



BIOTECH CAPITAL LIMITED

ABN 45 091 979 172

**Notice of Annual General Meeting and
Explanatory Statement**

Time: 2:00pm

Date: Wednesday, 9 November, 2011

Place: The offices of DibbsBarker, Level 8, 123 Pitt Street, Sydney NSW 2000

This Notice of Annual General Meeting and Explanatory Statement should be read in its entirety. If shareholders are in doubt as to how they should vote, they should seek advice from their professional advisors prior to voting.



Notice of Annual General Meeting and Explanatory Statement

The eleventh Annual General Meeting of BioTech Capital Limited (**Company**) will be held at the offices of Dibbs Barker, level 8, 123 Pitt Street, Sydney, at 2:00 pm on Wednesday, 9 November, 2011.

Auditor

Mr Conley Manifis of Deloitte Touche Tohmatsu (DTT) will be in attendance by telephone at DTT, Level 14, 240 St Georges Terrace, Perth.

Agenda

1. Remuneration report

To consider, and if thought fit, to adopt as a non-binding resolution: that the Remuneration Report contained in the Directors' Report provided to shareholders as part of the 2011 Annual Report, be adopted.

2. Financial report and directors' and audit reports

To consider and adopt the financial report, including the Directors' Declaration, for the year ended 30 June 2011, and the related Directors' Report and Independent Audit Report.

3. Election of Mr Alastair Davidson as a director

To consider, and if thought fit, to pass the following ordinary resolution: that Mr Alastair Davidson, who retires as a director of the Company in accordance with Article 17.1 of the Constitution and, being eligible for re-election, be re-elected as a director of the Company. Mr Alastair Davidson has been a director of Biotech Capital since 14 March 2000.

4. Deregistration of the Company as a Pooled Development Fund at the Discretion of the Directors

To consider, and if thought fit, to pass the following ordinary resolution: that approval be given to the directors of the Company, at their discretion within 12 months of the date of this resolution, to apply under section 46(1) of the Pooled Development Act 1999 to have the Company's registration declaration as a Pooled Development Fund revoked. Further details on the deregistration of the Company as a Pooled Development Fund are set out in the attached Explanatory Statement.

5. Other business

To deal with any other business which might be brought forward in accordance with the Company's Constitution and the Corporations Act.

By order of the Board

Baden M Bowen

Company Secretary

30 September 2011



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Proxies

If you are unable to attend and vote at the meeting and wish to appoint a person who will attend as your proxy, please complete the enclosed form of proxy. This form must be received by the company at least 48 hours before commencement of the meeting.

The completed form of proxy may be:

- mailed to the address on the form (to be received no later than 2:00 pm on 7 November, 2011) or
- faxed to the company's share registry on 08 9389 7871 (to be received no later than 2:00 pm on 7 November, 2011) or
- delivered to the company's share registry at 150 Stirling Highway, Nedlands WA 6009 (to be received no later than 2.00 pm on 7 November, 2011) or
- delivered to the company's registered office at 1 Edmondson Crescent, Karrinyup WA 6018 (to be received no later than 2.00 pm on 7 November, 2011).

A member entitled to attend and vote is entitled to appoint not more than two proxies. Where more than one proxy is appointed, each proxy must be appointed to represent a specific proportion of the member's voting rights. A proxy need not be a member of the company.



Biotech Capital Limited A.B.N 45 091 979 172

EXPLANATORY STATEMENT

Resolution 4: Deregistration of the Company as a Pooled Development Fund at the Discretion of the Directors

1. Background of proposed resolution

Biotech Capital Limited is a publicly listed company registered under the *Pooled Development Fund Act 1992* (the **PDF Act**) (the "**Company**").

In 2008 the Board conducted an extensive review of the Company's investment strategy and current investment portfolio. Based on that review the Board proposes, subject to shareholder approval, that the Company be restructured by applying to Innovation Australia (the "**PDF Board**") to have its registration declaration as a Pooled Development Fund ("**PDF**") revoked. In doing so the Company aims to provide a more flexible and workable investment structure to enhance shareholder value. It may be recalled that a similar resolution last year was put to the AGM and passed, however the economic circumstances did not present a suitable opportunity to seek deregistration.

That being the case and so as to keep shareholders fully informed, the Board has resolved that shareholder approval should be obtained on an annual basis until deregistration is effected or circumstances alter such that deregistration is not pursued.

1.1 Revocation of registration declaration as a PDF

Requirement to Notify

There is no provision either under the *Corporations Act 2001* or the *PDF Act* requiring shareholder approval prior to the Company applying to the PDF Board for its PDF registration declaration to be revoked. However, the Board is aware that under the Company's prospectus (dated 22nd June 2000) for the initial capital raising and public listing of the Company, a number of shareholders may have subscribed for shares or acquired securities in the Company on the basis of its PDF status. In addition, the Board is of the view that it is most important at all times to keep the shareholders fully informed as to the Board's important decisions in respect to investment strategies and the ways in which the Board seeks to maximise investment returns for shareholders. As a consequence, the Board has resolved to put the deregistration proposal before shareholders by way of an ordinary resolution at a general meeting of shareholders.

Process of PDF deregistration

Section 46(1) of the *PDF Act* requires that a PDF may apply in writing to the PDF Board to have its registration declaration revoked and under section 46(2) that Company must notify its shareholders in writing that it has made that application. The Board is advised that there is no requirement to give reasons for a deregistration request. On receiving an application the PDF Board must revoke the registration declaration as soon as practicable.

1.2 Background to PDF status

The Company was registered as a PDF under the *PDF Act* on 29 March 2000. The decision to apply for PDF status was primarily undertaken on the basis that the Company would qualify for the concessional tax rates and tax treatment under the *PDF Act*. The basis of the Government's concessional tax rates and tax treatment for PDFs was to encourage the flow of private equity capital to finance the growth and development of small Australian companies.

1.3 Rationale for deregistration as a PDF

Despite the tax concessions available to the Company and its shareholders under the PDF structure, the Board believes that the investment guidelines and compliance rules under the *PDF Act* have the effect of limiting the investment options of the Company and its ability to maximise investment returns for the shareholders.

Some specific aspects of the *PDF Act* investment guidelines that the Board is of the opinion have limited the investment opportunities and potential returns of the Company are detailed below:

- (a) The Company is restricted from investing in a company whose total assets are greater than \$50 million. On the basis that the small company sector of the ASX extends up to \$250 million market capitalisation, the *PDF Act* guideline substantially limits the range of companies in which the Company can invest.
- (b) The *PDF Act* specifically restricts secondary purchase of securities in companies. This limitation restricts the Company to only undertaking investments where it is subscribing for a new issue of capital. The Board has identified a number of compelling investment opportunities over the years in the small cap listed company sector that it has been prevented from undertaking. Additionally, the Company has been restricted from acquiring secondary stock in its existing investee companies at potentially attractive prices.
- (c) The volatility of listed small Company securities often results in a company trading substantially below their fair value. The Board believes it is critical for the Company not to be restricted from taking advantage of these investment opportunities.
- (d) The restriction on the Company investing in an overseas company or conducting follow on investments in overseas companies limits investment opportunities.
- (e) The Company is restricted to investing its surplus cash in bank accounts only, thereby being deprived from employing its surplus capital in higher yielding securities or bonds. This restriction in a generally low interest rate environment has potential to diminish returns for shareholders.
- (f) As a registered PDF, the Company is viewed by the equities markets as a development capital fund. The nature of development capital and the associated investment time horizons tend to result in investors applying a discount to the market value of the shares against the company's stated net asset value. This has applied to the Company where its shares consistently trade at a discount to underlying net tangible asset backing. The Board believes that the Company would receive an improved rating from the equity

market and investors given its enhanced flexibility to more effectively employ its capital in the event that it is deregistered as a PDF.

- (g) The Board believes that the Company will have improved access to equity capital as a result of deregistration as a PDF. This will provide the Company with an increased capacity to undertake new investment opportunities in order to enhance shareholder returns.

While the Board recognises the benefits of tax concessions available to the Company and its shareholders as a result of the Company being registered as a PDF, it believes that these benefits are outweighed by the investment restrictions on the company. The Board is also of the view that the change in status of the Company from a PDF will have a positive market rating implication for the Company and facilitate increased access to capital.

1.4 Implications of registration as a PDF on investment activities

The current activities and investment strategy of the Company is to operate as an investment company and to seek direct investment opportunities in both listed and unlisted companies both in Australia and internationally with a view to achieving attractive investment returns for shareholders.

The Board does not intend to substantially change the Company's current activities as a result of deregistration as a PDF. However the registration as a PDF to an investment company will provide the Company with much greater flexibility to undertake and restructure investments and will facilitate an expanded investment strategy to maximise returns for shareholders.

The Board will continue to focus on its current investment portfolio to maximise 'realisable' value by pursuing restructuring proposals including recapitalisations, revised business strategies, sale of businesses and the acquisition of controlling interests. The Company will support follow-on investments in circumstances where there are sustainable business plans, realistic valuations and investment returns meet the Company's new benchmarks.

1.5 Taxation implications for shareholders (deregistration)

The Board has commissioned an independent taxation opinion on the impact of shareholders on deregistering the Company as a PDF from BDO Corporate Tax (WA) Pty Ltd, which is set out in Annexure A of this Explanatory Statement. Shareholders are encouraged to review the independent tax opinion carefully.

However, because individual shareholders may be impacted differently by the proposed deregistration of the Company as a PDF, the Board strongly recommends that each shareholder seek their own independent financial and taxation advice as to the impact for them of the deregistration of the Company as a PDF.

Following the proposed deregistration shareholders will not be able to elect to receive dividends tax free. Any tax payable on future dividends to shareholders will be determined according to the individual tax position of each shareholder.

Via email: bmbowen@bigpond.net.au

Private & Confidential

The Directors
Biotech Capital Limited
1 Edmondson Crescent
Karrinyup
PERTH WA 6018

28 September 2011
Ref: BIOTE01

Dear Sirs

Deregistration as a Pooled Development Fund
Tax Opinion

This report refers to a previous proposal for Biotech to obtain approval from its shareholders to apply to Innovation Australia for revocation of Biotech's registration as a pooled development fund (PDF) where Biotech directors consider that such action is in the best interests of Biotech and its shareholders.

The report is intended as a general guide only. The purpose of this report is to explain the key Australian taxation consequences of deregistration as a PDF as at September 2011, but is limited to Australian resident individual shareholders, Australia resident company shareholders and Australia resident complying superannuation fund shareholders. Non resident shareholders should seek their own advice in their country of residence.

Assumption and Disclaimers

We have relied on the information provided to us. The report is a summary of tax implications and is not an extensive or definitive statement on all taxation issues that may arise. The report is based on the *Income Tax Assessment Act 1936* and the *Income Tax Assessment Act 1997*, as at the date of this report. Shareholders should be aware that the ultimate interpretation of the taxation laws in Australia rests with the Courts, and that such laws, which may affect the advice contained in this report, may become subject to amendments (at any time).

Shareholders should seek their own independent tax advice specific to their circumstances in relation to how the proposal will affect them.

Taxation Implications for Biotech

As a registered PDF, Biotech is currently eligible for various income tax concessions in Australia. These concessions will cease to be available to Biotech with effect from the start of the income year in which it is deregistered as a PDF.

Broadly, from Biotech's perspective, the following will result from deregistration as a PDF:

- (a) Biotech will no longer be entitled to the concessional Australian tax rate of 15% for income and gains derived in relation to its investments in certain small to medium enterprises permitted under the *Pooled Development Funds Act 1992*;
- (b) Biotech will no longer be entitled to the concessional tax rates applicable to income and gains derived by Biotech, excluding income and gains to which paragraph (a) applies;
- (c) Biotech will be liable for Australian income tax in respect of its total taxable income at the general corporate tax rate which is currently 30%, from the start of the income year in which it is deregistered as a PDF. Any distribution of profits in the form of dividends to shareholders will be regarded as a dividend for tax purposes and may be franked by Biotech to the extent of available franking credits;
- (d) Biotech would no longer be entitled to carry forward any prior year tax losses incurred in the period from which it was registered as a PDF to the end of the income year preceding the year in which Biotech ceases to be registered as a PDF. Biotech would not be able to apply any carried forward losses it incurred in the period it was registered as a PDF, in the calculation of its taxable income for the year of income in which it ceases to be registered as a PDF and subsequent years of income; and
- (e) Generally, Biotech will be able to carry forward and utilise any further revenue or capital losses incurred in the years of income commencing with the year in which Biotech is deregistered as a PDF, provided the requirements of the continuity of ownership test or the same business test outlined in the tax legislation are satisfied.

Broadly, the continuity of ownership test requires the same people to own more than 50 percent of the company's voting power, 50 percent of the rights to dividends the company might pay and a right to 50 percent of any capital distribution the company might pay, from the start of the loss year though to the end of the income year.

The same business test is made up of a number of tests. The first is that the company must have carried on throughout the year of income the same business it carried on immediately before it failed the continuity of ownership test. The second is that the company must not have at any time during the income year, derived assessable income from a business of a kind it did not carry on before failing the continuity of ownership test. The last is that the company cannot derive income from a transaction of a kind it had not entered into, in the course of its business, before it failed the continuity of ownership test.

Taxation Implications for Shareholders

The following tax implications should be considered by Biotech's shareholders.

Disposal of Biotech Shares Held on Capital Account

During the period Biotech is a registered PDF, any gains or losses realised on a disposal of Biotech shares are disregarded for tax purposes, irrespective of whether the shares are held by a shareholder on capital account or on revenue account.

When Biotech ceases to be registered as a PDF, shareholders will be deemed to have disposed of their shareholding in Biotech for tax purposes, immediately before Biotech ceases to be a PDF. The deemed disposal will have no Australian income tax or capital gains tax consequences and any gains or losses arising in relation to the deemed disposal of the Biotech shareholding will be disregarded for Australian tax purposes.

The Biotech shareholding will be deemed to have been immediately reacquired by shareholders with a cost base for tax purposes equal to the market value of the shares at the date Biotech is deregistered as a PDF. However, the Biotech shares so deemed to have been reacquired will not be treated as "shares in a PDF". Any gains or losses arising on a subsequent disposal of this shareholding will not be disregarded and the gain or loss is calculated by reference to this new cost base.

For shareholders holding their shares in Biotech on capital account, any gains derived or losses incurred on the subsequent disposal of the shares will generally be considered under the capital gains tax rules as follows:

- (a) The date that the Biotech shares are taken to be acquired will be the date Biotech is deregistered as a PDF;
- (b) The cost base of the Biotech shares held by shareholders will be the market value of the Biotech shares at the date Biotech is deregistered as a PDF;
- (c) A capital gain will arise on a subsequent disposal where the sale proceeds received by the shareholders exceed the cost base of the Biotech shares;
- (d) If the shareholder is an individual, they can be eligible for the 50% CGT discount of any capital gain realised in a subsequent disposal of Biotech shares, as long as the shares have been held for at least 12 months after the date Biotech is deregistered as a PDF. This 12 month period excludes the deemed day of acquisition and the day of disposal. If the shareholder is the trustee of a complying superannuation fund, it may be eligible for the CGT discount of 33 ⅓% of the capital gain realised on the sale of Biotech shares as long as the shares have been held for at least 12 months after the date Biotech is deregistered as a PDF. If, at the disposal time, the Biotech shares have been held for less than 12 months after the date Biotech is deregistered as a PDF, then both individuals and complying superannuation funds will be liable for CGT at the applicable marginal tax rates on the full amount of the capital gain;
- (e) If the shareholder is a corporate shareholder it will be taxed on the amount of any capital gains realised on a future disposal of Biotech shares at the corporate tax rate (currently 30%);
- (f) If the shareholder is a trustee of a trust, the trustee will only be liable for CGT on the full amount of the capital gain arising in respect of Biotech shares held for at least 12 months after the date Biotech is deregistered as a PDF if no beneficiaries of the trust are presently entitled to the capital proceeds on disposal. Where the beneficiaries are presently entitled, then the net income of the trust will only include 50% of the capital gain where the shares have been held for at least 12 months after the date Biotech is deregistered as a PDF. The capital gain will effectively flow through the trust to be taxable in the hands of the beneficiaries according to their particular status. Each beneficiary's proportionate share of the discounted capital gain from the trust will be grossed up by a factor of 100%; and

Where a beneficiary is an individual or complying superannuation fund or trust, that amount may be subject to discounted CGT treatment in the hands of the beneficiary (liable to pay tax on one half or two thirds of the gain as applicable).

- (g) A shareholder will incur a capital loss if the reduced cost base for Biotech shares exceeds the capital proceeds received on disposal. The shareholder may be entitled to recoup the capital loss against capital gains derived in that income year, or carried forward the loss to recoup capital gains derived in subsequent years. Capital losses cannot be recouped by a revenue gain.

Disposal of Biotech Shares Held on Revenue Account

The general income tax rules will apply to subsequent gains or losses on a disposal of Biotech shares where the shares are held by a shareholder as trading stock or otherwise on revenue account (such as where they are held as part of a profit making undertaking or scheme). The Biotech shares will be deemed to have been acquired at their market value immediately after Biotech was deregistered as a PDF.

Receipt of Dividends

During the period Biotech is a registered PDF, any dividends paid by Biotech are not subject to tax in the hands of the shareholders. In addition, certain shareholders such as resident complying superannuation funds and PDFs, pooled superannuation trusts and similar entities are entitled to an additional (refundable) tax offset where the dividends are franked with venture capital credits (being tax paid by a PDF attributable to capital gains from venture capital investments). This effectively enables such entities to receive capital gains attributable to venture capital investments free of tax through a PDF.

Further, Australian Biotech shareholders have the option to elect to be taxed on the receipt of any franked dividends received from Biotech. This option can assist Australian corporate shareholders who can utilise franking credits to distribute the dividend received from Biotech as a franked dividend and potentially assist Australian shareholders who pay tax at a rate lower than the general corporate tax rate of 30%.

Where Biotech ceases to be registered as a PDF, Biotech will be required to pay the corporate rate of tax on its taxable income, giving rise to franking credits. Any dividend Biotech pays may be franked at a rate determined by Biotech to the extent it has franking credits.

The taxation implications of dividends in the hands of a shareholder will depend on the particular circumstances of the shareholder.

- (a) Dividends received by individuals, superannuation funds or companies from Biotech will be included in the shareholder's assessable income. Generally, to the extent the dividend is franked, the franking credits attaching to the dividend will also be included in each shareholder's assessable income, but the amount of the franking credits may be offset against the shareholder's tax liability. The ability of shareholders to claim the credit as an offset is subject to complex rules which are not detailed in this report. One important rule is the 45-day holding rule which provides that a shareholder must hold its shares "at risk" for at least 45 days (excluding the date of acquisition and the date of disposal);
- (b) A refund is available to individual and complying superannuation fund shareholders for any excess franking credits;

- (c) On receipt of a fully franked dividend from Biotech, a corporate shareholder may be eligible to claim the franking tax offset and if so, the franking tax offset should reduce the tax on the recipient's taxable income that would otherwise be payable in respect of the dividends to nil. In this case, the net effect would be that the receipt of a fully franked dividend would not trigger any tax for the recipient company. A corporate shareholder in Biotech will not be entitled to a refund of any excess franking credits received from Biotech. However, any franking credits received from Biotech will result in a franking credit for the recipient company and may be available for distribution as a franked dividend; and
- (d) Where the 45-day holding period rule (refer above) is satisfied by a trustee of a trust that receives franked dividends from Biotech, the trustee will only be entitled to franking credits attaching to a dividend if the trustee is liable to tax on the dividend. Where the beneficiaries are presently entitled to the net income of the trust, then the franking credits should flow through to them. You should seek professional advice on the interaction of the 45-day holding period rule and the rules relating to family trust elections to confirm the ability for beneficiaries to obtain the benefit of franking credits in these circumstances.

Return of Capital

Any distribution by Biotech which is not considered to be a dividend will generally be a return of capital to shareholders. Whilst Biotech remains registered as a PDF, any return of capital by Biotech will have no tax consequences in the hands of shareholder. To the extent that Biotech makes a capital distribution to its shareholders after Biotech ceases to be registered as a PDF, the amount will, subject to the specific anti-avoidance rules in section 45B of the *Income Tax Assessment Act 1936*, reduce the shareholder's cost base in the shares held or to the extent that amount exceeds the cost base of those shares, give rise to a capital gain.

Tax File Number and Australian Business Number

A shareholder should consider whether to quote its tax file number ("TFN") or its Australian Business Number ("ABN") where appropriate, to Biotech unless appropriate TFN exemption information is provided.

Under the PAYG withholding regime, Biotech will be required to withhold tax at the highest marginal rate from most payments or distributions paid to shareholders who have not provided a TFN or ABN by the time of such payment.

Yours sincerely
BDO Corporate Tax (WA) Pty Ltd



Craig Melville
Director

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