

The logo for Davy, consisting of the word "DAVY" in white capital letters inside a red square.The logo for BDO, consisting of the letters "BDO" in blue capital letters with a red horizontal line underneath.The background features a light grey grid pattern. Overlaid on this are several large, semi-transparent images: a grey line graph showing an upward trend, and several Euro banknotes (including a 100 Euro note) arranged to form an upward-pointing arrow shape.

# The 2018 Davy EIS Fund

WANT TO ACHIEVE UP TO 40%\* INCOME TAX RELIEF?

**7 December 2018**

Managed by BES Management DAC, established in 1995, which is a joint venture company owned by Davy & BDO. BES Management DAC is regulated by the Central Bank of Ireland.

*\* An Investment in this Fund offers Qualifying Investors paying income tax at the higher rate, income tax relief of up to 40% in two tranches.*

[www.bes.ie](http://www.bes.ie)



## WHAT IS THE EMPLOYMENT AND INVESTMENT INCENTIVE SCHEME?

The Employment and Investment Incentive Scheme (“**EII Scheme**”) is a **tax relief incentive scheme**, (previously the Business Expansion Scheme (“**BES**”)) which provides all-income tax relief to Qualifying Investors for Investments in certain qualifying small and medium sized trading companies (“**SMEs**”)\*.

The EII Scheme offers **one of the few remaining income tax reliefs** and is one of the few sources of total income tax relief (which includes, for example, rental income).

\*Exceptions apply. For more information, please refer to the section headed “Relevant Trading Activities” on page 31.

## PROPOSED CHANGES TO THE EII SCHEME LEGISLATION

The Finance Bill 2018 (“**Finance Bill**”) published on 18 October 2018 proposed a number of changes to the EII Scheme. However, these changes are subject to Dáil and Seanad approval prior to being signed into law by the President.

The Prospectus has been prepared on the assumption that the Finance Bill is enacted as currently drafted and reflects the Managers interpretation of the proposed changes. It should be noted that some or all of the proposed changes may not be enacted. A summary of the existing EII Scheme legislation is included in Appendix VI for your information.

The Fund will operate under the existing EII Scheme legislation until such time as the Finance Bill is enacted, following which the Fund will operate under the proposed EII Scheme.

## THE 2018 DAVY EIIS FUND (THE “FUND”)

The 2018 Davy EIIS Fund will be managed by BES Management DAC which is a joint venture between BDO and J&E Davy and is Ireland’s longest running BES/EII Scheme manager.

Key characteristics of BES Management DAC:

- Successfully raised seven EII Scheme Funds over the past seven years;
- Previously raised 19 BES Funds over the past 23 years;
- Raised over €175 million which is invested in over 169 Irish companies; and
- Funds are managed by a professional and experienced management team.

## INVESTMENT STRATEGY

The primary objective of the Fund is to provide Investors with the opportunity to invest in selected SME’s and so benefit from the income tax provisions of the EII Scheme.

An investment in the Fund should be considered a high risk investment given the nature of the Investee Companies and the fact that they may be early stage companies.

The average investment level of the first six EII Scheme Funds raised by the Manager was c. €887,000. It is envisaged that the Fund will invest in between 3 and 12 Investee Companies and that the average investment level may be higher than previous Davy EII Scheme Funds, reflecting the requirements of the early stage companies.

For further information, please refer to the section headed “Investment Strategy” on page 15.

## TIMING OF RELIEF

One of the proposed changes introduced by the Finance Bill is that the EII Scheme will operate on a self-certification basis.

Investee Companies and previous Davy EIIS Funds have recently experienced significant delays obtaining outline approvals pre-investment and tax relief certificates post investment from Revenue. This has resulted in delays in issuing tax relief certificates to Investors to facilitate them claiming the tax relief.

It is envisaged that self-certification will address these delays. However, Revenue confirmation may still be required in certain circumstances and as the proposed changes have not yet become operational the impact of self-certification is unknown.

In addition, the proposed changes in the Finance Bill include the introduction of new conditions which must be fulfilled by the Investee Companies in order for Investors to obtain the tax relief. These changes may impact the availability and/or timing of the tax relief available to Investors.

For further information, please refer to section headed "Income Tax Relief" on page 26.

## BENEFITS OF INVESTING IN THE 2018 DAVY EIIS FUND

1. Opportunity for Qualifying Investors to avail of **one of the few remaining all-income tax reliefs** currently offering up to 40%\*\* income tax relief\*\*\* (subject to certain qualifying conditions).
2. Opportunity for Qualifying Investors to invest in indigenous Irish companies with **future growth potential**; and
3. Avail of a **professional, experienced and knowledgeable** investment team.

\*\* Being the current higher rate of income tax and assuming the continuation thereof.

\*\*\* Terms and conditions apply. Income tax relief on an Investment in the Fund may be available to Investors in two tranches. Please refer to the section headed "Income Tax Relief" on page 26 for detailed information relating to claiming the income tax relief. Depending on the availability of Managers Certificates, Investors can avail of the first tranche of tax relief by deducting 30/40ths of the Investment amount subscribed to the Fund from their total income for income tax purposes for either the tax year of subscription ending on 31 December 2018, or if so desired for the tax year of Investment by the Fund ending 31 December 2019 subject to certain conditions being fulfilled by the Investee Companies as further detailed in the section headed "The Relief" on page 27 depending on the availability of Managers Certificates. Investors can avail of the second tranche of tax relief by deducting 10/40ths of the Investment amount subscribed to the Fund from their total income for the year of assessment following the year of assessment in which the Subsequent Period ends (means the period beginning on the date on which the Eligible Shares were issued and ending three years after that date), subject to conditions in relation to employment levels or expenditure on Research & Development and Innovation being fulfilled by the Investee Companies in which the Fund has invested. If the Investee Companies fail to meet the relevant conditions you will not be able to claim the income tax relief. You should consult your tax advisor about the tax relief rules which may apply in your circumstances. This Investment may not be suitable for all Investors. For more information on the tax relief, please refer to section headed "The Relief" on page 27.

## RISKS OF INVESTING IN THE 2018 DAVY EIIS FUND

1. This is a medium to long-term Investment (at least four years from the date of Investment by the Fund) and there is no early exit mechanism.
2. If you invest in this Fund you may lose some or all of the money you invest.
3. There is no guarantee that the Fund will achieve its Investment objectives or primary objective.
4. Investors are exposed to the performance of the small and medium sized companies in which the Fund will invest. The Fund will invest in companies which by their nature are high risk.
5. The availability of the income tax relief on the Investment amount is based on our understanding of current tax legislation and the current Revenue Commissioners' interpretation thereof. Legislation and Revenue Commissioners interpretation is subject to change including retrospectively without notice.
6. Income tax relief which is available in two tranches may not be granted or may be withdrawn where already claimed, in part or in full, if the conditions of the legislation are not satisfied by the Fund and/or Investee Companies, including:
  - i. The Manager may not succeed in finding suitable companies and/or fully investing the Fund which may result in a return of uninvested funds and a consequent reduction or recovery of the income tax relief already claimed or potentially available to Investors.
  - ii. Statements of Qualification for the first tranche of income tax relief of 30/40ths or the second tranche of income tax relief of 10/40ths may not be issued by Investee Companies if the conditions as set out in the section Income Tax Relief on page 27 are not fulfilled. In such circumstances the Manager cannot issue a Managers Certificate and income tax relief will not be available to the Investors, or if already claimed may be required to be refunded to Revenue by the Investor.
  - iii. If any of the companies in which the Fund invests fail to spend 30% of the amount raised on a Qualifying Purpose within two years from the issue of Eligible Shares, the Investee Company cannot issue a Statement of Qualification; in such circumstances, the Manager cannot issue a Managers Certificate and the first tranche of income tax relief on 30/40th of the Investment will not be available to the Investor.
  - iv. If any of the companies in which the Fund invests fail to meet the employment numbers and emoluments or Research & Development and innovation expenditure criteria specified in the legislation, they cannot issue a Statement of Qualification (second stage relief). In such circumstances the Manager cannot issue a Managers Certificate and the second tranche of income tax relief of 10/40ths of the Investment will not be available to the Investor.
7. Income tax relief which is available in two tranches may not be granted or may be withdrawn where already claimed, in part or in full, if the conditions of the legislation are not satisfied by the Fund and/or Qualifying Investors, including:
  - i. You may not have sufficient income taxable at the higher rate so that part or all of the first tranche of income tax relief on 30/40ths of the Investment amount, if obtained, could be obtained at a lower rate than 40%, the current higher rate of income tax.
  - ii. The higher rate of income tax could reduce from its current 40% rate so that the second tranche of income tax relief of up to 10/40ths of the Investment amount if obtained in the year of assessment following the year of assessment in which the Subsequent Period ends, could be obtained at a lower rate than the current 40% rate.
  - iii. The second tranche of income tax relief of up to 10/40ths of the Investment amount, if obtained, could be obtained at a lower rate than the higher rate then applying.
  - iv. No income tax relief will apply to the second tranche of income tax relief of up to 10/40ths of the Investment amount in the year of assessment following the year of assessment in which the Subsequent Period ends if you have no taxable income at that time.
  - v. You may lose part or all of the income tax relief you obtain on the Investment amount if you receive value from any of the companies in which the Fund invests within a period of two years before and ending four years after the Fund invests in the company (as detailed in the section "Withdrawal of Relief – Investor" on page 32).

8. The proposed EII Scheme will operate on a self-certification basis which will require Qualifying Companies to self-certify and issue Statements of Qualification. The Investee Company will bear the risk of the Relief not being granted or withdrawn as a result of incorrect self-certification and circumstances detailed in the section “Withdrawal of Relief – Investee Company” on page 32. However, in these circumstances, the Investor may bear the risk of the commercial impact of a withdrawal of Relief from the Investee Company and hence may impact the value of the Investment.

## FUNDRAISING FEE

A once-off fundraising fee of 3% of the Investment amount will be payable by Investors to the Manager of the Fund, at the time of Investment, in addition to the Investment amount. This fee does not qualify for income tax relief.

## WHO MIGHT THIS INVESTMENT BE SUITABLE FOR?

Prospective investors should determine the suitability of the Investment based on an assessment of their own personal circumstances, attitude to and capacity for Investment risk, need for income and access to funds. The Investment may be suitable for Investors who:

- do not need access to their Investment for the term of the Investment, which will be at least four years from the date the Fund makes its Investments;
- do not need an income from their Investment for the term of the Investment;
- are confident that they have sufficient taxable income to be able to avail of income tax relief at the higher rate on the full Investment amount, within the relevant limits and restrictions;
- are aware they could, in certain circumstances, lose some or all of their Investment, even after income tax relief; and
- can afford to lose some or all of their Investment in return for seeking a higher rate of return than currently available on low risk Investments for a similar period.

**The information contained in this document is based on our understanding of current tax legislation and the current Revenue Commissioners’ interpretation thereof and is subject to change including retrospectively without notice. This Memorandum is intended as a general guide only and is not a substitute for individual tax or Investment advice. Potential Investors should seek competent professional advice specific to their circumstances prior to investing. Investors are responsible for establishing their entitlement to participate in this investment and for making their own income tax relief claims**

**WARNING: If you invest in this Fund you may lose some or all of the money you invest.**

**The value of your Investment may go down as well as up.**

**If you invest in this Fund you will not be able to cash in your Investment and you will not have access to your money for at least four years from the date the Fund makes its Investments.**

## MEMORANDUM: THE 2018 DAVY EIIS FUND (THE “FUND”) 7 DECEMBER 2018

Before subscribing to this Fund, Investors should consult their bank manager, investment firm or intermediary, solicitor, accountant or other professional adviser authorised or exempted under S.I. No. 375 of 2017 of European Communities (Markets in Financial Instruments) Regulations 2017 or the Investment Intermediaries Act 1995, having regard to the special risks involved, their own attitude to and capacity for Investment risk, their own financial circumstances, need for access to funds, need for income, their tax position and make their own commercial assessment on the proposal contained in this Memorandum (“the Memorandum”). Your attention is drawn especially to pages 15 and 21 with regard to the Fund’s Investment Strategies and Risk Factors respectively.

It is envisaged that the Fund will invest across a range of companies. The Employment and Investment Incentive Scheme (“EII Scheme”) is available to small and medium sized trading companies (“SMEs”) which comply with the EIIS legislation, the profits or gains of which are charged to tax under Case I of Schedule D, excluding activities as detailed herein on page 31 under Relevant Trading Activities.

Details of the requirements which Qualifying Companies must comply with are detailed herein under the “Summary of the Employment and Investment Incentive Scheme Legislation” section on page 27. Applications to participate in the Fund must, pursuant to Section 4 of the Designated Investment Funds Act 1985, be made on the terms of this Memorandum and on the Application Form contained in **Appendix III** herein.

Applications must reach BES Management DAC, c/o J&E Davy trading as Davy (“Davy”), no later than 31 December 2018 (the “Closing Date”). Applications shall be accepted in order of receipt up to a permitted maximum Fund balance of €15,000,000, but BES Management DAC, (the “Manager”) reserves the right to close the application list at any time and at any balance before 31 December 2018. In the event of over-subscription, or if the Manager in its sole discretion decides, all Subscription monies, (as defined in the Trust Deed), received after the sum of €15,000,000 has been raised shall be returned in full.

The procedure for and conditions of application are described on page 24 of this Memorandum.

**The Fund has been designated an “Investment Fund” by the Revenue Commissioners for the purposes of Part 16 of the TCA. The Revenue Commissioners have asked that it be pointed out that their designation is relevant only for the limited purposes in the EIIS Legislation (which deals with the approval of Investment funds under the scheme of Relief for Investment in Corporate Trades), and that such designation in no way attests to the commercial viability of the Investments to be made and neither does such designation guarantee the availability, amount or timing of relief from income tax.**

This Memorandum constitutes a prospectus within the meaning of Section 1 of the Designated Investment Funds Act 1985. The provisions of Part 16 of the Taxes Consolidation Act 1997, (as amended) (“TCA”) shall apply to this Fund.

The Minister, in giving the approval for this Memorandum, has required that the following matters be brought prominently to the attention of Investors:

1. The proper management of the Fund is the sole responsibility of the Manager and no liability whatsoever shall attach to the Minister.
2. No right to relief from income tax shall arise by reason only of the Minister having approved this document.

BES Management DAC is regulated by the Central Bank of Ireland.

**The information contained in this Memorandum is based on our understanding of current tax legislation and the current Revenue Commissioners’ interpretation thereof and is subject to change including retrospectively without notice. This Memorandum is intended as a general guide only and is not a substitute for individual tax or Investment advice. Potential Investors should seek competent professional advice specific to their circumstances prior to investing. Investors are responsible for establishing their entitlement to participate in this Investment and for making their own income tax relief claims.**

## DEFINITIONS

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|---|--|
| <b>“AML Legislation”</b>  | Means the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 as amended by the Criminal Justice Act 2013, the Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Act 2018 and the Criminal Justice (Terrorist Offences) Act 2005. |
| <b>“Closing Date”</b>   | 31 December 2018 or such other date as the “Manager” in its absolute discretion, pursuant to the terms of this Memorandum may determine.   |
| <b>“Compliance Period”</b>  | Means the period beginning two years before the “Eligible Shares” are issued, (or if later, beginning on the date the first company in the “RICT Group” was incorporated and ending immediately before the subscription for Eligible Shares) and the “Relevant Period”   |
| <b>“Eligible Shares”</b>  | “Eligible Shares” which the Fund may acquire in a Qualifying Company as defined in the “EII Scheme” legislation.   |
| <b>“Employment and Investment Incentive Scheme” or “EII Scheme” or “EII Scheme Legislation”</b> | The Scheme of Relief for Investment in Corporate Trades as provided for in Part 16 of the Taxes Consolidation Act 1997, as amended together with the proposed changes in the Finance Bill 2018, which have yet to be enacted.  |
| <b>“Fund”</b>   | The 2018 Davy EIIS Fund.   |
| <b>“Investee Company”</b>   | An unquoted company which is a “Qualifying Company” as defined in the EII Scheme legislation, in which the “Fund” acquires “Eligible Shares” and “Investee Companies” shall be construed accordingly.  |
| <b>“Investment”</b>   | Investment amount subscribed to the “Fund” for investment in “Eligible Shares” in a “Qualifying Company”.  |
| <b>“Investor” or “EII Scheme Investor”</b>  | An individual who subscribes to the Fund and “Investors” or “EII Scheme Investors” shall be construed accordingly.   |
| <b>“Manager”</b>  | BES Management DAC, a joint venture company owned by J&E Davy and BDO, with a registered office at 5th Floor, Beaux Lane House, Mercer Street Lower, Dublin 2.   |
| <b>“Managers Certificate”</b>   | Certificate issued by the “Manager” (following receipt of Statements of Qualification from Investee Companies) to the Investor to facilitate him/her claiming income tax relief on their Investment.   |
| <b>“Qualifying Company”</b>   | A company (including any partner and linked businesses which make up a “RICT Group”) which is a “Qualifying Company” as defined in the “EII Scheme” legislation, and “Qualifying Companies” shall be construed accordingly.  |



|                                     |   |
|-------------------------------------|---|
| <b>“Qualifying Investor”</b>        | An individual (including any connected person) who subscribes to the Fund, and “Qualifying Investors” shall be construed accordingly.   |
| <b>“R&amp;D+I”</b>                  | Means research and development activities and innovation as defined in the “EII Scheme” legislation.  |
| <b>“Relevant Trading Activity”</b>  | A trade which is being carried on by a “Qualifying Company” as defined in the “EII Scheme” legislation, and “Relevant Trading Activities” shall be construed accordingly.   |
| <b>“Relevant Period”</b>            | Means the period beginning on the date on which the “Eligible Shares” are issued and ending four years after that date.   |
| <b>“RICT Group”</b>                 | “RICT Group” means the “Qualifying Company” concerned, its partner businesses and linked businesses, and references to a “RICT Group” shall be taken to refer to any “RICT Group” defined in the “EII Scheme” legislation of which the “Qualifying Company” is part of. |
| <b>“Subscription”</b>               | The “Investment” amount together with a fundraising fee of 3% of the Investment amount.   |
| <b>“Subsequent Period”</b>          | Means the period beginning on the date on which the “Eligible Shares” were issued and ending three years after that date.   |
| <b>“Statement of Qualification”</b> | A statement by the “Investee Company” to the effect that the company is a “Qualifying Company” and the investment is a “Qualifying Investment” as defined in the “EII Scheme” legislation.  |
| <b>“Terms of Business”</b>          | Sets out the terms on which BES Management DAC provides its products and services to Investors, as set out in <b>Appendix V.</b>  |
| <b>“Trustee”</b>                    | First Names Trust Company (Ireland) Limited with a registered office at Suite 6, Rineanna House, Shannon Free Zone, Co. Clare.  |
| <b>“Trust Deed”</b>                 | Deed between BES Management DAC and First Names Trust Company (Ireland) Limited dated 16 November 2018 which governs the terms under which the Fund is established and managed.   |

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## MANAGER AND ADVISERS

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|  |   |
|--|---|
| <b>Manager:</b>                          | BES Management DAC  |
| <b>Registered Office of the Manager:</b> | 5th Floor,<br>Beaux Lane House,<br>Mercer Street Lower,<br>Dublin 2.                                      |
| <b>Directors of the Manager:</b>         | Tony Garry (Chairman)<br>Sinead Heaney<br>Ivan Murphy<br>David McCormick<br>Andrew Bourg                  |
| <b>Trustee of the Fund:</b>              | First Names Trust Company (Ireland) Limited,<br>Suite 6, Rineanna House,<br>Shannon Free Zone, Co. Clare. |
| <b>Solicitors to the Fund:</b>           | Eversheds Sutherland,<br>One Earlsfort Centre,<br>Earlsfort Terrace, Dublin 2.                            |
| <b>Auditors to the Fund:</b>             | KPMG, Chartered Accountants,<br>1 Stokes Place, St. Stephen's Green,<br>Dublin 2.                         |

## THE 2018 DAVY EIIS FUND

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The Fund has been established in accordance with the Designated Investment Funds Act 1985, to invest on behalf of Investors in Qualifying Companies under the Employment and Investment Incentive Scheme (“EII Scheme”). The provisions of Part 16 of the EII Scheme legislation apply to this Fund.

**The Finance Bill 2018 (“Finance Bill”) published on 18 October 2018 proposed a number of changes to the EII Scheme. However, these changes are subject to Dáil and Seanad approval prior to being signed into law by the President.**

**The Prospectus has been prepared on the assumption that the Finance Bill is enacted as currently drafted and reflects the Managers interpretation of the proposed changes. It should be noted that some or all of the proposed changes may not be enacted. A summary of the existing EII Scheme legislation is included in Appendix VI for your information.**

**The Fund will operate under the existing EII Scheme legislation until such time as the Finance Bill is enacted, following which the Fund will operate under the proposed EII Scheme.**

**A summary of the main proposed changes are set out below:**

- Eligible Shares may carry a right to preferential rights to a dividend or to repayment of capital on a winding up and may be redeemable;
- A Qualifying Company includes any partner and linked businesses which make up a RICT Group as defined in the EII Scheme legislation;
- The EII Scheme is based on self-certification which will require Qualifying Companies to self-certify. However, Investee Companies may apply to the Revenue Commissioners for confirmation that certain conditions are satisfied in respect of investments in Eligible Shares;
- Qualifying Companies will issue Statements of Qualification to facilitate Investors claiming relief and in the case of Designated Funds the Statements of Qualification will be issued to the Manager of the Fund who will in turn issue Managers Certificates to facilitate investors claiming relief;
- The Statements of Qualification cannot be issued until certain conditions have been fulfilled by the Investee Companies;
- If a company incorrectly self-certifies that it meets the conditions of the EII Scheme, the Investee Company will be liable to the clawback of the excess Relief claimed.

The primary objective of the Fund is to provide Investors with the opportunity to invest in selected Qualifying Companies and so benefit from the income tax relief provisions of the EII Scheme.

The Fund will seek to raise a minimum of €1,000,000 and a maximum of €15,000,000. Applications to participate in the Fund should be received by BES Management DAC c/o J&E Davy no later than 31 December 2018 but it should be noted that Applications shall be accepted in order of receipt and the Manager reserves the right to close the application list at any time, for any reason and at any level of funds subscribed by Investors without giving prior notice to any person on or before 31 December 2018 and to reject any application in whole or in part.

The Manager previously managed seven EII Scheme Funds, 19 BES Funds and invested a total of €175 million in Qualifying Companies over the past 23 years.

The 2018 Davy EIIS Fund anticipates that it shall invest in a portfolio of Qualifying Companies as detailed under Investment Strategy on page 15. The EII Scheme is available to small and medium sized trading companies, the profits or gains of which are charged to tax under Case I of Schedule D, excluding activities as detailed herein on page 31 under Relevant Trading Activities.

It should be noted that the maximum total Investment in all EII Scheme Investments in any one year which may qualify for income tax relief (in two tranches) is €150,000. The first tranche of income tax relief is available for either the tax year of subscription to the Fund (2018) or for the year in which the Fund makes its Investments (2019) following receipt of a Managers Certificate which will be issued by the Manager following receipt of a Statement of Qualification from each Investee Company.

**WARNING: Past performance is not a reliable guide to future performance. The value of your Investment in this Fund may go down as well as up. If you invest in this Fund you may lose some or all of the money you invest.**

**WARNING: There is no guarantee that the Fund will meet its primary objectives.**

**WARNING: If you invest in this Fund you will not be able to cash in your Investment and you will not have access to your money for at least four years from the date the Fund makes its Investments.**

**WARNING: This information is based on our understanding of current tax legislation and the current Revenue Commissioners' interpretation thereof and is subject to change including retrospectively without notice.**

## THE MANAGER

The Manager of the Fund will be BES Management DAC, a joint venture company owned by Davy and BDO, who act as the business and financial advisers respectively to the Manager.

### DAVY

Established in 1926, the Davy Group is Ireland's leading provider of wealth management, asset management, capital markets and financial advisory services. The Davy Group is headquartered in Dublin with offices in London, Belfast, Cork and Galway. Employing over 700 people, Davy offers a broad range of services to private clients, small businesses, corporations and institutional Investors and organises its activities around five interrelated business areas – Asset Management, Capital Markets, Corporate Finance, Private Clients and Research.

### BDO

Established by entrepreneurs for entrepreneurs, BDO is the leader in advising and funding ambitious Irish businesses, helping them to grow in domestic and international markets. Through its own professional expertise and by working directly with companies, BDO has developed a unique insight into what makes companies successful. The firm provides a range of services which include audit, tax, corporate finance, corporate recovery services, corporate secretarial, consulting, payroll and risk advisory services.

BDO employs over 560 staff in Dublin, Limerick, Cork and an associate office in Belfast. BDO is a member firm of BDO International. The BDO International network has 73,854 partners and staff working in 1,500 offices across 162 countries around the world.

### DIRECTORS

The Directors of the Manager responsible for the operation of the Fund in determining how the Investment monies should be invested or otherwise dealt with are:

#### Tony Garry

Tony Garry is a former Director and CEO of Davy. Tony graduated from UCD with a BComm. in 1975 and an MBS in 1977. He began his career in the Department of Labour, later moving to the Central Bank of Ireland. In 1975, he left the public service and moved to Allied Irish Investment Bank becoming an Associate Director in 1976. He joined Davy in 1979 and was appointed CEO in 1994. He led the team which completed the management buyout from Bank of Ireland in October 2006. Having served as CEO for over 20 years he retired from this role in March 2015.

**Sinead Heaney**

Sinead Heaney is a Partner in the Corporate Investment & Business Advisory Department of BDO. Sinead has considerable experience in structuring BES/EII Scheme Investments. She also has extensive experience working with small, medium and large privately owned businesses in both developing and achieving their strategic plans. She is also a Director of Development Capital Fund Management Limited (“Development Capital”), the Manager of The BDO Development Capital Fund and non-executive Director of Development Capital’s Investee Company Perigord Asset Holdings Limited. Sinead is a Fellow of the Institute of Chartered Accountants in Ireland.

**Ivan Murphy**

Ivan Murphy is Head of Corporate Finance at Davy having joined in 1991. Since then he has been involved in advising many of Ireland’s leading public and private companies on a range of transactions including flotations, secondary fundraisings and mergers and acquisitions. He has 30 years’ experience in corporate finance having previously worked with Kleinwort Benson, London. He is an honours economics graduate of UCD and a Fellow of The Chartered Institute for Securities & Investment.

**David McCormick**

David McCormick is a Partner in BDO and Heads up the Corporate Secretarial Department, which specialises in the development and administration of corporate structures. A Fellow of the Institute of Chartered Secretaries and Administrators, David is a Director of Development Capital as well as a number of retailers and property Investment Funds. David has also served as Company Secretary to a FTSE250 listed entity.

**Andrew Bourg**

Andrew Bourg is a Partner in the Corporate Investment & Business Advisory Department of BDO and is commercially focused with a wide breadth of experience in scaling, growing and internationalising SME’s on both an organic and acquisitive basis. Andrew has significant experience investing capital and working with SME’s across a range of industries to assist them accelerate and achieve their growth plans.

Andrew is also a Director of Development Capital, the Manager of The BDO Development Capital Fund and was non-executive Director of Development Capital’s first two Investee Companies, Version 1 Holdings Unlimited and Lifes2Good Holdings Limited. Andrew is a Fellow of The Institute of Chartered Accountants of Ireland.

## INVESTOR COMPENSATION ACT 1998 (THE “ACT”)

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The Manager is an Investment business firm authorised under the Investment Intermediaries Act 1995 and is a member of the investor compensation scheme under the Investor Compensation Act 1998, (“the Act”). In the unlikely event that the Manager is determined to be unable to return an Investor’s assets or is prevented by a High Court ruling from returning client assets, due to its financial circumstances, Investors may be able to make a claim on the scheme for 90% of any amount lost, subject to a current maximum claim of €20,000.

The Investor compensation scheme does not cover losses due to adverse market/price movements or the loss of an Investment due to the liquidation, etc. of a company in which the Fund invests. Pursuant to Section 38(1) of the Act, the Manager hereby informs the Investor of the following information concerning Investor compensation:

- (a) The Act provides for the establishment of a compensation scheme and the payment, in certain circumstances, of compensation to certain clients of authorised Investment business firms, (“Eligible Investors”);
- (b) The Manager is a member of that compensation scheme;
- (c) Compensation may be payable where money Investment instruments owed or belonging to an Eligible Investor and held, or in the case of Investment instruments, administered or managed by the Manager, cannot be returned to that Investor for the time being due to the financial circumstances of the Manager and there is no reasonable foreseeable opportunity of the Manager being able to do so;
- (d) The right to compensation will arise only:
  - (i) if the Investor is classified as an Eligible Investor as defined in the Act;

- (ii) if it is determined that the Manager is not in a position to return an Investor's money or Investment instruments owed belonging to clients of the firm or as prevented by doing so by a High Court ruling; and
  - (iii) to the extent that the Investor's loss is recognised for the purposes of the Act;
- (e) Where an entitlement to compensation is established, the compensation payable shall be the lesser of:
- (i) 90% of the amount of the Eligible Investor's loss which is recognised for the purposes of the Act; or
  - (ii) €20,000.

## INVESTMENT STRATEGY

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The objective of the Fund will be to provide Investors with Investment opportunities in suitable unquoted small and medium sized trading companies which qualify under the EII Scheme.

The EII Scheme is currently available to SMEs (detailed herein under Qualifying Company on page 29).

Qualifying Companies must be micro, small or medium- sized enterprises within the meaning of Annex I to Commission Regulation (EU) No. 651/2014 of 17 June 2014.

A Qualifying Company must also meet the requirements of paragraph 18 of Article 2 and paragraph 5, 6 and 9 of Article 21 of Commission Regulation (EU) No. 651/2014 of 17 June 2014 to comply with the EU's General Block Exemption Regulations on State Aid (GBER).

Paragraph 18 of Article 2 of Commission Regulation (EU) No. 651/2014 of 17 June 2014 states that a company shall not be a Qualifying Company while the company is regarded as a firm in difficulty for the purposes of the Community Guidelines on State aid for rescuing and restructuring firms in difficulty.

Paragraph 5 of Article 21 of Commission Regulation (EU) No. 651/2014 of 17 June 2014 states that eligible undertakings shall be undertakings which at the time of the initial risk finance Investment are unlisted SME's and fulfil at least one of the following conditions:

- (a) They have not been operating in any market;
- (b) They have been operating in any market for less than 7 years following their first commercial sale;
- (c) They require an initial risk finance Investment which, based on a business plan prepared in view of entering a new product or geographical market, is higher than 50% of their average annual turnover in the preceding 5 years.

Paragraph 6 of Article 21 of Commission Regulation (EU) No. 651/2014 of 17 June 2014 states that the risk finance aid may also cover second stage Investments made in eligible undertakings, including after the 7 year period mentioned in paragraph 5(b) (above), if the following cumulative conditions are fulfilled:

- (a) The total amount of risk finance mentioned in paragraph 9\* is not exceeded;
- (b) The possibility of second stage Investment was foreseen in the original business plan;
- (c) The undertaking receiving second stage Investments has not become linked, within the meaning of Article 3(3) of Annex I with another undertaking other than the financial intermediary or the independent private Investor providing risk finance under the measure, unless the new entity fulfils the conditions of the SME definition.

\*Paragraph 9 of Article 21 of Commission Regulation (EU) No. 651/2014 of 17 June 2014 states that the total amount of risk finance shall not exceed €15,000,000 per eligible undertaking under any risk finance measure.

The maximum EII Scheme Investment allowable in the lifetime of a Qualifying Company and its associates is €15,000,000, subject to a limit of €5,000,000 in any 12-month period.

The Manager will seek to invest in a number of companies with capable management and future growth potential.

The Fund will have no minimum investment level per Investee Company and a maximum investment level of €5 million per Investee Company. The Manager envisages that the Fund will invest in between 3 and 12 Investee Companies.

Certain criteria which may be used by the Manager in assessing the potential Investee Companies and their promoters are:

- a capable and industry experienced management team;
- growth potential;
- well defined market strategy; and
- potential for realisation of Investment after the four-year Investment period.

The criteria listed above is not intended to be an exhaustive or an exclusive list. The Manager shall take all reasonable care in selecting and assessing proposals for Investment and will enter into agreements which will oblige the Investee Companies to provide regular financial and other information so that the Manager can monitor the performance of each Investee Company on an ongoing basis.

In order to spread the commercial risk of the Fund, the Manager shall seek if possible to balance the portfolio of Investments across different industries and Qualifying Companies. However, this may not be possible. The Investee Companies may be at various stages of development. Based on the criteria for the EII Scheme as set out above it is envisaged that the majority if not all of the Investee Companies may be less than seven years trading and hence would be considered early stage high risk investments. The EII Scheme also facilitates investment in later stage companies subject to certain criteria and the Fund may invest in such later stage companies at the Managers discretion. Such later stage companies should also be considered high risk investments.

Your attention is drawn to the Risk Factors on page 21 and it should be noted that an investment in the Fund should be considered a high risk investment regardless of the Investee Companies stage of development.

In accordance with the EII Scheme legislation, the Investments will be made in return for Eligible Shares in the Qualifying Companies. Given the nature of the Qualifying Companies and the fact that the EII Scheme is a tax based Investment, it is envisaged that the Fund will be issued a distinct class of preference shares with capped returns. The cap on the return on the Investment is negotiated by the Manager on a case by case basis as appropriate. Depending on the risk profile of the Investee Company, the Manager may negotiate an option to convert into ordinary equity in certain circumstances (for example in the event of a trade sale).

The Fund may invest in companies which have received BES/EII Scheme funding from previous Davy BES/EII Scheme Funds. If you have invested in a previous Davy BES/EII Scheme Fund an Investment in the Fund may expose you further to the performance of such Investee Companies.

It is intended to complete the Investments in each Investee Company without undue delay and as soon as possible following the Closing Date however, due to the nature of such Investments this may take up to 12 months.

Your attention is drawn to the Risk Factors set out on page 21.

## ADVANTAGES OF INVESTING IN THE 2018 DAVY EIIS FUND

Investors may be able to derive a number of advantages by investing in the Fund including:

1. The opportunity to avail of income tax relief, within limits and subject to restrictions, under the EII Scheme legislation;
2. The Manager offers Investors professional management of the funds invested by an experienced team with substantial business expertise and experience of the EII Scheme;
3. Investments by the Fund will be chosen by the Manager for their commercial innovation, capable management and future growth potential;
4. Investors may be able to spread their Investment risk by subscribing to the Fund; and
5. The Fund offers Investors the potential for a high after tax return, subject to tying up their capital for at least four years and accepting the risk of part or total capital loss.



**WARNING: Past performance is not a reliable guide to future performance.**

**WARNING: The value of your Investment in this Fund may go down as well as up.**

**WARNING: If you invest in this Fund you may lose some or all of the money you invest.**

**WARNING: There is no guarantee that the Fund will meet its primary objectives.**

**WARNING: If you invest in this Fund you will not be able to cash in your Investment and you will not have access to your money for at least four years from the date the Fund makes its Investments.**

## OPERATION OF THE FUND

No Investment shall be made before the Closing Date for subscription of units in the Fund.

Subscription monies held pending Investment shall be lodged in a pooled account, i.e. an account containing the assets of more than one client, and any interest earned on these funds will be paid to Investors in accordance with the Trust Deed.

The Manager intends to invest the Investment monies in Qualifying Companies under the EII Scheme as soon as possible and without undue delay, which could take up to 12 months, after the Closing Date.

### Ownership

The Investor will, at all times, be the beneficial owner of Eligible Shares of Qualifying Companies in which Investments have been made. The Eligible Shares will be registered in the name of the Trustee who shall act as nominee for the Investor, pursuant to the provisions of the Trust Deed. An Investor must retain beneficial ownership of shares on which income tax relief is claimed for four years, to avoid withdrawal or reduction of the income tax relief claimed.

### Connected companies

The Manager will not knowingly invest monies forming part of the Fund in shares of a company with which any Investor is connected for the purposes of the EII Scheme legislation.

### Conditions

It is a condition of the Fund that each Investor irrevocably authorises the Manager and the Trustee, subject to the terms and conditions of this Memorandum:

- (a) to invest the Investment monies for shares in Qualifying Companies (based on self-certification) under the provisions of the EII Scheme and any amendment/(s) to the EII Scheme;
- (b) to act on the Investors' behalf in respect of the shares and all rights thereto for as long as the shares are held by the Fund;
- (c) to direct, in its absolute discretion, the exercise by the Trustee of all voting and other rights in connection with Investments made or held on the Investors' behalf under the Fund;
- (d) to receive and deal with all interest, distributions and dividends paid on Investments in accordance with the provisions of the Trust Deed;
- (e) to arrange for the sale or disposal of any Investment in whole or in part as the Manager may in its absolute discretion decide;
- (f) to agree to any transactions or arrangements (including without limitation arrangements for exchange,

amalgamation or reconstruction) and to take or refrain from taking any action whatsoever and make any decisions in respect of the shares of Investee Companies;

- (g) to draw on any Subscription monies subscribed by or due to the Investor under the Fund to satisfy the Manager's fees and expenses as set out in this Memorandum or the Trust Deed;
- (h) to place Investment monies on deposit with the Bankers to the Fund; and
- (i) to agree that no Investor is entitled to require any particular share to be either realised or transferred into his/her name for as long as the shares are held by the Fund.

The foregoing appointment and authorisations will remain binding on each Investor's personal representative in the event of the death of an Investor.

### Investment

When an Investment is made in an Investee Company, the shareholding in the Investee Company shall be registered in the name of the Trustee, acting as a nominee for the Investors collectively. The beneficial ownership of the shares in each Investee Company shall be allocated to an individual Investor in the same proportion that his or her Investment bears to the total Investment monies received by the Fund.

Fractional entitlements, if any, shall be rounded down. Each Investor shall be informed as soon as practicable of each Investment made on his/her behalf and furthermore, will be provided with full details of the extent and nature of the shares issued to the Trustee and held on his/her behalf after the final Investment has been made.

It is a condition of participation in the Fund that the Manager may exercise its discretion on behalf of Investors in any way, on any matter relating to the Investments of the Fund after taking any professional advice it considers necessary.

**Should the Manager exercise the right to dispose of Eligible Shares within four years of acquisition, this may result in the tax relief available to, obtained, or to be obtained by an Investor being wholly or partially withdrawn or not granted.**

In coming to a decision to sell, the Manager shall have regard to the interests of the majority of the Investors but reserves the right to exercise its discretion in this regard.

### Reporting to Investors

During the term of the Fund, half yearly reports relating to the financial periods ending on 30 June and 31 December shall be made available to Investors on the Manager's website ([www.bes.ie](http://www.bes.ie)), which shall set out any acquisitions and disposals of Investments which have taken place during these periods. The reports shall not be issued in intervals exceeding six months. The first report shall be made in respect of the period ending 30 June 2020. Audited accounts of the Fund to 31 December of each year shall be made available to Investors for inspection as soon as practicable after the year end. The first audited accounts shall be for the period ending 31 December 2019. To access these reports, Investors will be provided with a username and password to the website separately by the Manager.

Audited accounts will be prepared annually. When realising the assets of the Fund, audits of the Fund's financial statements will cease to be obtained when the fair value of the remaining Investments held by the Fund are valued at nil.

Any Investment monies which have not been invested before 31 December 2019 shall be returned to the Investors within 30 days of that date in the same proportion that the uninvested funds bear to the total Investment monies provided by each Investor. The element of commission paid by the Investor related to the uninvested funds shall also be repaid.

## MANAGER'S REMUNERATION

### Investor Fees

Each Investor shall be liable for the following fees:

A once-off fundraising fee of 3% of the Investment amount will be payable by each Investor at the date of application. The Manager may pay all or part of this fundraising fee as commission to an Investment product intermediary or certified person who holds an appropriate authorisation to advise and promote Designated Investment Funds.

Any interest earned on Investment monies pending Investment and on monies subsequently realised on the sale of such

Investments shall be paid to Investors in accordance with the Trust Deed.

In circumstances where interest is charged on Investment monies pending Investment or on monies subsequently realised and pending distribution, this interest will be recovered from the Investment monies or the proceeds of the realisation at the discretion of the Manager. Negative interest charged while the Fund is held by the Trustee pending investment may be deducted from the Fund in advance of investment in Investee Companies. You may not be able to claim tax relief on this portion of your investment.

Upon realisation of the Investments, the Manager and the Trustee shall be entitled to recover all reasonable and necessary costs associated with the realisation of Investments, up to a maximum of 2% of the total amount realised, such costs being recovered, if necessary, from the proceeds of the realisation.

The fee structure as outlined above is intended to cover the costs associated with raising monies for the Fund and to cover the management, administration (including legal, trustee and audit fees) and banking costs of operating the Fund. Investors shall not be liable for any additional fees.

### **Investee Company's Fees**

Investee Companies shall be liable for the following fees:

The Manager may receive for its own account remuneration from the Investee Companies.

The Manager may charge Investee Companies an arrangement or similar fee of up to 6% and a legal fee of up to 1% of the original amount invested at the time of Investment. In addition, the Manager may, in its absolute discretion, charge Investee Companies an annual management fee of up to 3.5% of the original amount invested in each Investee Company.

The Manager may also receive fees from Investee Companies for its own account in respect of services of consultants nominated by the Manager in respect of advice or assistance given to those companies.

The fee structure as outlined above is intended to cover the costs associated with raising monies for the Fund and to cover the management and administration costs (including legal, trustee and audit fees) of operating the Fund. The above list is neither exclusive nor exhaustive and other commissions or fees may apply. Investee Companies will be notified of such in advance of any Investment being made.

## **CONNECTED COMPANIES AND INVESTMENT BY DAVY, BDO, FIRST NAMES TRUST COMPANY (IRELAND) LIMITED & BES MANAGEMENT DAC**

The Fund may invest in companies which are clients of Davy, BDO or the Trustee, provided that none of those entities are connected with such companies. No Investment shall be made by the Fund in companies for the time being connected, as defined in the EII Scheme legislation, with the Manager or with the Trustee or with any of their associates.

However, the Manager and its associates may negotiate and acquire an interest in Investee Companies for itself at arm's length either simultaneously with or subsequent to Investment by the Fund in that Investee Company. Notwithstanding the above, the Manager and its associates will not in any case acquire a controlling interest or any right or interest that may prejudice tax relief obtained by Investors in the Fund.

### **MANAGER'S OPTION**

In addition, the Manager or its nominees may seek an option to subscribe on its own account for an equity share in any Investee Company. This option may at the Manager's absolute discretion be exercised at any time during the period of Investment by the Fund in the Investee Company or thereafter.

## REALISATION OF INVESTMENTS

Investments will normally be held for the minimum period of four years from the date each of the Investee Companies issue the shares to the Fund.

After that period, the Manager shall encourage the Boards of the Investee Companies to make arrangements for the realisation of Investments on behalf of Investors.

A non-exhaustive list of options is outlined below:

- (a) sale of the EII Scheme shareholdings to the promoters of the Investee Companies;
- (b) merger, acquisition or take-over;
- (c) public issue or sale of shares on the Irish Stock Exchange or any other recognised securities market;
- (d) repurchase by the Investee Company of its own shares;
- (e) private placing, e.g. trade sale;
- (f) call or put options at market value with the promoters of the Investee Companies; and/or
- (g) any other method of realisation which may, in the opinion of the Manager, be appropriate at that time.

In respect of Investments made in private companies, if it has not been possible to arrange for the realisation of such Investments after the projected four years or if, in the opinion of the Manager, the Investors should retain their shareholdings in particular Investee Companies, the Manager may, utilising the mechanism contained in Section 6 Designated Investments Funds Act 1985, arrange for shares to be transferred into the names of individual Investors, who shall be responsible for the payment of any stamp duty and other reasonable costs associated therewith.

It may be necessary to dispose of the EII Scheme shares, within four years of the EII Scheme Investment in respect of some Investee Companies.

Should the Manager exercise the right to dispose of shares within the Investment period, this may result in the income tax relief available to or obtained by an Investor being wholly or partially withdrawn. In making a decision to sell, the Manager shall have regard to the best interests of the majority of the Investors but shall act as the Manager sees fit in this regard.

Should dividends be declared by the Investee Companies on the class of shares held by the EII Scheme Investors, then upon receipt of those dividends, the Manager may distribute them during the term of the Investment or alternatively upon realisation of the Investment as the Manager may see fit.

## TRANSFERABILITY AND EARLY REALISATION OF INVESTMENTS

Under the provisions of the EII Scheme legislation, no Investor in the Fund shall be permitted or entitled to have realised or transferred into his own name, any shares in any Investee Company in which the Fund has invested, until a minimum of four years have elapsed from the date of issue of the shares to the Fund. However, in exceptional circumstances, but without obligation, a request made to the Manager by an Investor for the disposal of all the Investments held on the Investor's behalf (but not individual Investments) may be considered provided a purchaser for same can be found. This may result in the loss of all or part of the income tax relief available or claimed by an Investor.

The Manager of the Fund shall give no undertaking to find such a purchaser. In the event of the death of an Investor, any uninvested sums held in trust at that time shall, subject to compliance with the usual legal formalities, be placed at the disposal of the Investor's personal representatives. However, it is not envisaged that it will be possible for the personal representatives of the estate of an Investor to have the shares allocated to that Investor's estate or otherwise to realise that Investor's Investment in Qualifying Companies prior to the expiration of the projected EII Scheme Investment period.

Where requested by the Manager, the Trustee will arrange for the continued management or transfer of any shares remaining in the name of Investors at the expiration of the Investment period.

Arrangements for the transfer of shares in the Investee Companies into the names of the Investors will be made under the terms of Section 6 of the Designated Investment Funds Act 1985.

## AUDITORS TO THE FUND

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KPMG, Chartered Accountants, have agreed to act as Auditors to the Fund. In this connection, they shall report to the Investors on the financial statements for each year ending on 31 December and on termination of the Fund.

The first such report will be in respect of the period ending on 31 December 2019.

## RISK FACTORS

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### Unquoted Companies

Investment in unquoted small and medium sized trading companies through the Fund carries risk as well as the potential for growth. Investors are encouraged to consider their Investments as medium to long term and in compliance with the legislation, should not expect to be able to realise them for at least four years from the date of Investment by the Fund in each of the Investee Companies. There is no early exit mechanism for Investments in the Fund.

The risks associated with Investment in the Fund include the possible loss of the full amount invested and the potential limitations on the realisation of unquoted shares even in a successful company since these shares are not listed on a regulated market.

### Investee Company Compliance

The EII Scheme operates on a self-certification basis which requires each Investee Company to conclude that it complies with the EII Scheme legislation. Qualifying Investors may claim relief under the provisions of the EII Scheme in two tranches following the receipt of a Managers Certificate which will be issued by the Manager following receipt of a Statement of Qualification from each Investee Company.

The Investor will bear the risk of the Relief not being granted in circumstances where an Investee Company incorrectly concludes that it complies with the EIIS legislation and this becomes apparent after the investment has been completed and prior to the issuing of the Statement of Qualification (which cannot be issued until the conditions as detailed in the section "Income Tax Relief" on page 26 have been fulfilled).

The Investee Company will bear the risk of income tax relief not being granted or withdrawn in circumstances where an Investee Company incorrectly concludes that it complies with the EII Scheme legislation and this becomes apparent after the Investment has been completed and the Statement of Qualification has been issued. Withdrawal of Relief in this circumstance may impact the financial viability of the Investee Company and hence may impact the value of the Investment.

### Independent Advice

Before subscribing to this Fund, prospective applicants should consult a professional Investment adviser and carefully consider the risks involved, their own financial circumstances, including their need for liquidity and income, and their tax position to determine the potential suitability of this Investment for their circumstances.

### Tax Risk

The information contained herein is provided for Irish resident Investors only and is based on our understanding of Irish tax legislation and the known current Revenue interpretation thereof. This can vary according to individual circumstances and is subject to change without notice, including retrospectively. It is intended as a guide only and is not a substitute for professional advice. Investors should consult their tax advisor for the rules that may apply in their circumstances.

### Taxable Income Requirement

Investors must have sufficient taxable income in a year to get the maximum income tax relief in that year in respect of an Investment in the Fund. The maximum total Investment in all EII Scheme Investments by an Investor in any one year which may qualify for income tax relief (in two tranches) is €150,000. The first tranche of income tax relief is available for either the tax year of subscription to the Fund (2018) or for the year in which the Fund makes its Investments (2019) following receipt of a Managers Certificate which will be issued by the Manager following receipt of a Statement of

Qualification from each Investee Company. The second tranche of income tax relief is available for the year of assessment following the year of assessment in which the Subsequent Period ends, subject to the fulfilment of conditions set out under "Income Tax Relief" on page 26. The Manager, its shareholders and the Fund will not be liable if an Investor in the Fund does not qualify for income tax relief.

### **Withdrawal of Income Tax Relief**

In certain circumstances, Investors will bear the risk of a potential withdrawal of tax relief which may result from the conditions of the EII Scheme legislation not being satisfied.

Income tax relief may be wholly or partly withdrawn from the Investor if there is a direct disposal or an option/agreement which allows the Investor to purchase or dispose of Eligible Shares within the Relevant Period. There are additional rules whereby an Investor may suffer a withdrawal of some or all of the Relief detailed on page 32. Investors are strongly advised to obtain independent financial advice to ensure they have taken these risks into consideration in making their Investment.

### **Limitations on Income Tax Relief**

Income tax relief will be limited to the extent that the Manager successfully identifies and invests in suitable Investee Companies. Relief may be lower than the amount invested by the Investor, should the Manager not succeed in fully investing the Fund. The actual amount of income tax relief will not be known until after Investors have subscribed to the Fund and the Manager has made its Investments.

### **Timing of Income Tax Relief Claims**

The timing of income tax relief shall be dependent upon the timing of:

- Investments made by the Manager on behalf of Investors in Qualifying Companies; and
- the issuing of the Statements of Qualification (for both the first tranche of income tax relief and the second tranche of income tax relief) by the Investee Companies; and
- the issuing of the Managers Certificates by the Manager.

The timing of the Statement of Qualification for the first tranche of tax relief is dependent on the timing of when the Investee Company spends 30% of the Investment on a Qualifying Purpose (as detailed on page 27). The Investors will not obtain a Managers Certificate in circumstances where the Investee Company does not spend 30% of the amount raised on a Qualifying Purpose within two years of the date of issue of the Qualifying Shares.

The timing of the Statement of Qualification (second stage relief) for the second tranche of tax relief is dependent on the Qualifying Company fulfilling conditions in relation to employment numbers and employment levels or expenditure on R&D+I (as detailed on page 27) The Investors will not obtain a Managers Certificate in circumstances where the Investee Company does not meet these conditions or where the Statement of Qualification (second stage relief) is issued (for whatever reason) by the Qualifying Company more than two years after the end of the year of assessment in which the conditions were satisfied.

The Revenue Commissioners have indicated that all available Managers Certificates should be filed with an individual's return of income in order to claim income tax relief. It is the responsibility of each individual Investor to ensure that his own tax affairs are in order in any given year.

### **Default of Trustee and Bank Solvency**

The Manager shall not be liable to Investors in the event of the default or liquidation of the Trustee or the Bankers to the Fund where Investors' money may be deposited.

The Manager is a member of the Investor Compensation Scheme, set up by law, which provides compensation to Qualifying Investors. The right to compensation, however, only arises in certain limited circumstances, as outlined on

page 14. Even if an Investor is a Qualifying Investor and has a right to compensation, it is capped at 90% of the net amount lost or €20,000, whichever is less.

### **Commercial Investment Risk**

No compensation fund exists for Investors who lose all or part of their Investment due to commercial Investment risk. The Fund will invest in companies which by their nature are high risk. Furthermore Investee Companies are exposed to geo-political risk including the risk of Brexit. In addition there are limitations on the liquidity of unquoted shares and the time scale for realisation of EII Scheme Investments cannot be guaranteed after the Investment period has elapsed.

### **Interest Earned**

Interest earned on:

- (a) Subscription monies received prior to the 31 December 2018;
- (b) Investment monies pending Investment in Investee Companies; and
- (c) Funds subsequently realised on the disposal of such Investments shall be paid to the Investors in accordance with the Trust Deed.

In circumstances where interest is charged on Investment monies pending Investment or on monies subsequently realised and pending distribution, this interest will be recovered from the Investment monies or the proceeds of the realisation at the discretion of the Manager. Negative interest charged while the Fund is held by the Trustee pending investment may be deducted from the Fund in advance of investment in Investee Companies. You may not be able to claim tax relief on this portion of your investment.

### **Lack of Access to Investment**

This is a medium to long-term Investment and is not suitable for Investors who may need access to their Investment within the minimum four-year Investment period from the date the Fund makes each Investment. Exiting the Fund after the projected four-year Investment period may take some time, in certain circumstances.

Shares that cannot readily be disposed of in the Investee Companies shall be returned by the Manager to the Investors in proportion to their holding in the Fund, in the event that the Trustee may not arrange for their continued management.

### **Self-Certification**

The EII Scheme operates on a self-certification basis which will require Investee Companies to self-certify. The Manager will complete the investment of the Fund in Investee Companies based on this self-certification. There is a risk that if an Investee Company incorrectly self-certifies, Investors may not be granted tax relief or tax relief previously granted will be withdrawn.

### **Potential Conflicts of Interest**

There may be conflicts of interest between the Manager, and/ or its shareholders and the Investors. The Manager and/ or its shareholders may invest in Investee Companies alongside the Fund, provided this is at arm's length. The Manager and/ or its shareholders may be compensated by multiple parties, including Investors and Investee Companies, for its role. Neither the Manager nor any of its shareholders is acting as an agent or in any fiduciary capacity with respect to the Investors, other than the Trustee.

**WARNING: Past performance is not a reliable guide to future performance.**

**WARNING: The value of your Investment in this Fund may go down as well as up.**

**WARNING: If you invest in this Fund you may lose some or all of the money you invest.**

**WARNING: There is no guarantee that the Fund will meet its primary objectives.**

**WARNING: If you invest in this Fund you will not be able to cash in your Investment and you will not have access to your money for at least four years from the date the Fund makes its Investments.**

## DATA PROTECTION

The Manager fully respects your right to privacy and any information relating to you (including any personal data within the meaning of the General Data Protection Regulation (GDPR) 2016 and Data Protection Acts 1988 to 2018 (collectively the “DPA”)) which the Manager obtains and holds about you (“Information”) will be processed in accordance with the Terms of Business in **Appendix V**.

You agree to notify the Manager without delay in the event of any change in your personal data, to enable us to comply with our obligations to keep your Information up to date.

Davy will record telephone calls. The telephone records will be retained for a period as may be prescribed by law, regulation or guidance or at the discretion of Davy. The contents of such recordings may be used as required by law and regulation, to verify your instructions and for quality control purposes.

## STATE AID TRANSPARENCY REQUIREMENTS

In accordance with Article 9 and Annex III of Commission Regulation (EU) No 651/2014, EU Member States are required to publish details of certain State Aid granted to individual beneficiaries from 1 July 2016. Tax relief granted to Qualifying Investors under the EII Scheme above a cumulative threshold of €500,000 are subject to the transparency requirements.

Member States will publish the information on a central website and the information will include the identity of the beneficiary, the amount and type of aid granted and the date of which it was granted. For aid in the form of a tax relief, the information will be published within 12 months from the date on which the relevant tax return for the relevant tax year is due.

Publication will be based on the date on which the relevant tax return for the relevant tax year is due. However, aid that has been granted before 1 July 2016 does not fall under the transparency obligation even if the tax return in which the relief is claimed is due after that date. The 12-months deadline for publishing the information starts from the due date of the tax return that pushes the beneficiary over the threshold.

## PROCEDURE FOR AND CONDITIONS OF APPLICATION

The terms and conditions of the contract between the Manager and prospective Investors are set out in the Application Form in **Appendix III**. Prospective Investors should complete the Application Form enclosed in **Appendix III** and submit it to BES Management DAC c/o Davy on or before 31 December 2018. Completed Application Forms must be accompanied by a personal cheque or bank draft, payable to **First Names Trust Company (Ireland) Limited a/c The 2018 Davy EIIS Fund** for the amount of the Investment together with a fundraising fee of 3% of the Investment amount. **Appendix II** sets out examples of the amounts to be submitted for different levels of Investment.

Existing Davy clients have the option to debit the Subscription amount from their Davy personal client account by completing the Debit Instruction Form in **Appendix IV** and submitting this together with the completed Application Form.

The minimum Investment amount is €5,000 and Investments thereafter may only be made in multiples of €1,000 with a maximum Investment of €150,000 by any one Investor. It should be noted that the maximum total Investment in all EII Scheme Investments in any one year which may qualify for income tax relief (in two tranches) is €150,000. The first



tranche of income tax relief is available for either the tax year of subscription to the Fund (2018) or in the year in which the Fund makes its Investments (2019) following receipt of a Managers Certificate which will be issued by the Manager following receipt of a Statement of Qualification from each Investee Company.

Applications shall be accepted in the order of receipt up to the permitted maximum amount of €15,000,000 but the Manager reserves the right to close the application list at any time, for any reason and at any level of funds subscribed by Investors without giving prior notice to any person on or before 31 December 2018 and to reject any application in whole or in part. **The Fund shall not proceed unless a minimum of €1,000,000 is received by the Manager by way of applications, failing which all Subscriptions including commissions shall be returned within 30 days of the Closing Date.**

Applications to participate in the Fund will be considered only on the terms and conditions of this Memorandum and if made on the Application Form contained in **Appendix III** herein. Any agreement purporting to amend or exclude or partly exclude the application of any term or condition of this Memorandum shall be void, save for an amendment or alteration approved by the Minister for Jobs, Enterprise and Innovation pursuant to Section 5 of the Designated Investment Funds Act 1985.

Only one application shall be accepted from each applicant. **No joint applications shall be accepted by the Manager.**

In order to ensure compliance with the provisions of the AML Legislation, the Manager shall be required to establish and verify the identity of each applicant together with their source of funds and source of wealth for the Investment to satisfy anti-money laundering requirements.

Application Forms must therefore be accompanied by a certified copy\* of either:

- the applicant's current passport; or
- current driver's license; or
- copies of two forms of identification (e.g. passport and drivers licence) both of which must be in date and valid.

Each applicant is obliged to also provide an original or certified copy of two different forms of proof of address, dated within the past six months.

Acceptable forms of proof of address are any two of:

- recent utility bill (electricity, gas, telephone or mobile phone); or
- recent bank statement in the applicant's name at the address provided.

Proofs of address must bear the same name as provided on the Application Form and should not be more than six months old.

Application Forms must be accompanied by either:

- a personal cheque or bank draft drawn on an applicant's own bank account, which account will be with a body defined as "Designated Person" under the AML Legislation and must be made payable to First Names Trust Company (Ireland) Limited a/c The 2018 Davy EIIS Fund; or
- whereby applicable the completed Debit Instruction Form enclosed in **Appendix IV**.

Investors must also identify on the Application Form the source of funds which they intend to use for the purpose of the Investment. Your source of wealth must also be identified.

The Manager and/or Trustee reserve the right to refuse to accept any application which is incorrectly presented or fails to comply with the provisions contained in this Memorandum without liability for interest and any resulting loss or damage to that applicant.

\*certified copy i.e. a copy which has been signed, stamped and dated by a Solicitor, Commissioner for Oaths, Accountant or Bank Manager as evidence that the photocopy supplied is a true copy of the original.

## INCOME TAX RELIEF

Investors require Managers Certificates from the Manager for each Investment made by the Fund in order to claim income tax relief on their Investment.

Income tax relief on an investment in the Fund may be available to Investors in two tranches as detailed in the section “The Relief” on page 27. Investors require a Managers Certificate to claim both the first tranche of income tax relief and the second tranche of income tax relief.

The EII Scheme operates on a self-certification basis. Investee Companies may apply to the Revenue Commissioners for confirmation that certain conditions are satisfied in respect of investments in Eligible Shares.

### Claiming the First Tranche of Income Tax Relief

Each Investee Company shall issue a Statement of Qualification to the Manager following the completion of each Investment (subject to satisfying the required conditions as detailed below). The Manager will in turn issue a Managers Certificate to the Investor to facilitate him/her claiming the first tranche of income tax relief on that portion of his/her investment.

Qualifying Company may not issue a Statement of Qualification in respect of a Qualifying Investment for the first tranche of income tax relief:

- (a) until it has spent 30% of the amount raised on a Qualifying Purpose (as detailed herein on page 27), or
- (b) more than two years after the end of the year of assessment in which the Eligible Shares were issued.

### Claiming the Second Tranche of Income Tax Relief

Each Investee Company shall issue a Statement of Qualification (second stage relief) to the Manager in respect of the second tranche of income tax relief as appropriate subject to satisfying the required conditions (as detailed below). The Manager will in turn issue a Managers Certificate to the Investor to facilitate him/her claiming the second tranche of income tax relief on that portion of his/her investment.

A Qualifying Company may not issue a Statement of Qualification (second stage relief) in respect of a qualifying investment for the second tranche of income tax relief:

- (a) until the Relevant Period has ended and it has satisfied certain conditions in relation to employment numbers and emolument levels or expenditure on R&D+I (as detailed herein on page 27 under “The Relief”); or
- (b) more than two years after then end of the year of assessment in which the conditions referred to in paragraph (a) are satisfied.

Income tax relief shall be limited to the extent that the Manager successfully identifies and invests in what, it, at its sole discretion deems to be suitable Investee Companies. Relief may be lower than the amount invested by the Investor should the Manager not succeed in fully investing the Fund.

The timing of income tax relief shall be dependent upon:

- the timing of Investments made by the Manager on behalf of Investors in Qualifying Companies; and
- the timing of the issuing of the Statements of Qualification (for both the first tranche of income tax relief and the second tranche of income tax relief) by the Investee Companies; and
- the timing of the issuing of the Managers Certificates by the Manager.

The timing of the Statement of Qualification for the first tranche of tax relief is dependent on the timing of when the Investee Company spends 30% of the Investment on a Qualifying Purpose (as detailed herein on page 28). The Investors will not obtain a Managers Certificate in circumstances where the Investee Company does not spend 30% of the amount raised on a Qualifying Purpose within two years of the date of issue of the Qualifying Shares.

The timing of the Statement of Qualification (second stage relief) for the second tranche of tax relief is dependent on the Qualifying Company fulfilling conditions in relation to employment levels or expenditure on R&D+I (as detailed herein on page 28). The Investors will not obtain a Managers Certificate in circumstances where the Investee Company does not meet these conditions or where the Statement of Qualification (second stage relief) is issued (for whatever reason) by the

Qualifying Company more than two years after the end of the year of assessment in which the conditions were satisfied.

The Revenue Commissioners have indicated that all available Managers Certificates should be filed with an individual's return of income in order to claim income tax relief. It is the responsibility of each individual Investor to ensure that his own tax affairs are in order in any given year.

The Davy EII Tax Relief Fund 2017 ("2017 Fund") was the most recent fund raised by the Manager. The 2017 Fund experienced delays in its dealings with Revenue which impacted the timing of investments by the 2017 Fund and the issuing of Tax Relief Certificates by the Revenue. It is envisaged that the changes introduced in the Finance Bill 2018 (which have yet to be enacted) and specifically the self-certification will address these delays. However, it should be noted that Investee Companies may still apply to the Revenue Commissioners for confirmation that certain conditions are satisfied in respect of investments in Eligible Shares and hence undue delays from Revenue may impact the timing of the investment of the Fund and hence the issuing of the Managers Certificates.

Please see the Risk Factors section on page 21.

## TRUST DEED

A Trust Deed, which is a legal agreement establishing an irrevocable trust and outlining the terms between parties, has been agreed and signed by the Manager and the Trustee. In the Trust Deed, First Names Trust Company (Ireland) Limited has agreed to act as Trustee to the Fund.

A copy of the Trust Deed made between BES Management DAC and First Names Trust Company (Ireland) Limited dated 16 November 2018 is available for inspection at the registered office of the Trustee at Suite 6, Rineanna House, Shannon Free Zone, Co. Clare.

## SUMMARY OF EMPLOYMENT AND INVESTMENT INCENTIVE SCHEME LEGISLATION

### Introduction

This section seeks to summarise the main provisions of the Scheme for Relief for Investment in Corporate Trades as set out in the EII Scheme legislation. **The Finance Bill 2018 published on 18 October 2018 proposed a number of changes to the EII Scheme. However, these changes are subject to Dáil and Seanad approval prior to being signed into law by the President. The below reflects the proposed changes. It should be noted that some or all of the proposed changes may not be enacted.**

**Set out in Appendix VI is a summary of the existing EII Scheme Legislation for your information.**

**The Fund will operate under the existing EII Scheme legislation until such time as the Finance Bill 2018 is enacted, following which the Fund will operate under the proposed EII Scheme.**

The below summary does not set out the provisions of the relevant legislation in full and prospective Investors are strongly advised to seek appropriate professional advice on their entitlement to the relief before making any Investment in the Fund.

### The Relief

Income tax relief on an Investment in the Fund may be available to Investors in two tranches as detailed below:

- (a) the Relief will enable Investors to deduct 30/40ths of the Investment amount subscribed ("first tranche of income tax relief") to the Fund from their total income for income tax purposes for either the tax year of subscription ending on 31 December 2018, or if so desired for the tax year of Investment by the Fund ending 31 December 2019, subject to the fulfilment of certain conditions by the Qualifying Company. A Qualifying Company may not issue a Statement of Qualification (to facilitate Investors claiming the Relief) in respect of a Qualifying Investment for the first tranche of income tax relief:

- (i) until it has spent 30 percent of the amount raised on a Qualifying Purpose; or
  - (ii) more than two years after the end of the year of assessment in which the Shares were issued.
- (b) the Relief will enable Investors to deduct 10/40ths of the Investment amount subscribed (“second tranche of income tax relief”) to the Fund from their total income for income tax purposes for the year of assessment following the year of assessment in which the Subsequent Period ends, subject to the fulfilment of certain conditions by the Qualifying Company. A Qualifying Company may not issue a Statement of Qualification (second stage relief) (to facilitate Investors claiming the Relief) in respect of a Qualifying Investment for the second tranche of income tax relief:
- (i) until the Relevant Period has ended and unless in relation to a Qualifying Company and/or its Qualifying Subsidiaries:
    - i. the staff numbers and wage levels have increased by a minimum of one member of staff in the year of assessment in which the Subsequent Period ends; or
    - ii. the amount of expenditure on R&D+I incurred in the year of assessment in which the Subsequent Period ends exceeds the amount of expenditure on R&D+I incurred in the year of assessment prior to the year of assessment in which the subscription for Eligible Shares was made.
  - (ii) A Qualifying Company may not issue a Statement of Qualification (second stage relief) more than two years after the end of the year of assessment in which the conditions referred to above are satisfied.

Neither the first tranche nor the second tranche of income tax relief shall be given to the extent to which the amount or total Investment amount subscribed by an individual for Eligible Shares issued to the individual in any year of assessment exceeds €150,000. See “Limits on the Relief” on page 32.

### **Qualifying Investment**

An Investment shall be a Qualifying Investment where:

- (a) an individual subscribes for Eligible Shares in a Qualifying Company; and
- (b) the Qualifying Company employs the amount subscribed wholly or mainly for a Qualifying Purpose within the Relevant Period (as detailed below).

A Qualifying Purpose:

- (a) includes employing the amounts in the Qualifying Company, or a Qualifying Subsidiary following an Investment:
  - i. for the purposes of carrying on Relevant Trading Activities (set out on page 31); or
  - ii. in the case of a company which has not commenced to trade, for the purpose of carrying on R&D+I which is connected with and undertaken with a view to the carrying on of Relevant Trading Activities; and
  - iii. where the use of the money will contribute directly to the creation or maintenance of employment in the company;
- (b) does not include employing the amounts on the acquisition, directly or indirectly, of:
  - i. an interest in another company (such that that company becomes a Qualifying Subsidiary);
  - ii. a further interest in a Qualifying Subsidiary; or
  - iii. a trade.

An Investment shall not be a Qualifying Investment unless it is based on a business plan. The business plan must be a written business plan, containing details of products, sales and profitability development, establishing ex-ante financial viability and which includes both quantitative and qualitative details of the activities the Qualifying Investment is sought to support.

An initial risk finance investment shall only be a Qualifying Investment where the RICT Group (as defined in the ‘Qualifying Company’ section on page 29) which issues the Eligible Shares made its first commercial sale less than 7 years prior to the initial risk finance investment.

An expansion risk finance investment shall only be a Qualifying Investment where, based on a business plan prepared in view of entering a new product on the market or geographical market, the amount to be raised through the issue of those shares is greater than 50% of the RICT Group’s average annual turnover in the preceding five years.

A second stage risk finance investment shall only be a Qualifying Investment where:

- (a) the initial risk finance investment, or expansion risk finance investment, involved the issue of Eligible Shares on or after 6 April 1984 in respect of which relief was available, and
- (b) the possibility of the first-mentioned investment was foreseen in the business plan upon which the initial risk finance investment or expansion risk finance investment.

### **Eligible Shares**

Eligible Shares means new shares forming part of a Qualifying Company's share capital, which may:

- (a) carry a right to preferential rights to a dividend or to repayment of capital on a winding up, and
- (b) be redeemable.

No relief shall be available to an Investor in relation to Eligible Shares where any agreement, arrangement or understanding exists that could reasonably be considered to substantially reduce the risk that the person beneficially owning those shares including being unable to realise an amount other than a normal distribution in respect of those shares.

It is the responsibility of the Investor to submit his own individual claim for income tax relief to the Revenue Commissioners.

### **Qualifying Investor**

A Qualifying Investor is an individual who subscribes on his or her own behalf for Eligible Shares in a Qualifying Company and complies with the EII Scheme Legislation.

An individual shall not be a Qualifying Investor if at any time in the Compliance Period he or she is connected with the Investee Company. The Manager will not knowingly invest monies forming part of the Fund in shares in an Investee Company with which any Investor is connected for the purposes of the EII Scheme. As part of the Application Form, Investors must make a declaration disclosing any connections, as outlined in **Appendix III**.

An individual shall be connected with a Qualifying Company if the individual or an associate of the individual:

- (a) is a partner of the company or any company in the RICT Group;
- (b) is a director or employee of the company or any company in the RICT Group other than one who receives payment from a company in the RICT group during the Relevant Period other than reasonable and necessary payments as detailed in the EII Scheme Legislation;
- (c) has an interest in the capital of the company, or any company in the RICT Group and directly or indirectly, processes or is entitled to acquire:
  - i. any of the issued share capital of any such company;
  - ii. any of the loan capital of any such company;
  - iii. any of the voting power in any such company; or
  - iv. rights to the assets on a winding up of any such company.

Where an individual subscribes for shares in a Qualifying Company with which the individual is not connected, then he or she shall nevertheless be connected if he subscribes for the shares as part of any arrangement which provides for another person to subscribe for shares in another company with which the individual or any other individual who is a party to the arrangement is connected.

For this purpose, an associate includes a relative, partner and certain persons with whom the individual has connections through a trust.

### **Qualifying Company**

A Qualifying Company (including any company in the RICT Group) shall be a Qualifying Company if it is incorporated in the State or in another EEA State and must exist wholly for the purpose of carrying on Relevant Trading Activities as detailed in page 31. Throughout the Relevant Period the Qualifying Company shall carry on, or intend to carry on, Relevant Trading Activities from a fixed place of business in the State.

RICT Group means the Qualifying Company concerned, its partner businesses and linked businesses, and references to a RICT Group shall be taken to refer to any RICT Group in the legislation of which the Qualifying Company is part as further detailed in the EII Scheme Legislation.

At the time Eligible Shares are issued in the Qualifying Company, each company (including the Qualifying Company) in the RICT Group shall:

- (a) be a micro, small or medium-sized enterprise (SME) (within the meaning of Annex 1 to Commission Regulation (EU) No. 651/2014 of 17 June 2014);
- (b) not be an undertaking in difficulty (within the meaning of Paragraph 18 of Article 2 of Commission Regulation (EU) No. 651/2014 of 17 June 2014);
- (c) be unlisted, and no arrangements shall be in existence at that time in relation to the company becoming a listed company;
- (d) not be subject to an outstanding recovery order following a previous decision of the Commission that declared an aid illegal and incompatible with the internal market; and
- (e) hold a tax clearance certificate.

A Qualifying Company must not control or have an arrangement to control, another company other than a Qualifying Subsidiary or be under the control of another company, with the exception of companies controlled by certain state agencies. Each company in the RICT Group must have fully paid up share capital.

The Qualifying Company must exist wholly for the purpose of carrying on Relevant Trading Activities where those activities are principally carried on in the State and/or be a holding company of a subsidiary which carries on a Relevant Trading Activity in a fixed place of business in the State.

Where a Qualifying Company raises any amount through the issue of Eligible Shares for the purposes of raising money for Relevant Trading Activities which are being carried on by a Qualifying Subsidiary, the amount shall be used for the purpose of acquiring Eligible Shares in the Qualifying Subsidiary and for no other purpose during the Relevant Period.

The Investee Company (including any subsidiaries) will cease to be a Qualifying Company if before the end of the Relevant Period a resolution is passed, or an order is made, for the winding up of the company or the company is dissolved without winding up other than for bona fide commercial reasons (and not part of a tax avoidance scheme) or the company's net assets, if any, are distributed to its members before the end of the Relevant Period or (if later) three years from the commencement of the winding up.

The Qualifying Company may have subsidiaries itself but each must be carrying on a Relevant Trading Activity or the subsidiary's trade must consist of one or more of the purchase, sale or rendering of services to or on behalf of the Qualifying Company. The Qualifying Company must hold at least 51% of the shares of the Qualifying Subsidiary and control it.

The maximum EII Scheme Investment allowable in the lifetime of any company in the RICT Group is €15,000,000 subject to a limit of €5,000,000 in any 12-month period.

#### **General Block Exemption Regulations on State Aid (GBER)**

A Qualifying Company must meet the requirements of paragraph 18 of Article 2 and paragraph 5, 6 and 9 of Article 21 of Commission Regulation (EU) No. 651/2014 of 17 June 2014 to comply with the EU's General Block Exemption Regulations on State Aid (GBER).

Paragraph 18 of Article 2 of Commission Regulation (EU) No. 651/2014 of 17 June 2014 states that a company shall not be a Qualifying Company while the company is regarded as a firm in difficulty for the purposes of the Community Guidelines on State aid for rescuing and restructuring firms in difficulty.

Paragraph 5 of Article 21 of Commission Regulation (EU) No. 651/2014 of 17 June 2014 states that eligible undertakings shall be undertakings which at the time of the initial risk finance Investment are unlisted SMEs and fulfil at least one of the following conditions:

- (a) They have not been operating in any market;
- (b) They have been operating in any market for less than 7 years following their first commercial sale;
- (c) They require an initial risk finance Investment which, based on a business plan prepared in view of entering a new product or geographical market, is higher than 50% of their average annual turnover in the preceding 5 years.

Paragraph 6 of Article 21 of Commission Regulation (EU) No. 651/2014 of 17 June 2014 states that the risk finance aid may also cover second stage Investments made in eligible undertakings, including after the 7-year period mentioned in paragraph 5(b) (above), if the following cumulative conditions are fulfilled:

- (a) The total amount of risk finance mentioned in paragraph 9\* is not exceeded;
- (b) The possibility of second stage Investments was foreseen in the original business plan;
- (c) The undertaking receiving second stage Investments has not become linked, within the meaning of Article 3(3) of Annex I with another undertaking other than the financial intermediary or the independent private Investor providing risk finance under the measure, unless the new entity fulfils the conditions of the SME definition.

\*Paragraph 9 of Article 21 of Commission Regulation (EU) No. 651/2014 of 17 June 2014 states that the total amount of risk finance shall not exceed €15,000,000 per eligible undertaking under any risk finance measure.

### Relevant Trading Activities

Relevant Trading Activities are those activities carried on in the course of a trade the profits or gains of which are charged to tax under Case I of Schedule D, excluding activities related to the following:

- (a) adventures or concerns in the nature of trade;
- (b) dealing in commodities or futures or in shares, securities or other financial assets;
- (c) financing activities;
- (d) the provision of professional services (within the meaning of section 128F(1));
- (e) dealing in or developing land;
- (f) the occupation of woodlands within the meaning of Section 232;
- (g) operating or managing hotels, guest houses, self catering accommodation or comparable establishments or managing property used as an hotel, guest house, self catering accommodation or comparable establishment, except where such activity is a tourist traffic undertaking (meaning tourist accommodation facilities or operations which are registered or approved by the National Tourism Development Authority)
- (h) operations carried on in the coal industry or in the steel and shipbuilding sectors; and
- (i) the production of a film (within the meaning of section 481).

### Claiming Income Tax Relief

Claims may be made for Relief on receipt of Managers Certificates for both the first tranche and second tranche of income tax relief.

The Manager can only issue Managers Certificates to facilitate Investors claiming Relief on receipt of Statements of Qualification from each Investee Company.

A Qualifying Company may not issue a Statement of Qualification in respect of a Qualifying Investment for the first tranche of income tax relief:

- (a) until it has spent 30% of the amount raised on a Qualifying Purpose (as detailed on page 28); or
- (b) more than two years after the end of the year of assessment in which the Shares were issued.

A Qualifying Company may not issue a Statement of Qualification (second stage relief) in respect of a Qualifying Investment for the second tranche of income tax relief:



- (a) until the Relevant Period has ended and it has satisfied certain conditions in relation to employment levels or expenditure on R&D+I (as detailed on page 27); or
- (b) more than two years after the end of the year of assessment in which the conditions referred to in paragraph (a) are satisfied.

It is the responsibility of each individual Investor to ensure that his own tax affairs are in order in any given year.

#### **Limits on the Relief**

The maximum Investment in all EII Scheme Investments in any one year which may qualify for income tax relief (in two tranches) is €150,000. The first tranche of income tax relief is available in either the tax year of subscription to the Fund (2018) or in the year in which the Fund makes its Investments (2019) following receipt of a Managers Certificate which will be issued by the Manager following receipt of a Statement of Qualification from each Investee Company. In the case of a husband and wife, each is entitled to subscribe up to €150,000 to the extent that each spouse has sufficient taxable income in his or her own right. Unused amounts of relief may not be transferred between spouses. Relief under the EII Scheme is not given to an Investor for an Investment of less than €250 in one company in any tax year where the claimant invests directly.

Investors who invest in the Fund in excess of €150,000 in any one tax year may carry forward the income tax relief to the following year. Investors who have insufficient total taxable income to claim full income tax relief for their Investment in the year of issue may be allowed to claim relief for the balance of the Investment in the following years until 31 December 2021 subject to each Investor's particular tax circumstances.

#### **Withdrawal of Relief – Investee Company**

Where a Statement of Qualification issued by a Qualifying Company is incorrect, any relief claimed by an Investor in excess of the relief which would have been claimed had a correct Statement of Qualification been furnished shall be withdrawn by the making of an assessment on the Qualifying Company to corporation tax under Case IV of Schedule D for the year of assessment for which the relief was given, in an amount equal to 1.2 times of the first tranche of income tax relief, or such part of that amount as no longer qualifies for relief.

This subsection applies where any relief claimed is no longer due because within the Relevant Period:

- (a) the company has ceased to be a Qualifying Company;
- (b) an Investment has ceased, or partially ceased, to be a Qualifying Investment; or
- (c) the amount of relief available is to be reduced by the amount of value received by any member (including any company in the RICT Group) other than the Investor from the Investee Company.

Where a Statement of Qualification (second stage relief) issued by a Qualifying Company is incorrect, any relief claimed by an individual in excess of the relief which would have been claimed had a correct Statement of Qualification (second stage relief) been furnished shall be withdrawn by the making of an assessment on the Qualifying Company to corporation tax under Case IV of Schedule D for the year of assessment for which the relief was given, in an amount equal to 0.4 times of the second tranche of income tax relief, or such part of that amount as no longer qualifies for relief.

#### **Withdrawal of Relief – Investor**

Relief may be withdrawn from the Investor if it is found to be subsequently not due as a result of any circumstance apart from those circumstances (as detailed above in the section "Withdrawal of Relief – Investee Company") that result in a Withdrawal of Relief from the Investee Company.

Where Relief is to be withdrawn from the Investor, the Relief shall be withdrawn by the making of an assessment on the Investor to income tax under Case IV of Schedule D for the year of assessment for which the relief was given.

Relief may be withdrawn or deemed no longer due in circumstances where within the Relevant Period:

- (a) the Eligible Shares are subject to any agreement, arrangement or understanding that could reasonably be considered to substantially reduce the risk that the person beneficially owning those shares including being unable to realise an amount other than a normal distribution in respect of those shares;
- (b) the investment ceases to be a Qualifying Investment by virtue of Section 499 of the EII Scheme Legislation;
- (c) an Investor:



- i. disposes of Eligible Shares in an Investee Company directly or as a result of the sale of a Qualifying Subsidiary;
  - ii. has an option or agreement which allows the Investor to purchase or dispose of the Eligible Shares at a price other than the market value of the shares at the time the disposal is made;  
or
  - iii. receives value from any company in the RICT Group;
- (d) unless the issue of Eligible Shares are for bona fide commercial purposes and not as part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax; or
- (e) an Investor ceases to be a Qualifying Investor.

### Information

Revenue may require the Qualifying Company to provide evidence to verify that the conditions necessary for the claiming and granting of the Relief have been satisfied. Where an event occurs which would cause any Relief to be withdrawn the company, any person connected with the company who has knowledge of that matter and designated fund managers who have knowledge of the matter shall within 60 days of the event give a notice in writing to Revenue containing particulars of the event.

### Capital Gains Tax and Income Tax

Generally, when shares are disposed of, the transaction falls to be taxable for the Investor under Capital Gains Tax rules with any gain subject to the Capital Gains Tax rate, currently 33%. However, in certain circumstances income tax treatment can apply and/or Revenue can seek to apply income tax treatment to the disposal of shares under a number of specific and general provisions of legislation. This would mean that any gain would be subject to the Investors marginal rate of income tax, USC and PRSI which based on current rates could be up to 55%.

Where Capital Gains Tax treatment applies on the disposal of shares, the net cost of Investment, being the amount invested less tax relief received can be deducted from the proceeds in an arm's length sale in order to calculate the gain if any, for Capital Gains Tax purposes. However, if the shares are disposed of at a loss, no allowable loss for Capital Gains Tax purposes will be recognised. The responsibility for making Capital Gains Tax returns rests entirely with the Investor.

Where income tax treatment applies, any excess amounts received by the Investor above the original Investment amount will be treated as a distribution. The company making the distribution will be obliged to operate Dividend Withholding Tax ("DWT") currently at the rate of 20%. The Investor will be chargeable to income tax on the distribution under Schedule F at the Investor's marginal rate of income tax, USC and PRSI which based on current rates could be up to 55% but should receive a credit for the DWT withheld\*. The responsibility for making income tax returns rests entirely with the Investor.

For the purpose of illustration (please see **Appendix I**), it is assumed that Capital Gains Tax treatment will apply, although as detailed above Income Tax may apply.

\*No income tax deduction will be available for the fees associated with acquisition or disposal of the Investment, being fundraising and realisation fees.

### Tax Avoidance

Income Tax relief is not available unless shares are subscribed for and issued for bona fide commercial purposes and not as part of a scheme or arrangement, the main purpose, or one of the main purposes of which, is the avoidance of tax. Investments in shares which are subject to any agreement, arrangement or understanding that could eliminate the risk for the Investors do not qualify for relief.

**WARNING: This information is based on our understanding of current tax legislation and the current Revenue Commissioners' interpretation thereof and is subject to change including retrospectively without notice.**

## COMPLAINTS

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If an Investor is dissatisfied at any time with the service received from the Manager, he should not hesitate to make this known to us verbally or preferably in writing. We have an internal complaints procedure, the details of which are set out in the Manager's Terms of Business, and will deal with your complaint promptly. Please address your correspondence to BES Management DAC, 5th Floor, Beaux Lane House, Mercer Street Lower, Dublin 2. If you are not satisfied with the outcome of our review of your complaint, you are entitled to refer your unresolved complaint to the Financial Services & Pensions Ombudsman (FSO). The FSO is a statutory officer who deals independently with unresolved complaints from consumers about their individual dealings with financial services providers. It is a free service to the complainant. Further details relating to the FSO, including how to make a complaint, are available at [www.financialombudsman.ie](http://www.financialombudsman.ie), by telephone on Lo-Call Number: 1890 88 20 90, or by writing to the Financial Services Ombudsman, 3rd Floor, Lincoln House, Lincoln Place, Dublin 2.

## APPENDIX I

### ILLUSTRATIVE EXAMPLES OF SIMULATED RETURN CALCULATIONS

The following examples illustrate possible return scenarios on an Investment under the EII Scheme. They are for illustrative purposes only and are not intended to indicate a likely or probable return on this Investment.

The examples assume:

- An Investment of €100,000 in the Fund which is invested during 2019 and subsequently disposed of during 2023. In Example 1 it is assumed that the Investment is disposed of at a value of €115,000, before the exit fee of 2%. In Example 2 it is assumed that the Investment is disposed of at a value of €85,000, before the exit fee of 2%. The amount realised on disposal could be higher or lower than these amounts.
- The Investor is assumed to be an individual with at least €100,000 of income taxable at the higher rate of 40% \*\* in the tax year ended 31 December 2018 which is when it is assumed the first tranche of income tax relief is availed of, and in the tax year ended 31 December 2023, which is when it is assumed the second tranche of income tax relief is availed of.
- All the Investee Companies are assumed to satisfy the conditions required (as detailed in the section “The Relief” herein on page 27) to facilitate the Investee Companies issuing Statements of Qualification in 2019 to facilitate Investors claiming the full first tranche of income tax relief.
- All the Investee Companies are assumed to satisfy the conditions required (as detailed in the section “The Relief” herein on page 27) to facilitate the Investee Companies issuing Statements of Qualification (second stage relief) in 2024 to facilitate Investors claiming the full second tranche of income tax relief.
- Chargeable gains are assumed to be subject to capital gains tax at 33% and the Investor is assumed to have available the full amount of the €1,270 capital gains tax exemption for an individual. **Please note income tax may apply as detailed under ‘Capital Gains Tax and Income Tax’ on page 33 herein.**

#### Example 1: Illustrative Return on Investment Demonstrating a Capital Gain Scenario

€

|  |                    |
|--|--------------------|
| Illustrative Sale Proceeds (net*)  | 112,700            |
| Net Cost of Investment (see (A) below)   | <u>(63,000)</u>    |
| Gross Gain   | 49,700             |
| Capital Gains Tax (see (B) below)  | <u>(2,782)</u>     |
| Net Gain   | <u>46,918</u>      |
| <b>Illustrative Annual Compound Return on Net Cost of Investment (after CGT)</b> | <b><u>9.5%</u></b> |

| <b>(A) Net Cost of Investment</b>               |                 | € | <b>(B) Capital Gains Tax</b> |                  | € |
|---|-----------------|---|------------------------------|------------------|---|
| Amount Invested                                 | 100,000         |   | Sale Proceeds (net*)         | 112,700          |   |
| Once-off Fee at 3%                              | <u>3,000</u>    |   | Cost of Investment           | <u>(103,000)</u> |   |
|   | (103,000)       |   | Capital Gain                 | 9,700            |   |
| Less First Tranche of EII income tax relief     | (30,000)        |   | Capital Gains Tax Exemption  | (1,270)          |   |
| Less Second Tranche of EII income tax relief ** | <u>(10,000)</u> |   | Chargeable Gain              | <u>8,430</u>     |   |
| Net Cost of Investment                          | <u>63,000</u>   |   | Capital Gains Tax @ 33%      | <u>2,782</u>     |   |

\* Net of exit fee of 2% as detailed herein on page 18 under Investor Fees.

\*\* Subject to conditions in relation to employment numbers and emolument levels or expenditure on R&D+I being fulfilled by all of the Investee Companies and assuming no change in the current higher rate of income tax.

**WARNING: These figures are estimates only. They are not a reliable guide to the future performance of this Investment.**

**Example 2: Illustrative Return on Investment Demonstrating a Capital Loss Scenario**

In this illustration the same assumptions as outlined in Example 1 above are assumed with the exception that the the Investment is disposed of at a value of €85,000, before the exit fee of 2%.

|  |                 |
|--|-----------------|
|  | €               |
| Illustrative Sale Proceeds (net*)      | 83,300          |
| Net Cost of Investment (see (A) below) | <u>(63,000)</u> |
| Gross Gain                             | 20,300          |
| Capital Gains Tax***                   | 0               |
| Net Gain                               | <u>20,300</u>   |

|  |                    |
|--|--------------------|
| <b>Illustrative Annual Compound Return on Net Cost of Investment</b> | <b><u>2.5%</u></b> |
|--|--------------------|

|                                   |          |
|-----------------------------------|----------|
| <b>(A) Net Cost of Investment</b> | <b>€</b> |
|-----------------------------------|----------|

|   |                |
|---|----------------|
| Amount Invested                         | 100,000        |
| Once-off Fee at 3%                      | 3,000          |
|   | <u>103,000</u> |
| Less First Tranche of EII Scheme Income |                |
| Tax Relief                              | (30,000)       |
| Less Second Tranche of EII Scheme       |                |
| Income Tax Relief **                    | (10,000)       |
| Net Cost of Investment                  | <u>63,000</u>  |

\* Net of exit fee of 2% as detailed herein on page 18 under Investor Fees.

\*\* Subject to conditions in relation to employment levels or expenditure on R&D+I being fulfilled by all of the Investee Companies and assuming no change in the current higher rate of income tax.

\*\*\* There is no capital gains tax in this scenario due to the sales proceeds being less than the original amount invested, capital loss is not available for offset against other chargeable gains.

**WARNING: These figures are estimates only.  
They are not a reliable guide to the future performance of this investment.**

**WARNING: The above examples are shown for the purpose of illustration only.  
The actual return on an investment in the Fund depends on a number of factors including but not limited to the quantum and timing of income tax relief obtained, the growth or loss on the Fund's investments and income, if any.**

**WARNING: If you invest in this Fund you will not be able to cash in your Investment and you will not have any access to your money for at least four years from the date the Fund makes its Investments.**

**WARNING: If you invest in this Fund you may lose some or all of the money you invest.**

**WARNING: This information is based on our understanding of current tax legislation and the current Revenue Commissioners' interpretation thereof and is subject to change including retrospectively without notice.**

**WARNING: These illustrations are intended as a general guide only and are not a substitute for individual tax or investment advice.  
Prospective Investors should seek competent professional tax and investment advice specific to their circumstances prior to investing. Investors are responsible for establishing their entitlement to participate in this investment and for making their own income tax relief claims.**

## APPENDIX II

### AMOUNT TO BE SUBMITTED ON APPLICATION

| Investment<br>Amount<br>€ | 3%<br>Fundraising Fee<br>€ | Subscription<br>Amount Required<br>€ |
|---------------------------|----------------------------|--------------------------------------|
| 5,000                     | 150                        | 5,150                                |
| 10,000                    | 300                        | 10,300                               |
| 15,000                    | 450                        | 15,450                               |
| 20,000                    | 600                        | 20,600                               |
| 25,000                    | 750                        | 25,750                               |
| 30,000                    | 900                        | 30,900                               |
| 35,000                    | 1,050                      | 36,050                               |
| 40,000                    | 1,200                      | 41,200                               |
| 45,000                    | 1,350                      | 46,350                               |
| 50,000                    | 1,500                      | 51,500                               |
| 55,000                    | 1,650                      | 56,650                               |
| 60,000                    | 1,800                      | 61,800                               |
| 65,000                    | 1,950                      | 66,950                               |
| 70,000                    | 2,100                      | 72,100                               |
| 75,000                    | 2,250                      | 77,250                               |
| 80,000                    | 2,400                      | 82,400                               |
| 85,000                    | 2,550                      | 87,550                               |
| 90,000                    | 2,700                      | 92,700                               |
| 95,000                    | 2,850                      | 97,850                               |
| 100,000                   | 3,000                      | 103,000                              |
| 105,000                   | 3,150                      | 108,150                              |
| 110,000                   | 3,300                      | 113,300                              |
| 115,000                   | 3,450                      | 118,450                              |
| 120,000                   | 3,600                      | 123,600                              |
| 125,000                   | 3,750                      | 128,750                              |
| 130,000                   | 3,900                      | 133,900                              |
| 135,000                   | 4,050                      | 139,050                              |
| 140,000                   | 4,200                      | 144,200                              |
| 145,000                   | 4,350                      | 149,350                              |
| 150,000                   | 4,500                      | 154,500                              |

The minimum Investment amount is **€5,000** and Investments thereafter may only be made in multiples of **€1,000** to a maximum Investment amount of **€150,000**, all exclusive of fundraising fees. The above table is an illustration of the fundraising fee payable on each Investment and the Subscription amount required using multiples of **€5,000**.

Please note that the maximum total Investment in all EII Scheme Investments in any one year which may qualify for income tax relief (in two tranches) is **€150,000**. The first tranche of income tax relief may be available for either the tax year of subscription to the Fund ending 31 December 2018 or for the tax year of Investment by the Fund ending 31 December 2019 following receipt of a Managers Certificate which will be issued by the Manager following receipt of a Statement of Qualification from each Investee Company. The second tranche of income tax relief may be available for the year of assessment following the end of the four year Investment period, subject to the fulfilment of conditions set out under "The Relief" on page 27.

All cheques must be made payable to **First Names Trust Company (Ireland) Limited a/c The 2018 Davy EIIS Fund** and drawn on the applicant's personal bank account.

# APPENDIX III - APPLICATION FORM 2018

## THE 2018 DAVY EIIS FUND

Applications to participate in the Fund shall be considered only on the terms and conditions of the Memorandum dated **7 December 2018** and must be made on the Application Form contained in the Memorandum. Any agreement purporting to amend or exclude or partly exclude the application of any term or condition of the Memorandum shall be void, save for an amendment or alteration approved by the Minister for Jobs, Enterprise and Innovation under Section 5 of the Designated Investment Funds Act 1985. All expressions defined in the Memorandum shall bear the same meanings in this Application Form.

The Manager reserves the right to arrange to have all cheques presented for payment on receipt, to accept in part only or to reject any application, and to withhold allotments and/or remittances for surplus application monies pending clearance of the applicants' cheques. Joint applications cannot be accepted. The application list will open on 7 December 2018 and close on 31 December 2018 (the "Closing Date"). Applications to participate in the Fund should be received by BES Management DAC c/o J&E Davy no later than 31 December 2018 but the Applicant should note that applications shall be accepted in order of receipt and the Manager reserves the right to close the application list at any time, for any reason and at any level of funds subscribed by Investors without giving prior notice to any person on or before 31 December 2018 and to reject any application in whole or in part. This Application Form duly completed should be sent to BES Management DAC c/o J&E Davy at the address below as soon as possible and in any event by no later than 5pm on the Closing Date. It should be accompanied by appropriate cheques, drawn on the applicant's personal bank account or bank drafts made payable to First Names Trust Company (Ireland) Limited a/c The 2018 Davy EIIS Fund, or whereby applicable the Debit Instruction Form. Once lodged, this Application Form shall be irrevocable and cannot be withdrawn.

### Data Protection

The Manager and its Associates fully respect your right to privacy, and any personal information relating to you will be processed in accordance with the Terms of Business set out in **Appendix V**.

To: **BES Management DAC, co J&E Davy, Davy House, 49 Dawson Street, Dublin 2.**

BES Management DAC. is regulated by the Central Bank of Ireland. BES Management DAC. is a joint venture company owned by J&E Davy and BDO. J&E Davy, trading as Davy, is regulated by the Central Bank of Ireland. Davy is a member of Euronext Dublin and the London Stock Exchange. BDO is authorised to carry on Investment business in the Republic of Ireland by the Institute of Chartered Accountants in Ireland.

**1a.** I wish to subscribe the sum of € ..... being my Investment in the Fund on the terms and conditions of the Memorandum and I enclose a personal cheque/draft/Debit Instruction Form for € ..... including a fee due of € ..... (see **Appendix II**).

**Please note that the maximum total Investment in all EII Scheme Investments in any one year which may qualify for income tax relief (in two tranches) is €150,000.**

Signature

Dated  2018

Tel

Email

Name  (Block Capitals)

Home Address  (Block Capitals)

Tax District

PPS No.

Agent

Agent Address

If you are an **existing Davy client**, please state your client account reference (if known)

**1b.** If you are an **existing Davy client** and would prefer to Debit your Davy personal client account please tick the box below:

Debit my Davy personal client account: Yes  No  If you ticked 'Yes' please complete instruction form on **Appendix IV**.

**Please indicate your source AND amount of funds:**

This refers to the funds provided for this investment

| <b>SOURCE</b>                   | Please tick appropriate boxes | <b>AMOUNT TO BE INVESTED</b> | Please tick one box      |
|---------------------------------|-------------------------------|------------------------------|--------------------------|
| Salary/Bonus                    | <input type="checkbox"/>      | Less than €25,000            | <input type="checkbox"/> |
| Inheritance                     | <input type="checkbox"/>      | €25,000 to €65,000           | <input type="checkbox"/> |
| Savings                         | <input type="checkbox"/>      | €65,000 to €125,000          | <input type="checkbox"/> |
| Redundancy                      | <input type="checkbox"/>      | Greater than €125,000        | <input type="checkbox"/> |
| Sale of shares                  | <input type="checkbox"/>      |                              |                          |
| Transfer of shares / share cert | <input type="checkbox"/>      |                              |                          |
| Other (please specify)          | <input type="checkbox"/>      |                              |                          |

**Please indicate your source of wealth:**

This refers to how you accumulated your total net worth. For example, your source of funds for this investment may be as a result of a sale of shares whereas your total net worth may have been accumulated as a result of your occupation, i.e. Salary / Bonus.

| <b>SOURCE</b>                 | Please tick appropriate box(es) |   |
|-------------------------------|---------------------------------|---|
| Salary/Bonus                  | <input type="checkbox"/>        | Redundancy <input type="checkbox"/>                     |
| Inheritance                   | <input type="checkbox"/>        | Sale of shares <input type="checkbox"/>                 |
| Savings                       | <input type="checkbox"/>        | Transfer of stock / share cert <input type="checkbox"/> |
| Investments that have matured | <input type="checkbox"/>        | Greater than €125,000 <input type="checkbox"/>          |
|                               |                                 | Other (please specify) <input type="checkbox"/>         |

In order to comply with the Foreign Account Tax Compliance Act (FATCA) requirements, please confirm if you are a US citizen Yes  No

In order to comply with the Common Reporting Standard (CRS) requirements, please confirm if you are a Non-Resident Investor Yes  No

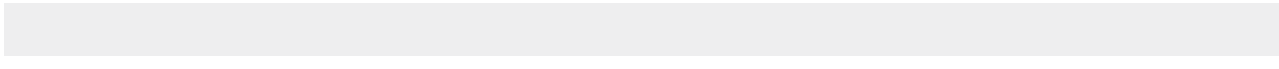
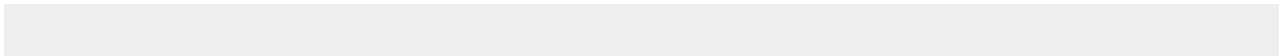
We may use your details to provide you with information in relation to **future EII Scheme Funds we make available.**

However, if you do not wish to receive such information, please tick the box.

- 1c. I understand that for the purposes of compliance with the provisions of the AML Legislation, the Manager is required to establish and verify the identity of Investors. **I enclose a certified copy\* of my passport / drivers licence or copies of two forms of identification (e.g. passport and drivers licence) both of which must be in date and valid and two forms of proof of address dated in the last six months e.g. either a recent utility bill (electricity / gas / telephone / mobile) or a bank statement in my name at the address provided.** I understand that these will be retained by BES Management DAC to fulfil its obligations under Anti Money Laundering legislation. I understand that if I do not provide the anti-money laundering documentation as described above, my application will be rejected and returned to me. I agree to notify the Manager without delay in the event of any change to my personal data. **\*certified copy i.e. a copy which has been signed, stamped and dated by a Solicitor, Commissioner for Oaths, Accountant or Bank Manager as evidence that the photocopy supplied is a true copy of the original.**
2. I hereby irrevocably agree and undertake to provide the Manager with such information regarding my application as it may in its sole discretion require.
3. I hereby accept and agree that my Subscription amount may be returned in part or in full at any time at the discretion of the Manager.
4. I hereby accept and agree that if I do not comply fully with the Procedure for and Conditions of Application as set out on page 24 herein, fully complete the Application Form and provide all the required information my application will be rejected and returned to me.
5. I hereby irrevocably agree and accept any amendments arising in relation to the EII Scheme legislation from the contents of the Irish budget that may be introduced by the Finance Bill 2018, Finance Bill 2019 or any Finance Bills thereafter.
6. I confirm that I have read and understand the Memorandum and the Application Form and I hereby agree to observe, perform and be bound by all the provisions and conditions of the Memorandum and this Application Form and declare that I am fully aware of the risks entailed in investing in the Fund and in particular the risk that the Investments made by the Manager could entail a complete loss of my Subscription.

- 7. I enclose a cheque/banker's draft, made payable to First Names Trust Company (Ireland) Limited a/c The 2018 Davy EIIS Fund or a Debit Instruction Form for the above mentioned sum, being the amount payable, in full on application for investing in the Fund. I also agree to accept the same or any lesser number of units in the Fund in respect of which the application may be accepted.
- 8. I hereby irrevocably authorise the Manager to enter into any agreements, do all such things as are necessary in connection with the management of the Fund as are set out in the Memorandum without further reference to me and notwithstanding any rights or entitlements which I may possess in respect of any shares in Qualifying Companies acquired by the Trustee at the direction of the Manager and in respect of which I shall be the beneficial owner pursuant to the provisions of the Trust Deed and in particular (without prejudice to the generality of the foregoing) I hereby irrevocably and unconditionally authorise the Manager in its absolute discretion in each case and without further reference to me:
  - (a) to invest the Investment monies in companies that indicate that they comply with the EII Scheme legislation.
  - (b) to act on my behalf for a minimum period of four years from the date the Fund makes its Investments or until all Investments made by the Fund have been realised, while recognising that, at all times, Investors retain beneficial ownership of the shares subscribed for in the Investee Companies;
  - (c) to direct the exercise by the Trustee of all voting and other rights in connection with Investments made or held on my behalf under the Fund;
  - (d) to receive and deal with all distributions and dividends paid on Investments in accordance with the provisions of the Trust Deed;
  - (e) to arrange for the sale or disposal of any Investment in whole or in part as the Manager may decide;
  - (f) to agree to any transactions or arrangements (including without limitation arrangements for exchange, amalgamation or reconstruction) and to take or refrain from taking any action whatsoever and make any decisions in respect of the shares of Investee Companies;
  - (g) to draw on any monies subscribed by or due to me under the Fund to satisfy the Manager's and Trustee's fees and expenses up to a maximum of 2% of the total amount realised as set out in the Memorandum or the Trust Deed; and
  - (h) to place monies on deposit with any bank or authorised building society licensed to transact business in the State, pursuant to the Trust Deed.
- 9. I hereby accept and agree that, subject to compliance by the Manager and the Trustee with their expressed obligations contained in the Trust Deed, under no circumstances whatsoever shall I be entitled to hold the Manager or the Trustee liable for any default, act or omission by the Manager or the Trustee or the failure or loss of any nature or kind of the Fund, except in relation to bad faith or gross negligence. I acknowledge that the proposed Investments may not proceed and in such event, I acknowledge that I have no claim against directors of Davy, BDO or the Manager or their shareholders, directors, officers, agents, employees, advisors or any associated entities of Davy, BDO, the Manager or the Trustee, nor shall I be entitled to hold the Trustee liable for any default, act or omission of the Manager.
- 10. I am an Irish resident for tax purposes and have qualifying income against which relief can be claimed. The tax information contained herein is as at 2018 and is subject to changes arising from Finance Bill 2018, and may be subject to change without notice or retrospectively.
- 11. I set out hereunder and/or attach a complete list of all companies with which I am connected as detailed in the EII Scheme legislation. I undertake to notify the Manager of any additional companies with which I may become connected prior to any connection arising for as long as I am an Investor of the Fund.
- 12. I hereby agree to provide updated AML documentation as required by the Manager in relation to my Investment.

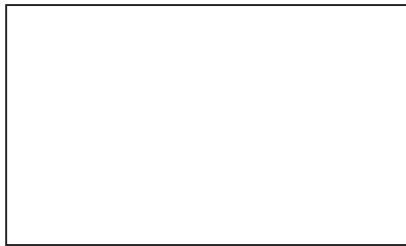
**Company Name and Address**

- 1. 
- 2. 

**Applications must be returned to:**

**BES Management DAC  
C/o Davy  
Davy House  
49 Dawson Street  
Dublin 2**

**Tel: 01-6149000**



If you are applying through an intermediary or as a result of an introduction by an intermediary, the Manager may pay commission to your intermediary. Details of any commission paid in respect of your application are available on request.



# APPENDIX IV – DEBIT INSTRUCTION FORM 2018

## For Davy clients only – Debit Instruction

Please complete the appropriate section depending on whether your Davy personal client account is a sole or joint account.

### 1. Davy Personal Client-Account in Sole name

I wish to subscribe the sum of € ..... being my Investment in the Fund on the terms and conditions of the Memorandum.

Davy Personal Client Account reference:

Please Debit my Davy Personal Client Account the total amount of € ..... including a fee due of € ..... (see Appendix II).

Please note that the maximum total Investment in all EII Scheme Investments in any one year which may qualify for income tax relief (in two tranches) is €150,000.

|               |                      |                  |
|---------------|----------------------|------------------|
| Signature     | <input type="text"/> |                  |
| Dated         | <input type="text"/> | 2018             |
| Tel           | <input type="text"/> |                  |
| Email         | <input type="text"/> |                  |
| Name          | <input type="text"/> | (Block Capitals) |
| Home Address  | <input type="text"/> | (Block Capitals) |
| Tax District  | <input type="text"/> |                  |
| PPS No.       | <input type="text"/> |                  |
| Agent         | <input type="text"/> |                  |
| Agent Address | <input type="text"/> |                  |

**2. Davy Personal Client-Account in Joint names**

I wish to subscribe the sum of € ..... being my Investment in the Fund on the terms and conditions of the Memorandum.

Davy Personal Client Account reference:

Please Debit my Davy Personal Client Account the total amount of € ..... including a fee due of € ..... (see **Appendix II**).

**Please note that the maximum total Investment in all EII Scheme Investments in any one year which may qualify for income tax relief (in two tranches) is €150,000.**

Signature

Dated  2018

Tel

Email

Name  (Block Capitals)

Home Address   
 (Block Capitals)

Tax District

PPS No.

Agent

Agent Address

**Joint account Holder signature**

I confirm my Davy Personal client account referenced below held in joint names with: ..... can be debited for € ..... including a fee due of € ..... (see **Appendix II**).

Davy Personal Client Account reference:

Signature

Dated  2018

Tel

Email

Name  (Block Capitals)

Home Address   
 (Block Capitals)

## APPENDIX V – TERMS OF BUSINESS

**BES Management DAC is regulated by the Central Bank of Ireland.**

**It is important you read this document carefully as it sets out the terms on which BES Management DAC provides its products and services to consumers. These terms are binding and apply to our relationship and services generally; where specific terms apply to an investment you should consider these carefully before proceeding.**

**Effective date: 7 December 2018**

### Contact Details

You may contact BES Management DAC by calling 01 4700 455. You may visit our website at [www.bes.ie](http://www.bes.ie). Our offices are located at 5th Floor, Beaux Lane House, Mercer Street Lower, Dublin 2.

### Group Details

BES Management DAC is a joint venture company owned by Davy and BDO. J&E Davy, trading as Davy, is regulated by the Central Bank of Ireland. Davy is a member of the Euronext Dublin and the London Stock Exchange. BDO is authorised to carry on investment business in the Republic of Ireland by the Institute of Chartered Accountants in Ireland. References in these Terms to “we”, “us” or “our” shall be construed as a reference to BES Management DAC. References in these Terms to “you” or “your” or “Investor” shall refer to each and every applicant to our Employment and Investment Incentive Scheme (EIIS) Funds, including the Davy EIIS Funds.

### Products & Services

BES Management DAC is authorised by the Central Bank of Ireland under Section 10 of the Investment Intermediaries Act 1995 to act as a manager of a designated investment fund within the meaning of the Designated Investment Funds Act 1985. BES Management DAC has launched and manages a series of EIIS funds, including the Davy EII Tax Relief Funds (“the Funds”). Investment in the Fund is available to individuals who qualify for tax relief on investments in the Fund, as set out in the EIIS Scheme Legislation and in the Fund’s Prospectus.

### Anti-Money Laundering

We are required under the terms of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 as amended by the Criminal Justice Act 2013, the Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Act 2018 and the Criminal Justice (Terrorist Offences) Act 2005 prior to establishing a business relationship with you, to establish and verify your identity, and the source of your subscription to the Fund. In this regard, you will be required to provide us with specific documentation which we will request from you at the time you make an investment and if you do not provide the information we require, you will not be in a position to make an investment in our EIIS Funds. You hereby confirm that any documentation that you supply shall be complete and shall not in any way be misleading or inaccurate and you also agree that we may pass on such information as we consider necessary in order for us to comply with our reporting and legal requirements under the Acts.

### Fees/Commissions

As outlined in the Funds Prospectus, a once-off fundraising fee will be payable by each Investor on the amount of his or her subscription to the Fund at the date of application. This fee is payable in addition to the Investor’s subscription to the Fund. Upon realisation of the Fund’s investments, we shall be entitled to recover all reasonable and necessary costs associated with the realisation of investments, up to a maximum of 2% of the total amount realised. Where such costs are applied, they are recovered from the proceeds of the realisation, payable to the Investor. Any interest earned on subscription monies pending investment and on monies subsequently realised on the sale of such investments shall be paid to the Investor in accordance with the Trust Deed.

### Information, Confidentiality and Conflicts of Interest

We confirm that where you give us confidential information or where we acquire sensitive information concerning you or your affairs in the course of the investment, we shall at all times keep such information confidential (“Confidential Information”). You agree for us to take such steps as we, in good faith, think fit to preserve the Confidential Information from misuse at all times during the investment and for a period of six years from the end of the client relationship or the date of transaction respectively. We shall be entitled to disclose Confidential Information which is widely known and acknowledged and / or available in the public domain (other than arising as a result of a breach of an obligation). We shall also be entitled to disclose Confidential Information which we require to our legal advisers or professional indemnity insurers and where necessary to comply with any legal, Governmental, statutory or professional regulatory requirement.

Conflicts of interest may arise with regard to BES Management DAC, Davy, BDO, the Trustee, the companies in which the Funds are invested and the individual investors. You agree to notify us immediately where you know or become aware of any conflict of interest or potential conflict of interest you have in relation to the Fund’s investments.

BES Management DAC will seek to avoid potential conflicts of interest. Where it is not possible to avoid a conflict of interest, we will ensure that we act honestly, fairly and professionally in your best interest. It is our policy to identify, review and manage any conflicts of interest that may arise from time to time through appropriate safeguards and disclosures.

Neither we nor you will be prevented from disclosing confidential or restricted information:

- (i) which is or becomes public knowledge other than by a breach of an obligation of confidentiality;
- (ii) which is or becomes known from other sources without restriction on disclosure;
- (iii) which is required to be disclosed by law or any professional or regulatory obligation; or
- (iv) which is required to be disclosed in confidence to any legal, taxation or other professional advisor.

### Default of a Consumer

If you default in an agreement with us, we may terminate that agreement and take such steps (including legal proceedings and enforcement of security) as we consider necessary to recover what you owe us.

### Consumer Protection Code

BES Management DAC is subject to the Central Bank of Ireland's Consumer Protection Code which we must comply with in our dealings with customers who are considering investing in or who have invested in our Funds. The Code offers protection to consumers and a copy of the Code can be found on the Central Bank's website [www.centralbank.ie](http://www.centralbank.ie).

### Data Protection

The provisions set out in Appendix 1 of these Terms shall govern data protection and privacy matters relating to the Engagement.

### Governing Law and Jurisdiction

These Terms shall be governed and construed in accordance with the laws of the Republic of Ireland and any dispute arising out of the application form, these Terms and the application form shall be subject to the exclusive jurisdiction of the Irish Courts.

### Complaints

If you are dissatisfied at any time with our services, you should not hesitate to make this known to us. To ensure your complaint is dealt with properly and speedily we would ask that you submit all such complaints in writing to BES Management DAC, 5th Floor, Beaux Lane House, Mercer Street Lower, Dublin 2. We have an internal complaints procedure and will deal with your complaint promptly.

A written acknowledgement of your complaint will be sent within 5 working days of the complaint being received. You will be provided with the name of the individual appointed by us to deal with your complaint and you will be provided with written updates on the progress of the investigation at least every 20 working days. Your complaint will be actively investigated and we aim to provide a comprehensive response to you not later than 40 working days from receipt by us of your original complaint.

If we have given you a less than satisfactory service we undertake to do everything reasonable to put it right and if you are still not satisfied with the outcome of our investigation and review of your complaint, you are entitled to refer your unresolved complaint to the Financial Services Ombudsman (FSO). The FSO is a statutory officer who deals independently with unresolved complaints from consumers regarding their dealings with regulated financial services providers. It is a free service to the complainant. Further details relating to the FSO, including how to make a complaint, are available at [www.financialombudsman.ie](http://www.financialombudsman.ie), by telephone on Lo-Call Number: 1890 88 20 90, or by writing to the Financial Services Ombudsman, 3rd Floor, Lincoln House, Lincoln Place, Dublin 2.

### Investor Compensation Act 1998 (the "Act")

BES Management DAC is a member of the Compensation Scheme (as defined in the Act). If the Central Bank makes a determination that we are unable to return client assets for reasons directly related to our financial circumstances, or the High Court makes a ruling preventing us from returning client assets (places the firm in Official Liquidation), and appoints an Administrator for the purposes of the Act, you may be able to make a claim to the Investor Compensation Company Limited. under the terms of the Act for any compensatable loss you may have suffered as a consequence. The current maximum compensatable loss is the lesser of 90% of your net loss and €20,000.

## APPENDIX 1

### DATA PROTECTION & PRIVACY

#### 1. Introduction

- 1.1 The Manager of The 2018 Davy EIIS Fund ("the Fund") will be BES Management DAC ("the Manager", "BES Management"). This Data Protection Notice ("Notice") provides guidance and information to the Fund investors regarding the processing of personal data ("Data") by the Fund and the Manager. Capitalised terms not otherwise defined herein shall have the meanings ascribed to them in the Prospectus, Supplements (if applicable), and the Prospectus Application Form.
- 1.2 BES Management DAC and the Fund needs to gather and use certain information about its investors. This Notice describes how this Data is collected, handled and stored to meet the Funds data protection standards and to comply with the law.
- 1.3 The Fund and BES Management ("us", "we" or "our") is committed to protecting and respecting your privacy. This Notice together with the Prospectus, Supplement(s) applicable to the Fund (if applicable), the Prospectus Application Form and the documents referred to therein, and any other manner in which we may collect information from you in relation to your investment in the Fund sets out the basis on which any Data we collect from you or that you provide to us ("Data") will be processed by us. Please read this Data Protection Notice carefully to understand our treatment and use of Data.
- 1.4 In this Data Protection Notice, references to "you" means the person whose personal information we collect, use and process.
- 1.5 We will use your Data only for the purposes and in the manner set forth below, which describes the steps we take to ensure the processing

of your Data is in compliance with the Data Protection Acts 1988 to 2018 and any subsequent data protection and privacy legislation (the “Acts”), European Union Law including the General Data Protection Regulation (the “GDPR”) and any subsequent amendments (together the “Data Protection Legislation”).

- 1.6 Please note that by signing a Prospectus Application Form with the Fund, you acknowledge that you have read, understood and agree to comply with the Prospectus, Prospectus Application Form, any relevant Supplements, this Data Protection Notice, and the provisions of the Terms of Business, in particular with regard to your data protection obligations. If you do not agree with or are not comfortable with any aspect of this Data Protection Notice, your only remedy is to not become an investor in the Fund.
- 1.7 We seek to maintain the privacy, accuracy, and confidentiality of personal information (including your Data) that we collect and use concerning our investors.

## **2. Identity of the Controller and Core Processors of Personal Information**

- 2.1. For the purposes of the Data Protection Legislation, the Data Controller is the Fund, a designated investment fund pursuant to the Taxes Consolidation Act 1997 (as amended) and the Designated Investment Funds Act, 1985 (as amended), and having its registered office address at 5th Floor, Beaux Lane House, Mercer Street Lower, Dublin 2.
- 2.2. BES Management DAC (“BES”), the manager of the Fund, is also a Data Controller. Where your details are provided to the Fund as a consequence of your investment in the Fund, then the Fund and BES Management, acting as joint Data Controllers, may themselves (or through third party Data Processors, process your personal information.

## **3. Contact Details of the Fund In Relation To Data Protection**

- 3.1. If you have any queries in relation to Data Protection please send an email to [besinfo@bes.ie](mailto:besinfo@bes.ie).

## **4. When Does This Data Protection Notice Apply**

- 4.1. This Data Protection Notice applies to personal information that we collect, use and otherwise process about you in connection with your relationship with us.

## **5. What personal information is collected and processed?**

- 5.1. We require you to complete the mandatory fields identified in our Prospectus Application Form for the purpose of entering into a contract with you. Please note that some of the information required by our Prospectus Application Form is necessary in order for us to administer your investment in the Fund and if you do not provide us with these required details, we may decline your application to become an Investor. Please be advised that you may be contractually obliged to ensure that certain information that we hold relating to you is up to date pursuant to the Application Form.
- 5.2. As such, we may collect and process the following categories of information about you:
  - (i) your title, full name, and your contact details, including for instance your email address, home and mobile telephone numbers;
  - (ii) your PPS number;
  - (iii) your source of funds;
  - (iv) your source of wealth;
  - (v) your home address, correspondence address (where different from your home address) and address history;
  - (vi) records of how you have contacted us and, if you get in touch with us online, details such as your mobile phone location data, IP address and MAC address;
  - (vii) your date of birth and/or age;
  - (viii) your nationality, if this is necessary for us to comply with our legal and regulatory requirements;
  - (ix) information about your tax residency;
  - (x) personal information which we obtain from investor identification verification entities (such as but not limited to source of wealth checks, fraud prevention agencies or credit checks);
  - (xi) financial information, including your bank account information, the amount you are looking to invest and the amount of any existing investment transactions;
  - (xii) proof of identification, in forms such as but not limited to, copies of your passport, driving license, bank statements, utility statements or bills, or other identity documents as provided by you;
  - (xiii) personal information provided by you to us in correspondence, whether by email, written letter, fax, or telephone call (this may be information volunteered by you, for example, it could include the reasons why you have decided to invest, or which may be mandated by anti-money laundering legislation, for example, where your investment money has come from);
  - (xiv) information relating to your investment in the Fund and any associated services (including online services), any other products and services you currently have, use, you have applied for, or you have previously held or used;
  - (xv) sometimes we may collect additional information about you from third parties. Specifically, we will obtain information about you from: credit reference agencies, fraud prevention agencies, and agencies providing background check information.
  - (xvi) information relating to your political affiliations, criminal convictions, regulatory sanctions and adverse media, where relevant, in order to meet our anti-money laundering requirements as prescribed by law. We may use PEP and financial sanction screening tools such as World Check to collect this information.

## 6. What do we use your data for?

- 6.1. The main purposes for which we use your personal information are to enable us to perform our contract with you and to enable us to comply with legal obligations. We also use your personal information to pursue legitimate interests of our own or those of third parties, provided your interests and fundamental rights do not override these interests. Additionally, we can also use your personal information with your consent.
- 6.2. The specific purposes for which your Data will be processed is the management and organisation of the Fund and of your investment in the Fund.
- 6.3. We will rely on a number of legal basis for this processing, as detailed below together with the purpose of processing.
- 6.4. To enable us to perform our obligations under any contract with you, which will enable us to:
  - (i) communicate with you about your investment(s);
  - (ii) pay income or proceeds of your investment(s) to you;
  - (iii) enable us to process the subscription, redemption, conversion or transfer of your investments;
  - (iv) evidence your ownership of an investment;
  - (v) verify that your instructions are genuine and to process them;
  - (vi) inform you about the performance of your investment;
  - (vii) notify you about changes to your investment (such as a change of name, or amendments to the investment policy of the Fund);
  - (viii) circulating periodic reports relating to the Fund;
  - (ix) allow you to exercise rights in relation to your investment (such as voting rights);
  - (x) recover the investment;
  - (xi) share your information with third parties if required for the management of your investment (e.g. trustees, technology providers or auditors) or of the Fund;
  - (xii) enable the Fund or its service providers to establish and maintain a register of Investors;
  - (xiii) comply with audit requests from counterparties; and
  - (xiv) including administering and managing your investments and services relating to that, updating your records and fee calculations.
- 6.5. Processing for legitimate interests provided these are not overridden by your interests and fundamental rights and freedoms (this includes our own legitimate interests and those of other affiliated entities of the Fund), in particular this is relevant when we use and process your Data in order to respond to your enquiries and to address our good governance obligations. This will enable us to:
  - (i) transfer your information to any third party who replaces any service provider to the Fund;
  - (ii) test the performance of our products, services, and investments to ensure that we are managing your investments to their best potential; and
  - (iii) carrying out statistical analysis and market research.
- 6.6. Processing which is necessary for compliance with our legal obligations laid down by applicable national laws. This will enable us to:
  - (i) investigate and deal with complaints or disputes;
  - (ii) enable the Fund to comply with legal or regulatory obligations, such as, but not limited to, tax or regulatory reporting, including disclosure to tax or regulatory agencies;
  - (iii) enable the Fund to verify your identity and carry out regulatory checks;
  - (iv) detect and prevent fraud, money laundering, terrorist financing, bribery, corruption, tax evasion and other financial crimes, and to prevent the provision of financial and other services to persons who may be subject to economic or trade sanctions, on an on-going basis, in accordance with the Fund and BES Management's anti-money laundering/ counter terrorist financing procedures. This includes performing OFAC (Office of Foreign Assets Control of the US Department of the Treasury) and politically exposed person screening for the purposes of complying with anti-money laundering and counter terrorist financing legislation and with the UN, EU and other applicable sanctions regimes. However, the output from such screening is not part of an automated decision making process ;
  - (v) combat late trading and market timing practices;
  - (vi) ensure you are eligible for a product or share class;
  - (vii) verify the adequacy of your income or net worth;
  - (viii) comply with requests made by you when exercising your legal rights;
  - (ix) carry out monitoring and to keep records,
  - (x) adhere to our obligations, guidance and best practice under the regimes of governmental and regulatory bodies in Ireland and internationally;
  - (xi) contact you where we have updated this Privacy Notice and consider that it is necessary to advise you about any changes to the way we are processing your personal information;
  - (xii) to effect the management and audit of our business operations, including accounting; and
  - (xiii) share your Data (to achieve the above purposes) with other people or organisations as set out in greater detail below in Section 7.
- 6.7. Where the processing is performed only where you consent to such processing. This is used:
  - (i) for direct marketing purposes (that is, us providing you with information on products and services of BES Management , its delegates or other third parties); and
  - (ii) communicate with you about our product and services.
- 6.8. From time to time, the Fund and/or BES Management may send you information about other products and services that they offer by letter, by telephone, by email or by other reasonable means of communication. You have a right not to receive such information.

- 6.9. You have a right to withdraw this consent at any time. However, your withdrawal of consent will not affect the lawfulness of processing based on consent before its withdrawal. You can withdraw your consent by contacting BES Management at the address in Section 3 of this Privacy Notice. You also have a right to object to the processing of your Data for direct marketing purposes.
- 6.10. The provision of Data is a contractual requirement and may also be a statutory requirement. If your Data cannot be processed this may have an impact on fulfilling our rights and obligations under our contract with you.

## 7. Recipients or Categories of Recipients of the Data

- 7.1. We may disclose your personal information to third parties, including the following:
- (i) service providers to the Fund, including the Directors, Company Secretary, BES Management Revenue, trustees, BDO, Davy, professional service providers and outsource providers (e.g. legal adviser, auditor, or consultant);
  - (ii) law enforcement agencies and governmental and regulatory bodies in Ireland and overseas, such as the Office of the Revenue Commissioners, the Central Bank of Ireland, the Financial Conduct Authority, the Securities and Futures Commission, any regulatory bodies with authority over the Fund and BES Management or its service providers, fraud prevention agencies, any investor compensation scheme or financial services ombudsman;
  - (iii) courts and to any other organisations which is necessary for the administration of justice, to protect vital interests and to protect the security or integrity of our business operations;
  - (iv) other organisations and businesses who provide services to us such as debt recover agencies, back up and server hosting providers, IT software and maintenance providers, document storage providers and suppliers of other back office functions;
  - (v) buyers and their professional representatives as part of any restructuring or sale of our business or assets, or those of our service providers;
  - (vi) market research organisations who help us to develop and improve our products and services.
- 7.2. International transfers: Your Data may be transferred to entities located in other countries, including outside the European Economic Area ("EEA"). These other countries may either have different data protection laws than your country of residence or they may not have the same standard of data protection laws as in the EEA. Steps will however be taken to put in place safeguards (including around security) to protect your Data when it is in other countries. If it is determined that the other jurisdictions are not the subject of an "Adequacy Decision" of the EU Commission (i.e. a determination that its data protections laws and enforcement thereof as not materially equivalent to those in the EEA, or if the data importing organisation is not part of the EU-US Privacy Shield) we will ensure that the EU Commission's Standard Model Contractual Clauses ("Model Clauses") are agreed with the data importer.
- 7.3. Your personal information may be transferred, stored and processed in one or more countries outside the European Economic Area ("EEA").
- 7.4. In addition, we take all reasonable steps to ensure that your personal information is adequately protected in accordance with Data Protection Legislation.
- 7.5. The Fund and any third parties working with or for the Fund, and who have or may have access to Data, will be expected to have read, understood and to comply with this Notice.

## 8. Length of Storage of Personal Data

- 8.1. We keep your personal data for as long as it is necessary to do so to fulfil the purposes for which it was collected as described above and in accordance with our [Data Retention Policy]. The criteria we use to determine data retention periods for Data includes the following:
- (i) retention in case of queries; we will retain it for a reasonable period after the relationship between us has ceased;
  - (ii) retention in case of claims; and
  - (iii) retention in accordance with legal and regulatory requirements;
- 8.2. The Fund and BES Management will retain your personal information for as long as required for the Fund and/or BES Management to perform the services or perform investigations in relation to same depending on whether additional legal/regulatory obligations mandate that the Fund and/or BES Management retains your personal information.

## 9. Your Rights

- 9.1. You may have various rights under Data Protection Legislation. However, in certain circumstances, these rights may be restricted. In particular, your rights may be restricted where this is necessary: (i) for the prevention, detection, investigation and prosecution of criminal offences, and/or (ii) in contemplation of or for the establishment, exercise or defence of a legal claim or legal proceedings (whether before a court, tribunal, statutory body or an administrative or out-of-court procedure).
- 9.2. Subject to the above, your rights under Data Protection Legislation may include (as relevant) the right to:
- 9.3. Request access to your data (commonly known as a "data subject access request"). This enables you to receive information about the data we hold about you.
- 9.4. To withdraw your consent to the processing of your Data. However, we may continue to process your personal information if there is an alternative legal basis for the processing;
- 9.5. Request correction of the data that we hold about you. This enables you to have any incomplete or inaccurate information we hold about you corrected.
- 9.6. Request erasure of your data. This enables you to ask us to delete or remove data where there is no good reason for us continuing to process it. You also have the right to ask us to delete or remove your data where you have exercised your right to object to processing (in certain circumstances).
- 9.7. Object to processing of your data where we are relying on a legitimate interest for processing (or a legitimate interest of a third party) and there is something about your particular situation which makes you want to object to processing on this ground. You also have the right to object where we are processing your data for direct marketing purposes.
- 9.8. Request the restriction of processing of your data. This enables you to ask us to suspend the processing of data about you, for example if you want us to establish its accuracy or the reason for processing it.

9.9. Request the transfer of your data to another party.

9.10. You can exercise all of these rights free of charge except in some very limited circumstances and we will explain these to you where they are relevant.

9.11. Please see "Contact Us" if you wish to exercise any of these rights (as relevant).

## **10. Your Right to Lodge a Complaint With A Supervisory Authority**

10.1. Without prejudice to any other administrative or judicial remedy you might have, you also have a right to complain to the Office of the Data Protection Commission at Canal House, Station Road, Portarlinton, Co. Laois by telephone at 1890 25 2231 and/or by email to [info@dataprotection.ie](mailto:info@dataprotection.ie).

## **11. Data Accuracy**

11.1. Data Protection Legislation requires the Fund to take reasonable steps to ensure data is kept accurate and up to date.

11.2. It is the responsibility of all stakeholders who work with Data to take reasonable steps to ensure it is kept as accurate and up to date as possible.

## **12. Security**

12.1. We endeavour to use appropriate technical and physical security measures to protect your Data which is transmitted, stored or otherwise processed by us, from accidental or unlawful destruction, loss, alteration, unauthorised disclosure, or access.

12.2. Our service providers are also selected carefully and required to use appropriate protective measures.

12.3. As effective as modern security practices are, no physical or electronic security system is entirely secure. The transmission of information via the internet is not completely secure. Although we will do our best to protect your Data, we cannot guarantee the security of your Data transmitted to us or any website, email, or fax. Any transmission of Data is at your own risk. Once we receive your Data, we will use appropriate security measures to seek to prevent unauthorised access. We will continue to revise policies and ensure all processors implement adequate and effective security measures.

## **13. Updating the Data Protection Notice**

13.1. We reserve the right to change this Data Protection Notice at any time in our sole discretion. If we make changes, we will notify you so that you can see what information we gather, how we might use that information and in what circumstances we may disclose it.

## **14. Contact Us**

14.1. For further information or if you have any questions about this Data Protection Notice, please contact [besinfo@bes.ie](mailto:besinfo@bes.ie).



## APPENDIX VI – SUMMARY OF EXISTING EMPLOYMENT AND INVESTMENT INCENTIVE SCHEME LEGISLATION

### Introduction

This section seeks to summarise the main provisions of the Scheme of Relief for Investment in Corporate Trades, as set out in Part 16 of the Taxes Consolidation Act 1997, as amended. It does not set out the provisions in full and prospective Investors are strongly advised to seek appropriate professional advice on their entitlement to the relief before making any Investment in the Fund.

### The Relief

Income tax relief on an Investment in the Fund may be available to Investors in two tranches. Investors can avail of the tax relief for either the tax year of subscription ending on 31 December 2018 or if desired for the tax year of Investment by the Fund ending 31 December 2019. The relief on an Investment in the Fund is available to the individual in two tranches as detailed below:

- (c) the relief will enable Investors to deduct 30/40ths of the Investment amount subscribed (“first tranche of income tax relief”) to the Fund from their total income for income tax purposes for either the tax year of subscription ending on 31 December 2018, or if so desired for the tax year of Investment by the Fund ending 31 December 2019; and
- (d) the relief will enable Investors to deduct 10/40ths of the Investment amount subscribed (“second tranche of income tax relief”) to the Fund from their total income for income tax purposes for the year of assessment following the end of the four year Investment period, subject to the fulfilment of the conditions set-out below:
  - (i) the staff numbers have increased by a minimum of one member of staff and the total wage levels have increased by a minimum of the wage of one member of staff in the year of assessment preceding the end of the four year Investment period compared to the staff numbers and the total wage levels in the year of assessment prior to the year of assessment in which the subscription for Eligible Shares was made; or
  - (ii) the amount of research and development expenditure incurred by the Qualifying Company in the year of assessment preceding the end of the four year Investment period exceeds the amount of research and development expenditure incurred by the Qualifying Company in the year of assessment prior to the issue of the Eligible Shares.

Both the first and second tranche of income tax relief shall not be given to the extent to which the amount or total Investment amount subscribed by an individual for Eligible Shares issued to the individual in any year of assessment exceeds €50,000.

### Basic Rules

Relief may only be claimed:

- by a Qualifying Investor;
- who subscribes for new Eligible Shares in a Qualifying Company;
- where those shares are issued for the purpose of raising money where that money was used, is being used or is intended to be used by the Qualifying Company as follows:
  - (i) for the purposes of carrying on Relevant Trading Activities which are being carried on or will be carried on within a specified period (normally two years) by such a Qualifying Company or by a qualifying subsidiary of a Qualifying Company,

**or**

  - (ii) in the case of a company which has not commenced to trade, in incurring expenditure on research and development;

**and**

  - (iii) the use of the money as set out in (i) and (ii) above will contribute directly to the creation or maintenance of employment in the company.

### Eligible Shares

Eligible Shares are new ordinary fully paid up shares which throughout the holding period beginning with the date on which they are issued, carry no present or future preferential rights to dividends, to assets on a winding up, or to be redeemed. No relief shall be available to an Investor in relation to Eligible Shares where such shares are subject to any agreement, option or understanding which:

- (a) would or could require a person to purchase or otherwise acquire the Investor’s shares at a price other than a price equal to the market value of the shares at the time of purchase or acquisition; or
- (b) would or could require the Investor to dispose of his shares at a price other than a price equal to the market value of the shares at the time of the disposal.

It is the responsibility of the Investor to submit his own individual claim for income tax relief to the Revenue Commissioners.

### Qualifying Investor

An individual must not be connected with the Investee Company at any time in the period two years before or four years after the issue of the shares qualifying for relief.

The Manager will not knowingly invest monies forming part of the Fund in shares in a company with which any Investor is connected for the purposes of Section 492 of the TCA. As part of the Application Form, Investors must make a declaration disclosing any connections, as outlined below.

The main rules relating to "connection" with a company are that:

- (a) an individual or an associate of his must not be a partner of the company or an employee or director of the company other than one who receives payments only that are reasonable and necessary remuneration for services to the company;
- or
- (b) he and his associates must not control the company or possess more than 30% in aggregate of the ordinary share capital or the aggregate of the loan capital and issued share capital or the voting power in the company (subject to certain relaxations for new and small companies).

For this purpose, an associate includes a partner and certain persons with whom the individual has connections through a trust. This does not include relatives.

### Qualifying Company

The Investee Company shall throughout the relevant period be an unquoted company which is resident in the State, or in a European Economic Area State other than the State provided it carries on business in the State through a branch or an agency.

The Qualifying Company must be a micro, small or medium-sized enterprise within the meaning of Annex 1 to Commission Regulation (EU) No. 651/2014 of 17 June 2014.

A Qualifying Company must meet the requirements of paragraph 18 of Article 2 and paragraph 5, 6 and 9 of Article 21 of Commission Regulation (EU) No. 651/2014 of 17 June 2014 to comply with the EU's General Block Exemption Regulations on State Aid (GBER).

Paragraph 18 of Article 2 of Commission Regulation (EU) No. 651/2014 of 17 June 2014 states that a company shall not be a Qualifying Company while the company is regarded as a firm in difficulty for the purposes of the Community Guidelines on State aid for rescuing and restructuring firms in difficulty.

Paragraph 5 of Article 21 of Commission Regulation (EU) No. 651/2014 of 17 June 2014 states that eligible undertakings shall be undertakings which at the time of the initial risk finance Investment are unlisted SMEs and fulfil at least one of the following conditions:

- (d) They have not been operating in any market;
- (e) They have been operating in any market for less than 7 years following their first commercial sale;
- (f) They require an initial risk finance Investment which, based on a business plan prepared in view of entering a new product or geographical market, is higher than 50% of their average annual turnover in the preceding 5 years.

Paragraph 6 of Article 21 of Commission Regulation (EU) No. 651/2014 of 17 June 2014 states that the risk finance aid may also cover second stage Investments made in eligible undertakings, including after the 7-year period mentioned in paragraph 5(b) (above), if the following cumulative conditions are fulfilled:

- (d) The total amount of risk finance mentioned in paragraph 9\* is not exceeded;
- (e) The possibility of second stage Investments was foreseen in the original business plan;
- (f) The undertaking receiving second stage Investments has not become linked, within the meaning of Article 3(3) of Annex I with another undertaking other than the financial intermediary or the independent private Investor providing risk finance under the measure, unless the new entity fulfils the conditions of the SME definition.

\*Paragraph 9 of Article 21 of Commission Regulation (EU) No. 651/2014 of 17 June 2014 states that the total amount of risk finance shall not exceed €15,000,000 per eligible undertaking under any risk finance measure.

A further condition is that to comply with the EU rules on the cumulation of State aids, a company that raised capital under the EII Scheme shall be obliged to reduce the maximum level of other State aids by 50% for companies located in non-assisted areas and by 20% for companies located in assisted areas.

The Qualifying Company shall not be a subsidiary of or be controlled by any other company. The Qualifying Company may have subsidiaries itself but each must be carrying on a Relevant Trading Activity or the subsidiary's trade must consist of one or more of the purchase, sale or provision of services to or on behalf of the Qualifying Company. The Qualifying Company must hold at least 51% of the shares of the subsidiary and control it.

The Qualifying Company must exist wholly for the purpose of carrying on Relevant Trading Activities where those activities are principally carried on in the State and/or be a holding company of a subsidiary which carries on a Relevant Trading Activity. During the relevant period, the Company's share capital must be fully paid up.

The Company will cease to be a Qualifying Company if before the end of the relevant period a resolution is passed, or an order is made, for the winding up of the Company or the Company is dissolved without winding up other than for bona fide commercial reasons.

A company shall not be a Qualifying Company while the company is regarded as a firm in difficulty for the purposes of the Community Guidelines on State aid for rescuing and restructuring firms in difficulty.

The maximum EII Scheme Investment allowable in the lifetime of a Qualifying Company and its associates is €15,000,000 subject to a limit of €5,000,000 in any 12-month period.

### Relevant Trading Activities

Relevant Trading Activities are those activities carried on in the course of a trade the profits or gains of which are charged to tax under Case I of Schedule D, excluding activities related to the following:

- (j) adventures or concerns in the nature of trade;
- (k) dealing in commodities or futures or in shares, securities or other financial assets;
- (l) financing activities;
- (m) the provision of services, which would result in a close company (within the meaning of section 430) that provides those services being treated as a service company for the purposes of Section 441 if that close company had no other source of income;
- (n) dealing in or developing land;
- (o) the occupation of woodlands within the meaning of Section 232;
- (p) operating or managing hotels, guest houses, self catering accommodation or comparable establishments or managing property used as a hotel, guest house, self catering accommodation or comparable establishment, (except where the operating or managing of such hotels, guest houses, self catering accommodation or comparable establishments, or the managing of property used as a hotel, guest house, self catering accommodation or comparable establishment is a tourist-traffic undertaking).
- (q) operations carried on in the coal industry or in the steel and shipbuilding sectors; and
- (r) the production of a film (within the meaning of section 481);

but including tourist traffic undertakings.

### Claims for Relief

Claims may be made when the Relevant Trading Activity has been carried on by the Investee Company for at least four months and must be made within two years of that date or if later, two years from the end of the year of assessment in which the EII Scheme shares are issued or when the Qualifying Company expends not less than 30% of the money subscribed for the shares on research and development activities which are connected with and undertaken with a view to the carrying on of the Relevant Trading Activities.

A Qualifying Company must qualify for a Tax Clearance Certificate at the time the claim is made under the EII Scheme.

### Limits on the Relief

The maximum Investment in all EII Scheme Investments in any one year which may qualify for income tax relief (in two tranches) is €150,000. The first tranche of income tax relief is available in either the tax year of subscription to the Fund (2018) or in the year in which the Fund makes its Investments (2019). In the case of a husband and wife, each is entitled to subscribe up to €150,000 to the extent that each spouse has sufficient taxable income in his or her own right. Unused amounts of relief may not be transferred between spouses. Relief under the EII Scheme is not given to an Investor for an Investment of less than €250 in one company in any tax year where the claimant invests directly.

Investors who invest in the Fund in excess of €150,000 in any one tax year may carry forward the income tax relief to the following year. Investors who have insufficient total taxable income to claim full income tax relief for their Investment in the year of issue may be allowed to claim relief for the balance of the Investment in the following years until 31 December 2021 subject to each Investor's particular tax circumstances.

### Withdrawal/Withholding of Relief

The relief may be withdrawn if the conditions attached to the relief relating to the Investee Company cease to be satisfied within four years of the Investment being made or, if later, of the commencement of trading.

Relief may also be wholly or partly withdrawn if the Investor receives value from the Investee Company or disposes of the shares within four years of subscribing for same. Value can be received from the Investee Company if, for example, it redeems shares or makes the Investor a loan or provides a benefit or facility to an Investor. Disposals between spouses, subject to the individual limitations applicable to each individual, will generally not result in a loss of relief. The receipt of reasonable and necessary remuneration and/or normal return on Investment does not constitute the "receipt of value" from the Investee Company.

Relief shall not be given where there exists an agreement, arrangement or understanding which could reasonably be considered to have eliminated the risk that the person owning the shares might at any time specified or any time thereafter, be unable to realise, directly or indirectly, in money or monies worth, an amount so specified or implied, other than a distribution in respect of those shares.

The second tranche of income tax relief shall not be given unless the conditions set-out are fulfilled by the Investee Companies.

There are additional rules whereby an Investor may suffer a withdrawal of some or all of the relief by reason of other non-qualifying shareholders receiving value from the company.





## DISCLAIMER

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An Investment in the Fund should only be considered by Investors who are able to bear the economic risks of their Investment for a medium to long term period of time and who can afford to sustain a total loss of their Investment.

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BES Management DAC. is regulated by the Central Bank of Ireland.

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