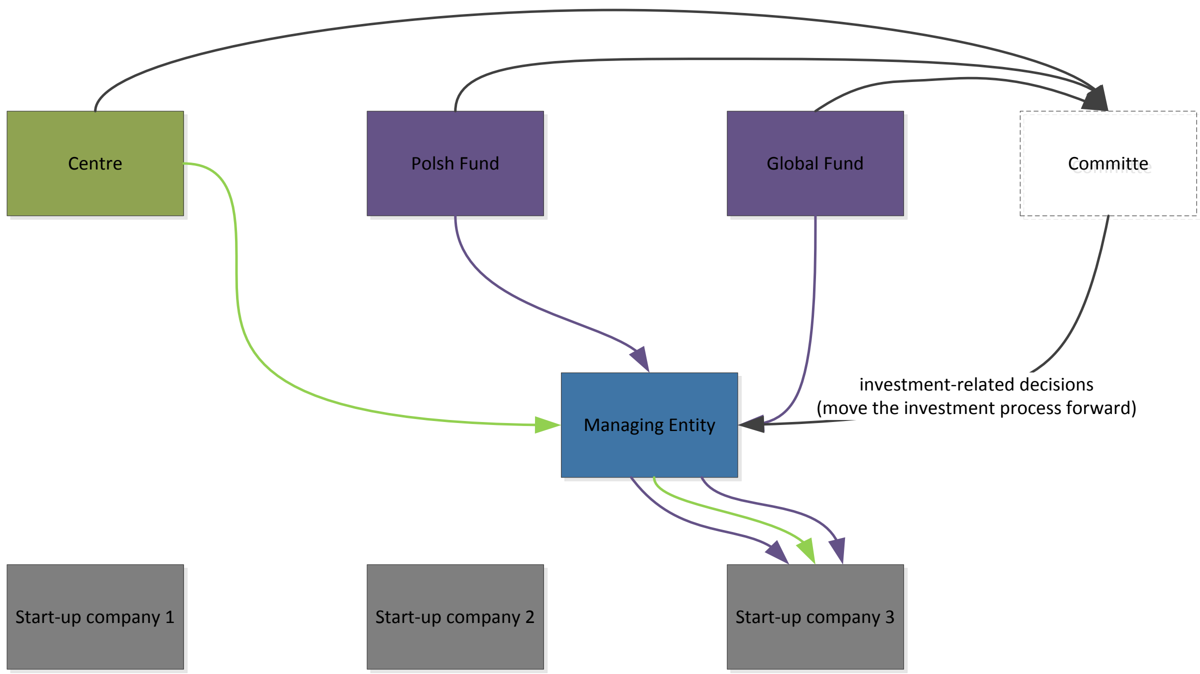
[9] If two funds are involved in the undertaking, the notion of „the Other Fund" shall mean the other fund involved in the undertaking. If there is only one fund involved in the undertaking, the notion of „the Other Fund" shall mean any fund designated by the Centre, which has not been involved in the undertaking so far.
[10] If two funds are involved in the undertaking, the decision is taken jointly by the Centre and the Other Fund. If there is only one fund involved in the undertaking, the decision is taken by the Centre.
[11] If there is only one fund involved in the undertaking, a consent is required only from the Centre.

FIG. 1 OPERATIONAL DIAGRAM OF THE INVESTMENT COMPONENT OF THE UNDERTAKING



BRIEFING:
JOINT UNDERTAKING AGREEMENT: Centre + Managing Entity + funds/fund
COOPERATION AGREEMENT: Managing Entity + funds/fund
MANAGING ENTITY: manages the capital of all the partners
AGREEMENT CONCLUDED WITH A STARTUP COMPANY: Managing Entity
COMPOSITION OF THE MANAGING ENTITY: funds/fund

Fig. 2 Flow chart of the invested resources within the undertaking's investment component

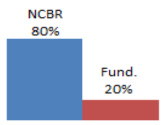
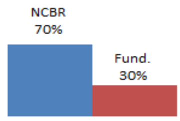
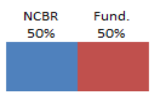


SHARES IN STARTUP COMPANIES

1. Author/University/Research Institute/PAS/former investors
2. Managing Entity
3. New investors

*Technical note: The invested resources follow the path as shown above if the Managing Entity deals with the resources. It is also possible, however, for the Centre and funds/fund to transfer their contributions directly to startup companies (without involving the Managing Entity).

Fig. 3 Simulation of the investment at each funding stage - as seen by the start-up company

Phase	Pre-incubation	Incubation	Post-incubation
Typical value of investment	1 million PLN	7 million PLN	15 million PLN
Inventor's share in the start-up company	50%	20%	5-10%
Investors' share in the start-up company	50%	80%	90-95%
Investment structure			

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