

**ACUITY
LAW.**

The Future Fund

Future Fund Services & Advice

With the unprecedented effect of coronavirus being felt throughout the world, we appreciate that it is a challenge for owners, investors and funders of businesses that may be struggling to make sense of the options open to them.

Here at Acuity Law, we are well placed to help. Our COVID-19 Advisory Group consists of expert lawyers across the firm, including private equity specialists. We regularly advise companies on equity investments (including PE and VC investments) and act for lenders and borrowers on finance transactions across the credit spectrum, from simple term loans to complex syndicated loan facilities with tiered priority structures.

Those companies wanting to apply for funding through the Future Fund will need to appoint a solicitor.

- We can provide investors or investee companies with advice on the Future Fund application process, eligibility criteria and on the terms and conditions of the standard form Convertible Loan Agreement. We can also facilitate completion of the Future Fund transaction and manage the distribution of funds (a role which **must** be carried out by a UK regulated solicitor under the terms of the Future Fund).
- For those companies who require bespoke corporate or commercial advice, we can offer a full range of specialist support including reviewing existing equity documents; drafting corporate resolutions; identifying consent and approval requirements; and carrying out a legal due diligence exercise.
- We are fully resourced, experienced, and equipped for agile working (having been so for several years). This leaves us perfectly placed to provide our clients with a prompt, full service, irrespective of external conditions or influences, providing them with confidence that their legal work is in safe legal hands.
- We provide our clients, both directly and through our social media feeds, with commentary and guidance on the Government's ongoing business relief announcements in reaction to the coronavirus downturn, and have closely followed announcements relating to the Future Fund up to, and following, its launch on 20 May 2020, so are well versed on the terms of the scheme. Summary details of the key terms are set out below.

Key Scheme Details and Eligibility

Key Scheme Details	Company eligibility	Investor Eligibility
<p>The Future Fund is a £500 million investment fund for high growth, UK-registered limited companies which administers convertible loans of between £125,000 and £5 million, subject to at least equal match funding from private investors.</p> <p>The maximum amount of the Government matched loan is £5 million. There is no cap on the amount that the matched investors may loan to the company.</p> <p>Loans taken out under the fund will incur a minimum of 8% per annum (non-compounding) interest. Interest will accrue until the loan converts, at which point it will either be repaid or convert into equity.</p> <p>The loan will mature after 36 months and cannot be repaid early (except by agreement of the investors). The loans will convert into shares in the company at a discounted rate in certain circumstances, including an exit or on a qualifying funding round.</p> <p>A non-negotiable template loan agreement (Convertible Loan Agreement) will be entered.</p> <p>The use of proceeds of the Future Fund loan for the following is <i>prohibited</i> for the following:</p> <ul style="list-style-type: none"> repaying any borrowings from a shareholder or a shareholder related party (other than the repayment of any borrowings pursuant to any bank or venture debt facilities) paying any dividends or other distributions [for a period of twelve months from the date of the Convertible Loan Agreement] making any bonus or other discretionary payment to any employee, consultant or director of the Company other than as contracted prior to the date hereof and as paid by the Company in the ordinary course of business; or paying any advisory or placement fees or bonuses to any corporate finance entity or investment bank or similar service provider on monies advanced by the Future Fund. 	<p>A business will be eligible for the fund if:-</p> <ul style="list-style-type: none"> it is a UK-incorporated limited company (and, if part of a group, is the ultimate parent company) it has raised at least £250,000 in equity investment from third-party investors in the last 5 years none of its shares are traded on a regulated market, multilateral trading facility or other listing venue it was incorporated on or before 31 December 2019 and at least one of the following is true: <ul style="list-style-type: none"> a) half or more employees are UK-based or b) half or more revenues are from UK sales 	<p>The investor must fall within any of the following categories:</p> <ul style="list-style-type: none"> an "investment professional" within the meaning given to that term in article 19 of the FPO a high net worth company, unincorporated associated or high value trust falling within article 49(2) of the FPO a "certified sophisticated investor" or a "self-certified sophisticated investor" within the meaning given in articles 50 and 50A respectively of the FPO a "certified high net worth individual" within the meaning of article 48 of the FPO an equivalent professional, high-net worth, institutional or sophisticated investor in accordance with applicable law and regulation in such investor's home jurisdiction an association of high net-worth or sophisticated investors within the meaning of article 51 of the FPO or capable of being classified as a "professional client" within the meaning given in the glossary to the FCA Rules. <p>Note that all other investors must fall within one of the above categories for them to be eligible to invest in the Convertible Loan Agreement. It is the responsibility of other investors to ensure they are eligible.</p>

Application Process

Step	Details
Step 1: Investor Eligibility Check and Application	<p>The application is investor-led, and therefore the first step is for the in the investor, or lead investor of a group of investors, to certify that they meet the scheme eligibility criteria and provide the key investment details. Ahead of this we would expect the investee company and the investors to have discussed and agreed the variable terms of the Convertible Loan Agreement (including the discount rate, which must be at least 20% and any valuation cap).</p> <p>Investors can create a Future Fund account here, which can be used to check eligibility and submit applications. Acuity can advise investors on their eligibility for the Future Fund. Once eligibility is established, investors may submit a Future Fund application through the Fund Portal.</p> <p>Investors will need the following information to apply:</p> <ul style="list-style-type: none"> • Applicant's personal information - information on the individual completing the application, including an upload of the individual's photo identification (passport, driving licence or identity card). • Investor's details - information on the investor making the match funding application. • Other investors' details - information on all other investors who will be making up the match funding (only required for investors applying as a group). • Company information - information on the company receiving the loan and contact details of a statutory director or the company secretary. <p>The portal is designed for applications to be completed in one session and therefore applicants are advised to have the required information to hand at the outset.</p>
Step 2: Company confirms application	<p>The investee company will need to confirm the accuracy of the investment application details provided before submitting the full application.</p>
Step 3: Execution of Convertible Loan Agreement	<p>Once the application is approved, all parties will need to execute the Convertible Loan Agreement. A standard, non-negotiable loan agreement will be used, a copy of which can be found here.</p> <p>In addition, the company will be required to return a Director's Certificate ,completed by one of its directors, which confirms that (i) £250k previous equity investment from third party investors had been received by the company in the previous five years; (ii) the Investee has the authority and necessary and valid corporate authorisations to enter into the Convertible Loan Agreement and to permit the issue of shares on conversion; and (iii) it has obtained all necessary waivers and/or consents in respect of any outstanding debt. This means the company's constitutional documents will need to be reviewed and the necessary consents and resolutions passed, we can help with this.</p> <p>Acuity can provide general advice on the terms of the terms of the Convertible Loan Agreement, as well as bespoke, Company-specific advice where required.</p>

Step 4 – Drawdown and distribution of funds	<p>A nominated solicitor must oversee the completion process, as the investor completion funds, and the Future Fund payment must be paid into the bank account of a UK regulated solicitor.</p> <p>Upon execution of the Convertible Loan Agreement and confirmation of the satisfaction of any conditions therein, the solicitor will release the funds to the investee company.</p> <p>Acuity can oversee the completion of Future Fund investments and can deal with the payment mechanics.</p>
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Our Services

The summary below outlines how we can help.

Type of advice	Details of services provided	Our fees
Tier 1: Standard advice on the Future Fund and provision of completion services	<p>We can:-</p> <ul style="list-style-type: none"> • provide preliminary advice on the application process and eligibility criteria (which apply to both investors and companies); • provide a general analysis on the terms of Convertible Loan Agreement including advice on the conditions, interest provisions, conversion mechanics, default provisions, repayment terms, warranties, and covenants; and • facilitate completion, and the drawdown and distribution of monies (including providing the necessary Solicitor’s Confirmation to the Future Fund, dealing with KYC requirement and money transfers). * <p><i>*It is a requirement of the scheme that a UK regulated solicitor is nominated to facilitate completion – this will involve receiving and holding the completion monies to order from the Investor(s) to be released to the Investee Company on completion of the Convertible Loan Agreement. We will also receive the completion monies from the Future Fund following completion, which we will distribute to the Investee Company.</i></p>	Fixed fee (to be agreed)

<p>Tier 2: Bespoke advice and services</p>	<p>In addition to the standard advice and completion services (Tier 1), we can provide bespoke services and advice to companies or investors who wish to further understand the terms of the Future Fund, or who require specific corporate or commercial advice.</p> <p>For example, for investee companies, we can:-</p> <ul style="list-style-type: none"> • prepare company-specific advice on the terms of the Convertible Loan Agreement, addressing any ad-hoc legal queries you may have • review and advise on existing equity documents, including investment and shareholder agreements and • prepare a suite of corporate documents in relation to the Future Fund arrangements (including board resolutions, shareholder resolutions and consents, as required). * <p>*Under the terms of the Convertible Loan Agreement, all necessary directors' and shareholders' resolutions of the company will need to be passed to provide the authorities to enter into the documents and to allot any shares (should the loan be converted) alongside receipt of any approvals or waivers required pursuant to any existing equity arrangements. Acuity can draft the required resolutions and review equity arrangements to identify any approval or consent requirements.</p> <p>A director of the Company will also be asked to provide a signed confirmation concerning certain facts about the Company's issued share capital and that it has the appropriate authorisations, waivers and approvals in place, to fulfil its obligations in respect of the Convertible Loan Agreements, including its ability to issue equity on conversion. Acuity can undertake a review of the Company's corporate history and advice on this accordingly.</p> <p>For acting for investors, Acuity can advise on the full implications of participating in the Future Fund and where required can carry-out a legal due diligence exercise on the investee company.</p>	<p>Tier 1 plus time-cost basis for additional work, based on our hourly rates, and dependent on the services and/or advice required.</p>
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