



ASPEN NETWORK  
OF DEVELOPMENT  
ENTREPRENEURS

 aspen institute



# UNLEASHING CHANGE:

A practical guide to  
impact investing in South Africa

March 2024

TrustLaw



THOMSON REUTERS  
FOUNDATION

ALLEN & OVERY

# Authors and Acknowledgments

---

## ▶ AUTHORS

**Benjamin Mbana** – Benjamin heads the tax practice in the Allen & Overy Johannesburg office. He has experience in advising on a wide range of corporate tax matters specialising in mergers and acquisitions (M&A), inbound and outbound investments, corporate re-organisations and preference share and debt financing transactions. He has experience in managing complex deals, frequently on a cross-border basis.

**Jonathon Saville** – Jonathon specialises in general commercial matters and M&A. He has acted for clients in a variety of industries, including mining, property, technology, food and beverage and renewable energy.

## ▶ ABOUT ANDE

The Aspen Network of Development Entrepreneurs (ANDE) is a global network of organisations that propel entrepreneurship in developing economies. ANDE members provide critical financial, educational, and business support services to small and growing businesses (SGBs) based on the conviction that SGBs create jobs, stimulate long-term economic growth, and produce environmental and social benefits.

As the leading global voice of the SGB sector, ANDE believes that SGBs are a powerful, yet underleveraged tool in addressing social and environmental challenges. Since 2009, ANDE has grown into a trusted network of nearly 300 collaborative members that operate in nearly every developing economy. ANDE grows the body of knowledge, mobilises resources, undertakes ecosystem support projects, and connects the institutions that support the small business entrepreneurs who build inclusive prosperity in the developing world.

ANDE is part of the Aspen Institute, a global non-profit organisation committed to realising a free, just, and equitable society. With a U.S. team based in Washington, DC and eight chapters across Asia, Africa, and Latin America, ANDE staff work hard to support members globally and locally, while building strong ecosystems for entrepreneurial growth.

## ▶ ABOUT ALLEN & OVERY

Allen & Overy's South Africa team is fully integrated into the Allen & Overy worldwide network and complements the firm's wider African capability. Combining the expertise and resources of a global elite law practice with a leading group of senior domestic practitioners, the Johannesburg office provides its clients with innovative and cost-effective legal solutions, wherever they are located. We advise homegrown African companies and international corporations on opportunities in the banking, finance, energy, infrastructure, and mining sectors in Sub-Saharan Africa. The sectors that we cover include banking and finance, corporate M&A, equity and debt capital markets, derivatives, restructuring, projects, and energy and regulatory. Clients benefit from our seamless integration across the firm, where a true spirit of collaboration ensures the sharing of knowledge, information, technology systems, processes and skills. Whatever the transaction or legal issue, we leverage our resources as one firm to meet our clients' needs, offering them the support and advice they need to succeed in the changing national and international markets.

 **ABOUT TRUSTLAW**

The Thomson Reuters Foundation works to advance media freedom, foster more inclusive economies, and promote human rights. Through news, media development, free legal assistance and convening initiatives, the Foundation combines its unique services to drive systemic change. TrustLaw, an initiative of the Thomson Reuters Foundation, is the world's largest pro bono legal network. Working with leading law firms and corporate legal teams, we facilitate free legal support, ground-breaking legal research, and resources for non-profits and social enterprises in 175 countries. By spreading the practice of pro bono worldwide, TrustLaw wants to strengthen civil society and drive change. If you have ideas for resources we could develop or legal research projects that would be of assistance after reading this guide, please contact us. If you are a non-profit or social enterprise in need of legal support, you can find out more about the service [here](#) and join TrustLaw for free.

 **ACKNOWLEDGEMENTS**

ANDE and the Thomson Reuters Foundation would like to acknowledge and extend their gratitude to the legal team of Allen & Overy, who contributed their time and expertise on a pro bono basis to make this report possible.

 **DISCLAIMER**

The information contained in this guide is intended to provide general guidance on some legal topics that may be of interest or relevance to the readers. The authors and publishers of this guide have made every effort to ensure the accuracy and completeness of the information in this guide, but they do not guarantee or warrant that the information is correct, complete, or up to date. The authors and publishers of this guide are not responsible or liable for any errors or omissions in the information or for any consequences that may arise from the use or misuse of the information in this guide. The information in this guide may not reflect the most current legal developments and may not apply to all jurisdictions or situations. The authors and publishers of this guide do not endorse or recommend any products, services, or organisations that may be mentioned or referenced in this guide.

This guide is provided for informational purposes only and does not create any attorney-client relationship between the authors, publishers, or readers of this guide. The readers of this guide are solely responsible for their own legal decisions and actions and should seek independent legal advice from a lawyer of their choice as this guide is not a substitute for legal advice from a qualified lawyer familiar with the specific facts and circumstances of your situation.

# Table of Contents

---

INTRODUCTION .....	5
LAWS, POLICIES AND INCENTIVES RELEVANT FOR IMPACT INVESTING IN SOUTH AFRICA .....	6
STRUCTURES FOR IMPACT INVESTING IN SOUTH AFRICA.....	16
TERM SHEETS FOR IMPACT INVESTING IN SOUTH AFRICA.....	21
TERM SHEET DOS AND DON'TS .....	22

# Appendix

---

FORM OF TERM SHEET .....	24
--------------------------	----

# Introduction

---

According to the Global Impact Investing Network, impact investments are investments made with the intention of generating positive, measurable social and environmental impact alongside a financial return. That definition includes investments made across many asset classes, sectors, and regions.<sup>1</sup> The growing impact investment market provides capital to address the world's most pressing challenges in sectors such as sustainable agriculture, renewable energy, conservation, microfinance, and affordable and accessible basic services, including housing, health-care, and education.<sup>2</sup> Moreover, South African companies receiving much-needed impact capital are able to expand in size, fostering increased employment availability and facilitating financial inclusion.<sup>3</sup>

This guide is intended as an explanatory memorandum covering the current legal landscape and market standards in South Africa concerning impact investing as well as the current viable impact investment options. This guide will be useful to, amongst others, South African debt and equity investors, grant-makers, foreign investors, incubator/accelerator portfolio managers, small and medium enterprises and social enterprises.

After this introduction, the rest of this guide is divided into the following sections. Section B examines the laws and policies governing impact investing in South Africa. Section C covers the different types and sources of financing that can be accessed for impact investment, such as equity, debt, convertible notes, grants, guarantees, angel investors, venture capitalists, development finance institutions, and philanthropic foundations. Section D introduces the concept of a term sheet in the context of impact investing in South Africa. Section E presents helpful “dos and don’ts” for both investors and target companies when carrying out negotiations and drafting term sheets. Finally, the appendix to this guide presents a model term sheet that can be used to facilitate a deal between an investor and an investee company based on the most common structure: financing by equity/capital in exchange for shareholding.

The purpose of this guide is to support potential impact investors and their investees in assessing the main legal and policy issues of a potential deal. This guide does not give legal guidance on any topics addressed. Prospective investors and investees should take specific legal advice when considering an investment.

---

1 GIIN. N/A. [What You Need to Know about Impact Investing](#). The Global Impact Investing Network.

2 Ibid.

3 Impact Investing South Africa. N/A. [Mapping the Ecosystem](#). Impact Investing South Africa.

# Laws, policies and incentives relevant for impact investing in South Africa

## PART 1: LAWS

### THE COMPANIES ACT, 2008 (COMPANIES ACT)

The Companies Act sets out the essential rules for doing business in South Africa, including how companies must be governed, and offers a modern, flexible, and comprehensive legal framework for the formation and regulation of different forms of companies. The Companies Act contains certain unalterable provisions relating to company governance (such as audits, social and ethics committees, business rescue, solvency and liquidity tests, shareholder meetings, and disclosure of beneficial ownership).

### THE INCOME TAX ACT, 1962 (ITA)

This guideline sets out select tax incentives and/or allowances available to companies undertaking certain impact investing activities as listed below.

#### Research and development (R&d) (Section 11g(A) and 11D of the ITA):

- » Section 11g(A) of the ITA permits a tax allowance of between 5% and 10% in respect of expenditure actually incurred by a taxpayer (that is, the investee company) in the production of income in devising or developing any invention as defined in the Patents Act or in creating or producing any design as defined in the Designs Act or any trade mark as defined in the Trade Marks Act or any copyright as defined in the Copyright Act or any other property that is of a similar nature.
- » Section 11D provides for a 150% tax deduction on expenditures incurred with respect to certain research and development activities, subject to approval by a government-appointed approval committee. The deduction may only be claimed with respect to R&D that has been approved by the Department of Science and Technology.<sup>4</sup> A company (as defined in the ITA) that is a tax resident may apply for the R&D tax incentive. Foreign firms are eligible if they meet the definition of a permanent establishment. Companies and foreign firms or their subsidiaries are eligible for the R&D tax incentive only if they are conducting eligible R&D within the boundaries of South Africa.

<sup>4</sup> The Government of South Africa. 1962. *Income Tax Act*. Government Gazette Extraordinary. Section 11D(2) and 11D(4).

---

**Section 12I of the ITA (greenfield and brownfield expansion projects)** provides for a deduction in respect of industrial policy projects that meet certain criteria and are approved by the Minister of Trade and Industry (greenfield and brownfield projects). The deduction is aimed at promoting investment, employment, and competitiveness in the manufacturing sector. The deduction consists of two components: an investment allowance and a training allowance. In order to claim the allowance, the project undertaken by the investor must be considered an “industrial policy project” in accordance with section 12I(7) of the ITA. A project will be considered an “industrial policy project” where the Minister of Trade and Industry is satisfied that:

- » The minimum investment implemented by the company is ZAR 50 million (greenfield) and ZAR 30 million (brownfield);
- » The project does not constitute an industrial participation project<sup>5</sup> and does not receive any concurrent industrial incentive provided by any national sphere of government; and
- » The project is not integrally related to any other project of the company (or any other company that forms part of the same group of companies as that company) that has been approved as an industrial policy project.

---

**Section 12E of the ITA** provides that “small business corporations” who own a plant or machinery and:

- » Use the plant and machinery for manufacturing processes carried on by that company; and
- » Bring the plant and machinery into use for the first time may deduct the entire cost of the plant or machinery in the year that such asset is first brought into use.

This guideline further sets out relevant tax consequences applicable to non-residents in South Africa. South Africa applies a residency-based taxing system. Non-residents are subject to tax on their income generated from a South African source.<sup>6</sup>

---

## Employment income

In the case of non-residents, remuneration (in cash or in kind) forms a part of South African gross income if it is effectively connected to the person’s employment in South Africa. There are no special concessions for short-term foreign employees, except under double taxation treaties.

If a double taxation treaty is in place, generally an individual non-resident will not be subject to income tax in South Africa where:

- » He or she is not present in South Africa for a period or periods in aggregate exceeding 183 days in any 12-month period (not necessarily a year of assessment).
- » His or her remuneration is paid by, or on behalf of, an employer who is not a resident of South Africa.
- » His or her remuneration is not borne by a permanent establishment that the foreign employer has in South Africa.

---

<sup>5</sup> According to the South African Revenue Service Interpretation Note 86 (Issue 2) (REPEALED), these are projects that already receive investment or benefits in terms of the National Industry Participation Programme, the Defence Industrial Participation Programme or the Competitive Supplier Development Programme.

<sup>6</sup> For more information, see SARS. N/A. [Tax and Non-Residents](#). South African Revenue Service.

---

## Interest income

Interest income will be regarded as being from a source within South Africa if it is:

- » Attributable to an amount incurred by a person that is resident, unless the interest is attributable to a permanent establishment which is situated outside of South Africa; or
- » Received or accrues in respect of the utilisation or application in South Africa by any person of any funds or credit obtained in terms of any form of interest-bearing arrangement.

Interest received by or accrued to a non-resident from a source within South Africa is exempt from normal tax in South Africa unless the non-resident:

- » Was physically present in South Africa for a period or periods exceeding 183 days in aggregate during a 12-month period preceding the date on which the interest is received by or accrues to that person; or
- » The debt from which the interest arises is effectively connected to the permanent establishment of that person in South Africa.

Interest received by a non-resident that is exempt from normal tax will, however, be subject to a withholding tax of 15%, subject to the exemptions applicable in section 50D of the ITA or the application of a double taxation treaty between South Africa and the country of tax residence of the beneficial owner of the interest income.

In order to rely on the exemptions applicable under section 50D of the ITA or a reduced rate under a double taxation treaty, the beneficial owner of the interest must ensure that by the date of payment of the interest it has provided the borrower with a declaration, in a form prescribed by the South African Revenue Service (SARS), that the interest is subject to (i) an exemption under section 50D of the ITA or (ii) a reduced rate applicable under a double taxation treaty.

If a non-resident is present in South Africa for a period exceeding 183 days in aggregate, the interest received by or accrued by such a non-resident from a source within South Africa is subject to normal tax in South Africa.

---

## Dividend income

A dividend, for South African tax purposes, is generally defined as any amount, other than a distribution of an asset *in specie*, transferred or applied by a South African tax resident company for the benefit or on behalf of any person in respect of any share in that company but does not include, *inter alia*, an amount that:

- » Results in the reduction of contributed tax capital of the company; or
- » Constitutes shares in the company.

Dividends received from a South African tax resident company will be exempt from income tax but may be subject to dividends tax.

As a general rule, dividends paid by a South African tax resident company will be subject to dividends tax at a rate of 20% subject to the exemptions applicable in section 50D of the ITA or the application of a double taxation treaty between South Africa and the country of tax residence of the beneficial owner of the dividend income.

In order to rely on the exemptions applicable under section 64F of the ITA or a reduced rate under a double taxation treaty, the beneficial owner of the dividend must ensure that by the date of payment of the dividend it has provided the company declaring the dividend with a declaration, in a form prescribed by the SARS, that the dividend is subject to (i) an exemption under section 64F of the ITA or (ii) a reduced rate applicable under a double taxation treaty.

A beneficial owner of a dividend is, to the extent that the dividend does not consist of a distribution of an asset *in specie*, liable for dividends tax on that dividend notwithstanding that the dividends tax is withheld by the company declaring the dividend. In the case of a dividend *in specie*, the company declaring the dividend will be liable for the dividends tax and no tax must be withheld from the amount distributed.

---

### Capital gains tax

The maximum effective tax rate on capital gains is 18% in the case of natural persons or 21.6% in the case of companies. Non-residents are only subject to capital gains tax on immovable property (such as a flat, house, farm, or vacant land) situated in South Africa or any interest or right of whatever nature of the non-resident to or in immovable property situated in South Africa, subject to the application of a double taxation treaty between South Africa and the country of tax residency of the non-resident.

An interest to or in immovable property consists of equity shares in a South African company where 80% or more of the market value of those equity shares is attributable directly or indirectly to immovable property in South Africa and the non-resident holds at least 20% of the equity shares in that company.

## SPECIAL ECONOMIC ZONES ACT, 2014

“Special Economic Zones” (SEZs) within South Africa are geographically designated areas set aside for specifically targeted economic activities to promote national economic growth and exports by using support measures to attract foreign and domestic investments and technology.<sup>7</sup>

If a project is located within a Special Economic Zone, the corporate tax rate applied to the taxpayer is reduced to 15%. The taxpayer also gains an accelerated ten-year allowance on buildings, VAT and customs relief, the benefit of Section 12I of the ITA tax incentive (above) and an employment tax incentive to promote the hiring of employees.<sup>8</sup>

<sup>7</sup> SARS. N/A. *Legal Counsel Income Tax: Brochure on the Special Economic Zone Tax Incentive*. South African Revenue Service.

<sup>8</sup> *Ibid.*

## EXCHANGE CONTROL REGULATIONS, 1961 (EXCON REGULATIONS) AND THE CURRENCY AND EXCHANGES MANUAL FOR AUTHORISED DEALERS, 2019<sup>9</sup>

---

South Africa has exchange control regulations that govern the transfer of capital in and out of South Africa. The Excon Regulations are administered by the Financial Surveillance Department (FSD) of the South African Reserve Bank (SARB).

Certain approved South African commercial banks, referred to as “Authorised Dealers”, have been designated authority to administer the exchange control regulations on behalf of the FSD, in terms of the Currency and Exchange Control Manual for Authorised Dealers (Excon Manual).

The Excon Manual contains the permissions and conditions that apply to transactions that may be undertaken by Authorised Dealers and/or on behalf of their clients in terms of Section 2(2) of the Excon Regulations. It also details the related administrative responsibilities and the FSD’s reporting requirements. The Excon Manual must be read in conjunction with the Excon Regulations. Authorised Dealers may transact without referring to the FSD, provided such transactions are permitted in terms of that manual.

In terms of Section G(C) and G(D) of the Excon Manual, non-residents may freely invest in South Africa, provided that suitable documentary evidence is viewed to ensure that such transactions are concluded at arm’s length, at fair market-related prices and are financed in an approved manner. The creation of any loan account between a resident and a non-resident would require the prior written approval of the FSD. The local sale or redemption proceeds of non-resident-owned assets in South Africa may be regarded as freely transferable.<sup>10</sup> However, it is required that non-resident entities maintain a non-resident Rand account with an authorised bank into which such proceeds may be paid before being paid into a non-resident account.

## FINANCIAL INTELLIGENCE CENTRE ACT, 2001 (FICA) AND THE PREVENTION OF ORGANISED CRIME ACT, 1998 (POCA)

---

FICA brings South Africa in line with similar legislation in other countries designed to reveal the movement of monies derived from unlawful activities and thereby curb money laundering and other criminal activities.<sup>11</sup> The regulations and obligations of FICA apply to a wide range of entities, including banks, insurers, investment firms, and other financial intermediaries. These entities are known as “accountable institutions” and are required to comply with various obligations under FICA, such as:

- » Identifying and verifying their clients and beneficial owners and keeping records of their transactions and business relationships;<sup>12</sup>
- » Implementing risk-based measures to prevent and detect money laundering and terrorist financing and reporting any suspicious or unusual transactions or activities to the Financial Intelligence Centre (FIC);<sup>13</sup>

---

9 SARB. N/A. *Financial Surveillance Documents*. South African Reserve Bank.

10 SARB. 2024. *Currency and Exchanges Manual for Authorised Dealers*. South African Reserve Bank.

11 The Banking Association of South Africa. N/A. *The Financial Intelligence Centre Act*. The Banking Association of South Africa.

12 *Ibid*, Chapter 3, Part 1 and 2.

13 *Ibid*, Chapter 3, Part 3.

- » Developing and maintaining internal policies, procedures, systems, and controls to ensure compliance with FICA and to promote a culture of compliance within their organisations;<sup>14</sup>
- » Providing training and awareness to their staff and directors on FICA and its implications for their roles and responsibilities;<sup>15</sup> and
- » Cooperating with the FIC and other authorities in their investigations and inspections and providing any information or documents that may be requested.<sup>16</sup>

Investors (or intermediaries used for the flow of funds into South Africa) that are accountable institutions under FICA may need to conduct due diligence on their potential investees and their projects and monitor their spending and performance to ensure that they are not involved in or facilitating any money laundering or terrorist financing activities and that they are using the funds for the intended purposes and impact objectives. Investors may also need to report any suspicious or unusual transactions or activities that may indicate any illicit financial flows or diversion of funds to the FIC. These obligations may also apply to investee entities that are accountable institutions.

---

**POCA criminalises, amongst others, activities in relation to the benefits of crime. In terms of POCA, any person shall be guilty of an offence if they:**<sup>17 18</sup>

- » Receive or retain any property derived, directly or indirectly, from a racketeering activity;
- » Know or ought reasonably to have known that such property was so derived; and
- » Use or invest, directly or indirectly, any part of such property in the acquisition of any interest in, or the establishment or operation of activities of, any enterprise within the Republic of South Africa (RSA) or elsewhere.

The POCA, therefore, has extraterritorial application.

As impact investors are potential sources or recipients of funds that may be linked to organised crime, they need to be aware of and comply with the provisions and requirements of POCA, FICA, and other relevant laws and regulations. They also need to conduct due diligence and risk assessments on their investees, partners, intermediaries, and beneficiaries to ensure that they are not involved in or exposed to organised crime or money laundering activities.

<sup>14</sup> Ibid, Chapter 3, Part 4.

<sup>15</sup> Ibid, Chapter 3, Part 4.

<sup>16</sup> Ibid, Chapter 3, Part 5.

<sup>17</sup> Republic of South Africa. 1999. [Prevention of Organised Crime Act 121](#). *Government Gazette*, Vol. 402, No. 19553, Section 2.

<sup>18</sup> The remainder of Section 2 criminalises various instances where a person who knows or ought reasonably to have known that property is derived from unlawful activities continues with the transaction.

## BROAD-BASED BLACK ECONOMIC EMPOWERMENT (B-BBEE) ACT, 2003 AND THE AMENDED CODES OF GOOD PRACTICE, 2013

The B-BBEE Act is a government policy aimed at the inclusion of “black people”, namely Africans, Indians and Coloureds who are South African citizens, in the economy with a larger goal of national empowerment targeting historically disadvantaged people.<sup>19</sup> While an entity is not penalised for failing to adhere to the B-BBEE Act or for having a low B-BBEE score, it is unlikely to be awarded contracts and licences by the government<sup>20</sup> and is less likely to be awarded contracts in the private sector.<sup>21</sup>

Compliance with the B-BBEE Act is voluntary. However, certain industries require an entity to have a particular percentage of black ownership in order to receive and maintain a license to operate. B-BBEE requirements are implemented in the empowering legislation for the licence in question (e.g., banking, broadcasting, mining, telecommunications, transportation, etc.), and, in certain instances, B-BBEE minimum thresholds may be set.

B-BBEE compliance is measured by means of a scorecard based on various elements. The generic elements are set out below:<sup>22</sup>

B-BBEE Element	Description	Maximum of Weighting Points Available
Ownership	Assessed on the basis of voting rights exercisable by black people; economic interest of black people in the business; and realisation points.	25
Management Control	Assessed on the basis of exercisable voting rights of black people; board participation and black executive management; number of black people in senior, middle and junior management; and employees with disabilities.	19
Skills Development	The amount of money focused on training and development of employees, specifically skills development initiatives and training for black employees, and the amount made available for bursaries and apprenticeships.	20 (plus 5 bonus points)
Enterprise and Supplier Development	Measures the level of spending on preferential procurement, supplier development and enterprise development.	40 (plus 4 bonus points)
Socio-Economic Development	The annual value of all socio-economic development contributions by the measured entity as a percentage of the target.	5
<b>TOTAL</b>		<b>118</b>

**Table 1. Generic B-BBEE Scorecard**

<sup>19</sup> Corenelius, N. 2023. *Understanding the Benefits Of B-BBEE in South Africa*. SERR synergy.

<sup>20</sup> A government entity engaging in a project scores potential bidders on pricing and B-BBEE score. A low B-BBEE score could lead to a tender being awarded to another more compliant bidder. This is also known as “preferential procurement”.

<sup>21</sup> A private player may increase its own B-BBEE score by procuring goods and services from entities with higher B-BBEE scores.

<sup>22</sup> Republic of South Africa. 2004. *Broad-based Black Economic Empowerment Act 53 of 2003*. Government Gazette, Vol. 463, No. 25899.

## PART 2: POLICIES

### SECOND CODE FOR RESPONSIBLE INVESTING IN SOUTH AFRICA (CRISA 2)<sup>23</sup>

The CRISA 2 is a *voluntary* initiative that seeks to guide institutional investors in developing and implementing sustainable and long-term investment strategies. It sets out five principles supported by recommended practices and reporting statements, emphasising environmental, social and governance (ESG) goals and broader sustainable development issues. CRISA 2 applies to asset owners, asset managers and service providers. Principle 1 of CRISA 2 recommends that: “*Investment arrangements and activities should reflect a systematic approach to integrating material ESG factors.*” Principle 5 of CRISA 2 recommends that ESG initiatives be disclosed to enable stakeholders to make informed assessments of progress towards achieving positive outcomes.

### KING IV REPORT ON CORPORATE GOVERNANCE FOR SOUTH AFRICA, 2016 (KING IV)

King IV is an important South African corporate governance code which adopts an inclusive approach and was first introduced in 1994. King IV sets out 17 principles that an organisation must or should apply to substantiate a claim that it is practising good governance, reflected in four outcomes: ethical culture, good performance, effective control, and legitimacy.<sup>24</sup>

Principle 17 of King IV recommends that the board of an *institutional investor* ensures that responsible investment – an approach that incorporates ESG factors into investment decision-making to better manage risk and generate sustainable long-term returns – is practised by the organisation to promote good governance and the creation of value by the companies in which it invests. To this end, an organisation must adopt a recognised responsible investment code, principles and practices.<sup>25</sup> King IV recommends that the responsible investment code and the application of its principles and practices should be disclosed.

<sup>23</sup> For more information, see CRISA. N/A. [About the Code](#). Code for Responsible Investing in South Africa.

<sup>24</sup> Davids, E, Kitcat, R. and Douglas, C. 2024. [Environmental, Social & Governance Law South Africa 2024](#). Global Leader Group.

<sup>25</sup> Ibid.

## PART 3: INCENTIVES

This guideline sets out examples of some of the most relevant incentives for potential impact investors in South Africa below.

### **AQUACULTURE DEVELOPMENT AND ENHANCEMENT PROGRAMME (ADEP)<sup>26</sup>**

The ADEP is an incentive programme available to South African registered entities engaged in primary, secondary and ancillary aquaculture activities in both marine and freshwater environments as classified under standard industry classification (SIC) 132 (fish hatcheries and fish farms) and SIC 301 and 3012 (the production, processing and preserving of aquaculture fish). The programme offers a reimbursable cost-sharing grant of up to a maximum of ZAR 20 million to cover qualifying costs in machinery and equipment, bulk infrastructure, owned land and/or buildings, leasehold improvements, and competitiveness improvement activities as outlined in Section 8 of the ADEP guidelines.

### **AGRO-PROCESSING SUPPORT SCHEME (APSS)<sup>27</sup>**

The APSS aims to stimulate investment by South African agro-processing/beneficiation (agri-business) enterprises. The investment should demonstrate that it will achieve some of the following: increased capacity, employment creation, modernised machinery and equipment, competitiveness and productivity improvement and broadening participation. The scheme offers a 20% to 30% cost-sharing grant to a maximum of ZAR 20 million over a two-year investment period. The Department of Trade, Industry and Competition (DTIC) may consider an additional 10% grant for projects that meet all economic benefit criteria, such as employment, transformation, geographic spread and local procurement.

### **AUTOMOTIVE INVESTMENT SCHEME (AIS)<sup>28</sup>**

The AIS is an incentive designed to grow and develop the automotive sector through investment in new and/or replacement models and components that will increase plant production volumes, sustain employment and/or strengthen the automotive value chain. The AIS provides for a non-taxable cash grant of 20% of the value of qualifying investment in productive assets and 25% of the value of qualifying investment in productive assets by component manufacturers and tooling companies as approved by the DTIC.

An additional grant of up to 10% is available to investors who meet certain qualifying criteria as mentioned on the DTIC's official website.<sup>29</sup>

### **BLACK INDUSTRIALISTS SCHEME (BIS)<sup>30</sup>**

The BIS aims to unlock the potential within black industrialists who operate in the South African economy through deliberate, targeted and well-defined financial and non-financial interventions. The BIS offers a cost-sharing grant ranging from 30% to 50% to approved entities to a maximum of ZAR 50 million. The quantum of the grant will depend on the level of black ownership and management control, the economic benefit of the project and the project value.

<sup>26</sup> The DTIC. N/A. [Aquaculture Development and Enhancement Programme](#). Department of Trade, Industry and Competition.

<sup>27</sup> The DTIC. N/A. [Agro Processing Support Scheme](#). Department of Trade, Industry and Competition.

<sup>28</sup> The DTIC. N/A. [Automotive Investment Scheme](#). Department of Trade, Industry and Competition.

<sup>29</sup> See fn 28.

<sup>30</sup> The DTI. 2015. [The DTI Black Industrialists Scheme \(BIS\): An Incentive Scheme of the Black Industrialists Policy – 2015 Programme Guidelines](#). Department of Trade and Industry.

## **CAPITAL PROJECTS FEASIBILITY PROGRAMME (CPFP)<sup>31</sup>**

The CPFP is a cost-sharing grant that contributes to the cost of feasibility studies likely to lead to projects that will increase local exports and stimulate the market for South African capital goods and services. The grant is capped at ZAR 8 million to a maximum of 50% of the total costs of the feasibility study for projects outside Africa and 55% of the total costs of the feasibility study for projects in Africa. A foreign entity will only be considered if it partners with a South African registered entity and the application is submitted by the South African entity.

## **CRITICAL INFRASTRUCTURE PROGRAMME (CIP)<sup>32</sup>**

The CIP aims to leverage investment by supporting infrastructure that is deemed to be critical, thus lowering the cost of doing business. The South African Government is implementing the CIP to stimulate investment growth in line with the National Industrial Policy Framework and Industrial Policy Action Plan. The CIP offers a grant of 10% to 30% of total qualifying infrastructural development costs, up to a maximum of ZAR 50 million, based on the achieved score in the Economic Benefit Criteria. For projects that alleviate water and/or electricity dependency on the national grid, the CIP will offer a grant of 10% to 50%, up to a maximum of ZAR 50 million.

## **CLOTHING, TEXTILES, FOOTWEAR AND LEATHER GROWTH PROGRAMME (CTFLGP)<sup>33</sup>**

The CTFLGP aims to increase employment, improve overall competitiveness and grow the clothing, textiles, footwear, leather and leather goods manufacturing industries. The CTFLGP is delivered through four programmes: Programme A (Competitiveness Improvement), Programme B (Expansionary Working Capital), Programme C (Start-up Funding) and Programme D (Cluster Funding). For Programmes A, B and C, enterprises with a structure of more than 30% for textiles and leather and 20% for clothing and footwear are eligible to apply. For Programme D, the cluster must support skills and productivity enhancement within the value chain. Various grants and interest-free loans are available and vary per programme.

## **FOREIGN FILM AND TELEVISION PRODUCTION AND POST-PRODUCTION INCENTIVE (FOREIGN FILM)<sup>34</sup>**

The Foreign Film incentive aims to encourage and attract large-budget films and television productions and post-production work that will contribute towards employment creation, the enhancement of South Africa's international profile, and increasing the country's creative and technical skills base. The Foreign Film incentive offers a cost-sharing grant ranging from 25% to 30% with a cap of ZAR 50 million for qualifying South African production and post-production expenditure activities and a post-production only grant of between 20% and 25% based on the amount of post-production budget spent in South Africa.

Details of other film incentives are available on the DTIC's official website.<sup>35</sup>

<sup>31</sup> The DTIC. N/A. [Capital Projects Feasibility Programme](#). Department of Trade, Industry, and Competition.

<sup>32</sup> The DTIC. N/A. [Critical Infrastructure Programme](#). Department of Trade, Industry, and Competition.

<sup>33</sup> The DTIC. 2022. [Revised Programme Guidelines: Clothing, Textiles, Footwear and Leather Growth Programme \(CTFLGP\)](#). Department of Trade, Industry and Competition.

<sup>34</sup> The DTIC. N/A. [Foreign Film and Television Production and Post-Production Incentive](#). Department of Trade, Industry and Competition.

<sup>35</sup> The DTIC. N/A. [Film Incentive](#) Department of Trade, Industry and Competition.

# Structures for impact investing in South Africa

---

## WHAT ARE THE MAJOR STRUCTURES IN SOUTH AFRICA?

Direct investment, where the impact investor acquires an equity stake or provides a loan or grant to the impact enterprise directly, is subject to the terms and conditions of a shareholders' agreement or a loan or grant agreement.

Indirect investment, where the impact investor invests in an intermediary fund or vehicle that invests in the impact enterprise, is subject to the terms and conditions of a fund agreement or a vehicle agreement.

Hybrid investment (blended financing) is where the impact investor combines different forms of financing or instruments to achieve a blended return and impact, such as a convertible note, a revenue-sharing agreement, or a social impact bond. Blended finance often involves the strategic use of public finance for the mobilisation of additional private finance towards sustainable development in developing countries.<sup>36</sup>

According to the Organisation for Economic Co-operation and Development (OECD), impact investors are increasingly making use of blended finance instruments and mechanisms to address the need for vast amounts of finance to achieve the Sustainable Development Goals (SDGs).<sup>37</sup> The OECD classifies blended finance instruments as equity instruments, debt instruments, mezzanine instruments, guarantees and insurance, hedging, and grants and technical assistance.<sup>38</sup>

---

<sup>36</sup> World Economic Forum. 2023. *Blended Finance: How Setting up a Financial Intermediary Can Accelerate Sustainable Development*. World Economic Forum

<sup>37</sup> Habbel, V, Jackson, E, Orth, M, Richter, J, and Harten S. 2021. *Evaluating Blended Finance Instruments and Mechanisms: Approaches and Methods*. OECD Development Co-operation Working Paper 101, OECD Publishing, Paris, p. 12.

<sup>38</sup> Ibid, 14.

Instrument	Description	Value Proposition for Funders
Equity Instruments	In the case of blended finance deals, public or philanthropic institutions make direct or indirect equity investments to help reduce risk and stabilise returns for commercial investors to invest additional private capital.	Equity investments provide long-term growth capital that private enterprises in developing and emerging markets often lack. Equity financing is risk-absorbing, allowing companies to pursue riskier, higher-growth strategies.
Debt Instruments	Examples of debt instruments include direct or indirect loans, credit or bonds to companies, which oblige the company (borrower) to repay the principal amount plus agreed interest. Some debt instruments (such as bonds) are also designed to achieve ESG objectives, such as green bonds, which may be purchased privately or on public securities markets.	These instruments are relatively straightforward to design, negotiate and enforce legally and administratively in most jurisdictions. They are usually well-secured and thus offer a manageable level of risk to investors. A debt instrument may be combined with a requirement of technical assistance, giving the investor increased oversight of the investee.
Mezzanine	<p>Mezzanine investments involve the investor bearing the first losses to stand behind the deal's viability, thereby attracting other investors. Bouri and Mudaliar note four mezzanine finance options:<sup>39</sup></p> <ol style="list-style-type: none"> <li>1. equity, where the provider takes the most junior equity position;</li> <li>2. grants, converted into debt or equity;</li> <li>3. guarantees, to cover a set amount of losses; and</li> <li>4. subordinated debt, where the provider takes the most subordinated debt position.</li> </ol>	Mezzanine finance can help to accelerate impact, optimise resources and achieve better terms for investees. Recipients benefitting from mezzanine finance can better meet their investment obligations and gain a competitive advantage over other funds or businesses.

39 Bouri, A, and Mudaliar, A. 2013. *Catalytic First-Loss Capital*. Global Impact Investing Network.

Instrument	Description	Value Proposition for Funders
Guarantees and Insurance	<p>A development guarantee involves the guarantor guaranteeing the repayment of losses suffered by the company. The guarantee is dispersed only when the company suffers a loss.</p> <p>Insurance can reduce specified risks.</p>	<p>Actual losses can be mitigated when the investor undertakes detailed due diligence and provides technical assistance in the management of the investee. In contrast, securing the investee's working capital can produce significant development results. Guarantees may also attract other risk-averse investors.</p> <p>The elements covered by insurance can be defined as required, thereby reducing potential exposure to the investee for unforeseen losses.</p>
Development Impact Bonds (DIBs)	<p>According to the Centre for Global Development, DIBs finance development programmes with money from private investors who earn a return if the programme is successful, paid by a philanthropic third-party donor.<sup>40</sup></p>	<p>With a greater focus on outcomes instead of inputs, DIBs create space for collaboration among stakeholders, enable innovation, increase accountability, and drive performance towards achieving impactful results.</p>
Performance-Based Grants (PBGs)	<p>PBGs entail a funder making payments conditional upon the achievement of pre-agreed outcomes. PBGs have been increasingly utilised in recent years to mobilise private capital for blended financing and impact investing in support of the SDGs.</p>	<p>In most of the countries where PBGs have operated for some years, they have helped create an environment conducive to dialogue on the performance of local governments, promoted healthy competition among local governments, stimulated discussions on ways to improve local government performance, and served as a tool for improved dialogue between citizens and local governments on how best to address local challenges.<sup>41</sup></p>

**Table 2. Types of Blended Finance Instruments**

40 Centre for Global Development. N/A. [Development Impact Bonds](#). Center for Global Development.

41 UNCDF. N/A. [Performance-Based Grant Systems: Concept and International Experience](#). United Nations International Children's Emergency Fund, p. 63.

## FACTORS MOTIVATING AN INVESTOR'S DECISION

### The level of control and influence that the impact investor can exercise

- » The level of control and influence that the impact investor can exercise over the investee, such as voting rights, board representation, veto powers and exit rights. Often, a specialised impact investor is well-placed to assist the company's management to achieve long-term sustainability.
- » Investors may choose to purchase ordinary shares, which carry voting rights, or preference shares, which do not. Owners of preference shares are paid dividends on company income before ordinary shareholders. Preference shareholders also have preferential claims against the company should it fail for whatever reason; preferent shareholders are paid after creditors and bondholders but before ordinary shareholders.

### The level of risk and return that the impact investor can expect from the investee, such as capital protection, acceptable interest rates, dividend rates, valuation method utilised, and performance metrics

- » Equity instruments entail high financial and reputational risks for the investor, which often require the investor to be heavily involved with the governance of the company and determine the right time to exit.<sup>42</sup>
- » A key feature of impact investing is its more hands-on approach – many of the investees require more than just funds. Capacity building enables the investor to strengthen and develop skills in investee companies that enable them to be more effective and sustainable.

Increase Service Quality	Strategic planning, sales and marketing, and specific technical expertise. <sup>43</sup>
Strengthen the Business	Financial management, corporate governance, IT training, and human resources training.
Enhance Environmental and Social Impact	Site visits, contributing to the conservation of key biodiversity areas and protected areas, training on environmental safeguard standards, and enhanced corporate social responsibility initiatives and training.

**Table 3. Sample Capacity Building Project Goals**

- » Capacity building may even be used at the pre-investment stage, where the impact investor first assists the target company in reaching certain goals/performance before it releases the monetary investment (see PBGs in the table above at C.1(c)).
- » Likewise, capacity building can be used at the post-investment stage. The investor may, for instance, provide the board with further training and development as and when new members join.

<sup>42</sup> Habel, V, Jackson, E, Orth, M, Richter, J, and Harten S. 2021. *Evaluating Blended Finance Instruments and Mechanisms: Approaches and Methods*. OECD Development Co-operation Working Paper 101, OECD Publishing, Paris, p. 14.

<sup>43</sup> GIIN. N/A. *Business Partners International*. The Global Impact Investing Network.

---

**The level of flexibility and alignment** that the impact investor and the investee can achieve, such as the maturity date, conversion options, repayment schedules and impact measurement and management

---

**The level of complexity and cost that** the impact investor and the impact enterprise can incur, such as the legal and regulatory requirements, the due diligence and negotiation processes, and the transaction and management fees

---

#### **The headquarter company regime<sup>44</sup>**

An intermediate company located in South Africa has the following benefits:<sup>45</sup>

- » Exemption from South Africa's Controlled Foreign Company rules.
- » Exemption from dividend withholding tax on the headquarter company's dividend distributions.
- » Exemption from withholding tax on interest in certain circumstances.
- » Exemption from South Africa's transfer pricing rules on back-to-back loans, outbound loans, back-to-back intellectual property licensing arrangements, and outbound intellectual property licensing arrangements.
- » The participation exemption for dividends received from, or gains derived on the disposal of, foreign qualifying holdings.

---

<sup>44</sup> For requirements of headquarter companies, see The Government of South Africa. 1962. [Income Tax Act](#). Government Gazette Extraordinary. Section 11D(2) and 11D(4).

<sup>45</sup> PwC. N/A. [Tax credits and incentives](#). PwC.

# Term sheets for impact investing in South Africa

---

## WHAT IS A TERM SHEET?

---

A term sheet is a non-binding document that outlines the key terms and conditions of a proposed investment deal between an impact investor and an impact enterprise.

---

A term sheet serves as a basis for further due diligence, valuation, and legal documentation. It also acts as a tool for communication, clarification, and the alignment of expectations and interests.

---

A term sheet typically covers the main aspects of the investment deal, such as the type and amount of financing, the valuation and pricing of the equity, the rights and obligations of the parties, the governance and management of the enterprise, and the exit and dispute resolution mechanisms.

---

Please see Schedule 1, below, which presents a basic term sheet template that can be used in the initial negotiation stages. Amendments and bespoke terms should take into account the “dos and don’ts” discussed in Section E of this guidance, and specific legal advice should also be taken.

# Term sheet Dos and Don'ts

---

## DOS<sup>46</sup>

---

Set goals and expectations. Goals should consider the effects an investment has on people and/or the planet and balance investor expectations regarding risk, return, liquidity, and impact.

---

Define strategies. There are many pathways to achieving impact goals and meeting expectations. It is important to consider which pathways make the most sense for individual portfolios, investment expertise, or client demand.

---

Select metrics and set targets. Investors must use relevant output, outcome, and proxy indicators to set targets, track performance, and manage towards success. Impact metrics should ultimately deliver investment decision information.

---

Measure, track, use the data and report. Impact measurement and management are about more than counting metrics. They mean considering information about risks, returns, and impact to learn, adjust, and improve decision-making, which can help strengthen portfolio performance and investment strategies.

---

Conduct thorough research and due diligence on the potential partner, the market, and the legal and regulatory environment before entering into term sheet discussions. A well-performed due diligence assists investors in ascertaining capacity-building opportunities.

---

Identify priority areas for improvement and investment.

---

Assess the creditworthiness of the prospective client and the viability of the investment.

---

Design, implement and monitor a concise capacity-building project.

---

Seek professional advice and assistance from lawyers, accountants, and other experts on the legal, financial, and technical aspects of the term sheet.

---

Focus on the key terms and conditions of the deal and avoid unnecessary or irrelevant details or clauses.

---

Align the interests and expectations of the parties on the vision, mission, and impact of the enterprise and the investment.

---

Balance the rights and obligations of the parties and ensure that they are fair, reasonable, and proportional to the risks and returns involved.

---

46

Capitalised headings below are extracted from GIIN. N/A. [Impact Investing: A Guide to This Dynamic market](#). The Global Impact Investing Network, p.8.

---

Communicate openly and honestly with the potential partner and address any questions or concerns promptly and respectfully.

---

Build trust and rapport with the potential partner and establish a positive and collaborative relationship.

---

Be flexible and willing to compromise and accommodate the needs and preferences of the potential partner.

---

At exit, ensure that the follow-on investor shares similar philosophies in the value proposition.<sup>47</sup>

---

## DON'TS

When drawing up a term sheet, you should not do any of the following:

---

Facilitate an exit strategy that involves a trade-off between financial and social goals. By the time the impact investor wants to exit, the target company should be scalable and profitable.<sup>48</sup>

---

Rush or pressure the potential partner into signing the term sheet or the investment agreement without sufficient time and information.

---

Make unrealistic or misleading claims or promises about the performance or potential of the enterprise or the investment.

---

Use the term sheet as a binding or final agreement or as a tool for renegotiation or litigation.

---

Include terms or conditions that are illegal, unethical, or detrimental to the impact or sustainability of the enterprise or the investment.

---

Ignore or violate the confidentiality and exclusivity provisions of the term sheet or the investment agreement.

---

Disregard or disrespect the culture, values, and goals of the potential partner or the stakeholders of the enterprise or the investment.

---

Neglect or undermine the governance and management of the enterprise or the investment.

---

Overlook or misrepresent the risks or challenges of the enterprise or the investment.

---

Assume or impose a one-size-fits-all approach to the term sheet or the investment agreement.

---

Be rigid or stubborn and refuse to listen or learn from the potential partner or the feedback of the market.

---

---

<sup>47</sup> GIIN. N/A. LeapFrog's Exit from Express Life. The Global Impact Investing Network.

<sup>48</sup> Ibid.

# SCHEDULE 1

## FORM OF TERM SHEET

### COMMERCIAL TERM SHEET IN RESPECT OF [.]<sup>49</sup>

This term sheet (the “**Term Sheet**”) executed on [.] (the “**Signature Date**”) sets forth the principal terms and conditions of a proposed investment by the investor in the Company (as defined below) with respect to their rights, relations and obligations in relation to the Company, in which the Investor is contemplating investing, pursuant to a subscription agreement entered into, or to be entered into, among the Parties (“**SPA**”). Unless otherwise stated, the terms of the shareholders’ agreement will become effective on the Subscription Date (under the SPA) (“**Closing Date**”).

## THE PARTIES

<b>Investor</b>	[INSERT NAME OF INVESTOR], a [insert type of company] duly registered and incorporated under the laws of [insert country of incorporation] with registration number [.] with its address at [insert address of investor], represented by [insert name of first contact person] [insert email address of first contact person] and [insert name of second contact person] [insert email address of second contact person].
<b>Company</b>	[INSERT NAME OF TARGET], a [insert type of company] duly registered and incorporated under the laws of South Africa with registration number [.] with its address at [insert address of target], represented by [insert name of first contact person] [insert email address of first contact person] and [insert name of second contact person] [insert email address of second contact person].
<b>[Insert name/s of other shareholder/s]</b>	[INSERT NAME/S OF OTHER SHAREHOLDER/S], a private limited liability company duly registered and incorporated under the laws of South Africa with registration number [.] with its address at [insert address of target], represented by [insert name of first contact person] [insert email address of first contact person] and [insert name of second contact person] [insert email address of second contact person].

<sup>49</sup> This Term Sheet is prepared on the basis that the Investor will subscribe to a portion of the issued share capital and provide a shareholder loan.

## KEY TERMS

<b>Status of this Term Sheet</b>	This Term Sheet is neither an offer nor a binding commitment to purchase shares. Such a binding commitment will only be made pursuant to the execution of a definitive Share Subscription and Shareholders Agreement mutually acceptable to all parties and only upon satisfaction of the Investment Conditions.
<b>Investment Conditions</b>	<ul style="list-style-type: none"> <li>• The Investor has completed, to its satisfaction, a [financial, legal, technical, social and environmental] due diligence.</li> <li>• The Investor has satisfied itself that there has been no material adverse change to the business, financial condition or prospects of the Company.</li> <li>• The Investor has approved the investment in accordance with its governance rules.</li> <li>• The Company has received all necessary approvals (corporate or otherwise) required to complete the contemplated transaction; and</li> <li>• Any other condition(s) as may be stipulated in the Share Subscription and Shareholders Agreement.</li> </ul>
<b>Amount of Equity Contribution</b>	[Insert desired amount of equity funding to be introduced into the target entity]
<b>Amount of Loan Funding</b>	[Insert desired amount of loan funding to be introduced into the target entity]
<b>Number and Percentage of Subscription Shares</b>	[Insert number of shares] shares (being [insert percentage]% of the entire issued shares of the Company)

## COMPANY'S GOVERNANCE

<b>Shareholding</b>	<ul style="list-style-type: none"> <li>• Investor: [insert numerical percentage shareholding]% ([insert alphabetical percentage shareholding] percent);</li> <li>• [insert name of other shareholders]: [insert numerical percentage shareholding]% ([insert alphabetical percentage shareholding] percent); and</li> <li>• [insert name of other shareholders]: [insert numerical percentage shareholding]% ([insert alphabetical percentage shareholding] percent).</li> </ul>
<b>Business</b>	<p>The business of the Company shall be as allowed under the Company's Memorandum of Incorporation and shall consist mainly of the provision of [insert service offering of Company] across the Republic of South Africa (RSA).</p> <p>The Company shall not engage in any other activities not related to the Business unless approved by 75% of the shareholders.</p>

<p><b>Role of Investor</b></p>	<p>The Investor shall act as an indirect [international] shareholder of the Company through its shareholding in the Company, with the Investor providing financial and operational expertise in the day-to-day operations and management of the Company. The Investor shall procure that its representatives on the board of directors of the Company ("<b>Board</b>") fulfil, <i>inter alia</i>, the following:</p> <ul style="list-style-type: none"> <li>• Measure and report on the social and environmental performance and progress of the Company, ensuring transparency and accountability;</li> <li>• Bring international best practices, training and management expertise to the Company to enable it to carry out its Business in the best way possible; and</li> <li>• Support the Company in developing project design and business plans for the provision of its [<i>insert service offering of Company</i>] services, taking into consideration, without limitation, traffic development, revenue, operational costs, and financing costs.</li> </ul>
<p><b>Role of Other Shareholders</b></p>	<p>The other shareholders shall act as local shareholders of the Company. They shall procure, to the extent that such shareholders are permitted to appoint representatives to the Board, that their representative/s on the Board fulfil, <i>inter alia</i>, the following:</p> <ul style="list-style-type: none"> <li>• Build and maintain good relationships with the South African authorities and contact network to the mutual benefit of the Parties and the Company, including with financial institutions for the purposes of arranging financing (if and when needed);</li> <li>• Endeavour to introduce the Investor and its representatives to the relevant official authorities, including regulatory authorities, in the RSA;</li> <li>• Support the Company with local licensing, government liaison, regulatory issues and local human resources; and</li> <li>• Support the Company to ensure it meets the Broad-Based Black Economic Empowerment ("<b>B-BBEE</b>") Act requirements of a level 1 rated entity.</li> </ul>
<p><b>Role of Management</b></p>	<p>Without prejudice to the Management's obligations under their respective employment agreements, Management shall procure that its representatives on the Board fulfil, <i>inter alia</i>, the following:</p> <ul style="list-style-type: none"> <li>• Put at the disposal of the Company its years of experience in [<i>insert service offering of Company</i>];</li> <li>• Connect the Company to its well-established and sound stakeholder relations;</li> <li>• Provide its understanding of the South African [<i>insert sector in which Company operates</i>] market;</li> <li>• Ensure that the Company retains its existing customer base and strong relationships which had been established over time;</li> <li>• Maintain a conducive industrial relations climate in a highly unionised environment;</li> <li>• Facilitate the Company's participation in different local [<i>insert sector in which the Company operates</i>] forums.</li> <li>• Support the Company to ensure it meets the B-BBEE requirement of a level [<i>Insert required B-BBEE level</i>] rated entity; and</li> <li>• Provide additional services and support as required to ensure the Company's business and local presence is continuous, sustainable, impactful, inclusive and profitable.</li> </ul> <p>Nothing in this Section shall restrict or be construed to limit the employment terms of the current executive management, which are governed under a separate agreement.</p>

<b>Mutual Contributions of the Parties</b>	Each Party shall (i) bring its know-how in relation to the services offered by the Company and (ii) provide sufficient local and international staff suitably trained and experienced for the purpose of providing the best possible services for the beneficiaries thereof.
<b>Board</b>	<p>The Company shall be governed by a board of directors (the “<b>Board of Directors</b>”) consisting of [insert number of directors] directors (the “<b>Directors</b>”):</p> <ul style="list-style-type: none"> <li>• [insert number of directors] Directors nominated by the Investor (“<b>Investor Directors</b>”),</li> <li>• [insert number of directors] Directors nominated by [insert name of appointing shareholder/s] (“[Insert name of other investor/s] <b>Directors</b>”);</li> <li>• [insert number of directors] Directors nominated by Management (“<b>Management Directors</b>”);</li> </ul> <p>The chairperson of the Board shall be appointed from the Investor Directors at all times and shall have a casting vote.</p> <p>Each Party shall have the authority to appoint or remove any director nominated by it by providing 30 (thirty) days’ notice in writing to the other Parties. The Parties hereby acknowledge and agree that, on such a change being made, the Parties shall procure that the Company takes all required steps to give effect to such change.</p> <p>Each Party undertakes to take all such steps and do all such things or procure the taking of all such steps and the doing of all such things as may be necessary to effect the appointment of the Investor Directors, the [Insert name of other investor/s] Directors and the Management Directors as soon as reasonably practicable after the Closing Date, provided that no person shall be appointed as a Director if she/he is ineligible and/or disqualified in terms of Section 69(7) and (8) of the Companies Act read with Regulation 39(3) of the Companies Act.</p> <p>To the extent that any Party fails to take any such steps or do any such things as aforementioned, each Party hereby unconditionally and irrevocably nominates any other Party as its attorney and agent <i>in rem suam</i> to take such steps and/or do such things as aforesaid.</p>
<b>Board Role</b>	The Board shall, subject to the Companies Act No. 71 of 2008 (as amended) (“ <b>Companies Act</b> ”), the provisions of this Term Sheet and the Shareholders’ Agreement (“ <b>SHA</b> ”) to be concluded, determine the general policy and strategic development of the Company and the manner in which the Business should be implemented.
<b>Executive Management</b>	The Board will maintain the post of the current executive management, subject to the terms of their employment agreements consisting specifically of a chief executive officer ([insert name of current CEO]) assisted by a chief financial officer ([insert name of current CFO]) and an operations/commercial executive ([insert name of current COO]). The existing management will act under the supervision of the Board and will provide the services as stipulated in their employment agreement, provided such services are in alignment with the Management Agreement.

<p><b>Current Management/ Future Appointments</b></p>	<p>The Parties agree to maintain the existing management team of the Company in place under the same terms and conditions of their engagement, until and unless the Board resolves otherwise.</p> <p>Any change to the management team shall require the following approval process before it is approved by the Board: (i) CEO – will require Investor pre-approval, (ii) commercial director – will be selected by the Investor, and (iii) CFO – the Investor will suggest up to three (3) candidates for the role. From the shortlist of candidates recommended by the Investor, the other shareholders must approve a candidate (approval not to be unreasonably withheld), provided that the shortlisting of the candidates will not hinder the Company's interest <i>vis-a-vis</i> B-BBEE compliance.</p>
<p><b>Removal of the Executive Management team</b></p>	<p>The Board shall always have the authority to replace the general manager / CEO and/or the finance manager and/or other key positions of the Company in accordance with the terms of this Term Sheet and the applicable laws. It is recorded, for the avoidance of doubt, that any removal of persons in such key positions shall be subject to the provisions of the (i) Labour Relations Act No. 66 of 1995 (as amended); and, (ii) to the extent that such person is also a Director, the Companies Act.</p>
<p><b>Board Meetings</b></p>	<ul style="list-style-type: none"> <li>• All actions of the Board shall require the majority of the votes cast by the Directors present at a duly convened meeting at which a quorum is present.</li> <li>• Each director shall have one vote.</li> <li>• The quorum for a duly convened meeting of the Board shall consist of a majority of the directors in office to be present at a director's meeting before a vote may be called at such meeting. If a quorum is not present at any meeting of the Board within one hour (save where a director has communicated a delay and later attendance), the meeting shall be adjourned to one week hence and the persons at such adjourned meeting shall constitute a deemed quorum.</li> <li>• No meeting of the Board may commence and no business may be conducted until the meeting has a quorum.</li> <li>• Meetings of the Board shall be held at the appropriate place or by such method as the Directors may agree (including by telephone, video conferencing or audio/visual communication).</li> <li>• Meeting outside the RSA and by video conference shall be allowed subject to applicable laws.</li> <li>• The Directors can attend in person or may be represented by their alternate director, if any.</li> </ul>

<p><b>Reserved Matters</b></p>	<p>No action or decision with respect to the following matters shall be valid unless approved by the affirmative vote of Shareholders representing more than 75% of the Company:</p> <ul style="list-style-type: none"> <li>• Any merger, amalgamation, consolidation or reorganisation of the Company;</li> <li>• Any material changes in the nature or scope of the Company’s Business;</li> <li>• The Company’s dissolution, liquidation or winding-up, or the commencement of a voluntary proceeding seeking reorganisation or other similar relief;</li> <li>• Any transaction between the Company, on the one hand, and any of its affiliates or any affiliates of the Shareholders, on the other hand, except for [<i>insert carveouts, such as management agreements</i>] (“<b>Excluded Agreements</b>”);</li> <li>• The issue of new shares in the Company subject to the provisions under the Funding Section;</li> <li>• Any matter relating to external borrowings of the Company that would have the effect of directly or indirectly reducing the proportionate shareholding of any Shareholder;</li> <li>• The issue of guarantees, suretyships, or other similar undertakings (other than to secure trade debt in the ordinary course of business);</li> <li>• The increase or decrease in the number of authorised shares of any class of the Company’s shares (subject to the provisions under the Funding Section);</li> <li>• The entering into any employment contracts involving the payment of any persons or companies in excess of [ZAR x] per annum for any such contract and in excess of the Budget by more than 10%;</li> <li>• The establishment and implementation of, or any change in, the Company’s financial policy, including, but not limited to, dividend declarations;</li> <li>• Any establishment, termination of or amendment to the Company’s retirement or medical aid funding;</li> <li>• The entering into by the Company of any contract with any employee of the Company that is based on or which provides for participation in its profits or dividends;</li> <li>• The Company to make any material acquisition or purchase of any business, share or other investment, excluding the purchase of assets as required for the day-to-day operation of the business, the price of which exceeds [ZAR x] to enter into a lease agreement in respect of such asset, and in excess of the Budget by more than 10%; and</li> <li>• The encumbering of any assets of the Company in any manner whatsoever, including, but not limited to, by way of mortgage bonds, notarial bonds, pledges, lien etc., unless such encumbrance is in respect of the Company obtaining third-party funding.</li> </ul>
<p><b>Politically Exposed Person (PEP)</b></p>	<p>Under no circumstance shall any definitively convicted person or PEP (as defined below) be entitled to act as a Director, manager or executive of the Company or occupy or assume a key executive position or be otherwise involved in or assigned to in any way the management of the Company.</p> <p>“<b>PEP</b>” means any government official or candidate for public office in South Africa, including all political candidates, political parties, employees and directors of a government entity and any person acting in an official capacity on behalf of a government entity as well as his/her family members and close associates.</p>

## FINANCIAL PROVISIONS

<p><b>Profits</b></p>	<p>Subject to Section 46 of the Companies Act, the distributable profits of the Company shall be assumed or distributed between the Parties on a <i>pro rata</i> basis according to their percentage of ownership therein.</p> <p>The Company may pay a bonus to the existing management in accordance with the Company's bonus scheme.</p>
<p><b>Funding</b></p>	<p>In the event the Board determines that the Company requires additional capital in connection with capital expenditure projects, repayment of indebtedness or otherwise, funding shall first be made from the Company's own resources and cash flow.</p> <p>If the Company does not have enough resources to cover the required funding, then the funding of the Company shall be made <i>pro rata</i> between the Parties in accordance with their shareholding in the Company and shall be procured through regular corporate channels in accordance with the applicable laws, including via shareholders' loans (<i>prorated</i>) and/or third-party financing (within reasonable interest rates) and/or capital increase of the Company, subject to the following order:</p> <ul style="list-style-type: none"> <li>• The Company shall first attempt to procure funding through external third-party financing at reasonable market rates to be approved by the Board.</li> <li>• In case third-party financing is unavailable, the Company shall procure funding via shareholders' loans, which the shareholders shall be entitled to but not obliged to provide. The Board shall notify Shareholders of such funding requirements via a contribution notice. If, after 30 (thirty) days from receipt of a call for contribution notice, any Shareholder fails or elects not to contribute all or any portion of the needed amount, the other Shareholders shall be entitled to contribute additional amounts, at their sole discretion.</li> <li>• In the case a Shareholder advances excess funds on behalf of another Shareholder, at its discretion under the foregoing section, then the excess shareholder's loan ("Excess Loans") shall be subject to the following terms: (i) the Excess Loans shall accrue interest at [insert percentage rate] and (ii) the Excess Loans shall be repaid before any other shareholder's loans are repaid. In such event, the Excess Loans cannot be converted into new capital in the Company and the contributing party of the Excess Loan cannot call for a capital increase to raise the needed financing within a period of three (3) months. A party that elected not to, or failed to, advance funding to the Company in terms of a contribution notice will be entitled to advance funds to the Company before the expiry of such a three-month period to enable the Company to repay the Excess Loan or part thereof.</li> <li>• As a last resort, the Parties will recourse to capital increase to raise the required funding in case the aforementioned funding channels are not available or if their interest rates are exorbitant. In case funding is made through a capital increase and a shareholder does not participate <i>pro rata</i> to its shareholding in the Company, then the non-contributing shareholders confirm to be diluted and to revisit their guaranteed rights under the SHA commensurate to their shareholding's interest in the Company.</li> </ul> <p>The SHA shall include funding guarantee provisions that periodically secure each Party's financing commitments in the Company <i>pro rata</i> to their existing shareholding in order to ensure the Company's financing is not paralysed.</p>

<b>Business Plan</b>	<p>Within 90 (ninety) days of the Closing Date, the general manager/CEO shall submit to the Board for approval a business plan (“<b>Business Plan</b>”) for a duration of 3 (three) years, said business plan shall be updated annually and approved by the Shareholders.</p> <p>The Business Plan shall include, in reasonable detail:</p> <ul style="list-style-type: none"> <li>• The developmental, operational and management strategy for the Company;</li> <li>• The performance targets for the Company for the period of the plan; and</li> <li>• The financing or equity projections for the Company.</li> </ul>
<b>Budget</b>	<p>Each year, the CEO shall submit to the Board for approval an annual budget for the Company for the following year (“<b>Budget</b>”) consistent with the approved Business Plan. The Budget shall include as a minimum:</p> <ul style="list-style-type: none"> <li>• A description of the work to be performed during the following year;</li> <li>• An estimated timetable for performing such work;</li> <li>• An itemised estimate of the expenses to be incurred in performing the proposed annual budget; and</li> <li>• An estimated time schedule for the incurring of such expenses.</li> </ul> <p>The Budget shall be decided by majority Board approval.</p>
<b>Information Rights</b>	<p>Proper books of account shall be kept, and such books shall always be available for inspection by each Party.</p>

## OTHER TERMS

<b>B-BBEE [if applicable]</b>	<p>The Parties shall always ensure that the Business is carried out in a manner that gives high preference to, and is in compliance with, the B-BBEE (as amended), the Codes of Good Practice on B-BBEE (as amended) and any sector specific empowerment legislation that the Company is obliged to comply with by virtue of its service offering. Moreover, the Board shall procure the audit of the Company by a registered B-BBEE agent and maintain all related B-BBEE certificates.</p> <p>In particular, the Parties shall implement a clear framework for:</p> <ul style="list-style-type: none"> <li>• A preferential procurement policy;</li> <li>• Enterprise development (Small, Medium and Micro Enterprise (SMME) development, subcontractors)</li> <li>• Skills transfer and skills development programmes for senior management (collectively, the “<b>B-BBEE Policies</b>”).</li> </ul>
-------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p><b>Right of First Refusal</b></p>	<ul style="list-style-type: none"> <li>• In the event that any of the Shareholders proposes to sell the shares they hold in the Company to third parties, the other Shareholders shall have a pre-emptive right to purchase such shares on substantially the same terms as the proposed sale in proportion to their shareholding.</li> <li>• Where the remaining Shareholders elect not to follow their pre-emptive right to purchase the shares that are the subject matter of the pre-emption rights, the consummation of the sale by the concerned Shareholder(s) of its shares to the third party shall be subject to the consent of the Directors of the company, which may not be unreasonably withheld if the third party fulfils the sale requirements, namely the B-BBEE, regulatory, know-your-customer, anti-money laundering and liquidity requirements.</li> <li>• Transfers in favour of any related or interrelated person (as defined in the Companies Act) of the Shareholders are not subject to any restrictions or conditions, save that they shall be required to provide written notice of such transfer to the other Shareholders before the transfer may be implemented.</li> </ul> <p>Further, should such related or inter-related person at any time in the future no longer qualify as a related or inter-related person to the transferring Shareholder, such transferring Shareholder shall procure that such shares as held by such related or inter-related person are transferred back to the transferring Shareholder and such transferring Shareholder indemnifies and holds harmless the other Parties for any loss that may be sustained as a result of such transfer (excluding any consequential or indirect loss).</p>
<p><b>Tag-along and Drag-along Provisions</b></p>	<p>Standard drag-along and tag-along rights apply in the event of a sale of shares in the Company of [<i>insert percentage triggering tag-along and drag-along provisions</i>]% or more.</p>
<p><b>Deemed Offer</b></p>	<p>The standard deemed offer to the other shareholders in the event of a shareholder's insolvency shall be at fair value, except in material breach circumstances, when it shall be 80% of fair value.</p>
<p><b>Confidentiality</b></p>	<p>Until the earliest of the expiry of a period of 2 (two) years as of the Signature Date of this Term Sheet or the execution of the SHA containing a confidentiality clause, each Party agrees to (i) hold any proprietary information and documentation furnished or made available by one Party to the other Party/ies under this Term Sheet, as well as the existence of this Term Sheet itself, in strict confidence, (ii) not disclose, without the approval of the other Party/ies any such confidential information to any third party, and (iii) not use such confidential information except as expressly permitted herein. The foregoing provisions will not apply to information that is:</p> <ul style="list-style-type: none"> <li>• Publicly known or becomes publicly known through no unauthorised act of the recipient Party;</li> <li>• Rightfully received by the recipient Party from a third party; and/or</li> <li>• Required to be disclosed pursuant to a requirement of a government agency or any applicable law, so long as the Party is required to release the information and provides the disclosing Party with prior notice of such disclosure (save where such Party is prohibited from doing so by any applicable law).</li> </ul>

<b>Non-Compete</b>	Each Shareholder agrees that, so long as it is a Shareholder, it shall not engage in or assist any business entity in the RSA that is engaged in any activities that directly compete with the Business of the Company in the RSA. Each Shareholder undertakes that it will not, whether directly or indirectly and whether alone or in conjunction with or on behalf of any other person, (i) induce or attempt to induce any person to cease to deal with or restrict or vary the terms of how it deals with the other shareholder(s) or the Company; (ii) do or say anything that is harmful to the reputation of the other shareholders or the Company, and (iii) attempt or knowingly assist or procure any person to do any of the foregoing.
<b>Representations and Warranties</b>	Standard representations and warranties for a transaction of this nature will be applied, including, <i>inter alia</i> , authority of shareholders, compliance with applicable laws, and compliance with antibribery, anti-corruption and anti-money laundering regulations.
<b>Extent of Legal Obligation</b>	Save (i) as contemplated below and (ii) for the provisions relating to Confidentiality, Costs and Expenses, Assignment, Applicable Law and Dispute Resolution, which shall be binding on the Parties with effect from the Signature Date, the provisions of this Term Sheet shall not be binding on any Party.
<b>Costs and Expenses</b>	Each Party shall pay its own expenses, including fees of professional advisers and/or representatives in connection with the transaction contemplated herein.
<b>Assignment</b>	No Party shall be entitled to cede its rights or delegate its obligations under this Term Sheet without the prior written consent of the other Parties, save for the Investor, which shall be entitled to cede its rights and delegate its obligations under this Term Sheet to any related or inter-related person (as defined in the Companies Act) on written notice to the other Parties.
<b>Prevailing Terms</b>	In the event that there arises any conflict or ambiguity between the provisions of the SHA and the memorandum of incorporation of the Company, the provisions of the SHA shall prevail, and the Shareholders shall, to the extent permitted by the applicable laws, exercise all voting and other rights and powers available to them so as to give effect to the provisions of the SHA and shall further procure any required amendment to the Company's memorandum and/or articles of association as may be necessary in order to reflect the provisions of the SHA.
<b>Applicable Law and Dispute Resolution</b>	This Term Sheet shall be governed by and interpreted in accordance with the laws of the RSA. All disputes arising out of or in connection with this Term Sheet shall be finally settled under the Rules of Arbitration of the Arbitration Foundation of Southern Africa (" <b>AFSA</b> ") by a single arbitrator appointed by agreement between the Parties, failing which by the Chairperson of AFSA. The seat of arbitration shall be South Africa, and the language of the proceedings shall be English. The proceedings shall remain confidential. Any Party may seek interim measures (including injunctive relief) from any court with competent jurisdiction in relation to the provisions of this Term Sheet.

**Signed for on behalf of**  
**[insert name of Investor/s]**

**Signed for on behalf of**  
**[insert name of Shareholder/s]**

Name: .....

Name: .....

Title: .....

Title: .....

Date: .....

Date: .....

**Signed for on behalf of the**  
**[insert name of Company if party to Term Sheet]**

Name: .....

Title: .....

Date: .....

## **HELPFUL RESOURCES**

[Business Partners International](#) – a case study where capacity-building to enhance business performance and address weaknesses was the preferred success model over monetary investment

[B-BBEE Code of Good Practice](#) – a collection of sector codes gazetted under the B-BBEE Act and B-BBEE Codes of Good Practice

[B-BBEE Sector Codes](#) – an exposition of the various Sector Charters promulgated under the B-BBEE Act

[Catalytic First-Loss Capital by GIIN](#) – a document explaining catalytic first-loss capital, a form of blended finance

[Impact Toolkit by GIIN](#) – a digital database designed to help investors identify resources across the web that are relevant to their impact measurement and management needs

[IRIS+ by GIIN](#) – IRIS metrics support basic investor activities such as due diligence and portfolio management

[Land Bank's Blended Finance Scheme](#) – a blended finance initiative implemented by Land Bank and the Department of Agriculture, Land Reform and Rural Development aiming to address the financing needs of the agricultural sector



[LeapFrog Investments](#) – a case study where private equity financing is used to promote access to critical financial and health services while obtaining board representation on the target company

[Medical Credit Fund](#) – a case study where debt and donor funding are used to build capacity in private health clinics and pharmacies across Sub-Saharan Africa

[Performance-Based Grant Systems by UNICEF](#) – a case study of performance-based grant systems implemented around the world

[Phatisa: Gender Lens Investing Initiative](#) – a case study where equity financing is used to promote gender quality in the workplace across Sub-Saharan Africa in line with Sustainable Development Goals 1, 2, 5 and 11

[Tax and Non-Residents Information by South African Revenue Service](#) – for rules applicable to the taxation of non-residents in South Africa

[The Navigating Impact Project by GIIN](#) – this online resource provides a simple means to align impact goals and expectations to credible, evidence-backed investment strategies



**ASPEN NETWORK  
OF DEVELOPMENT  
ENTREPRENEURS**

 **aspen institute**

**For more information, please contact:**

**SangEun Kim**

Research Manager, ANDE  
[sangeun.kim@aspeninstitute.org](mailto:sangeun.kim@aspeninstitute.org)