

LEGAL NOTICE NO. 4

REPUBLIC OF TRINIDAD AND TOBAGO

THE VENTURE CAPITAL ACT, 1994

REGULATIONS

MADE BY THE MINISTER UNDER SECTION 32 OF
THE VENTURE CAPITAL ACT

THE VENTURE CAPITAL REGULATIONS, 1996

1. These Regulations may be cited as the Venture Capital Citations
Regulations, 1996.

2. In these Regulations—

Definitions

“Act” means the Venture Capital Act;

Act No. 22 of
1994

“calculation period” means—

(a) in the case where a company or its affiliate has
been in business for a period of less than twelve
months at the date of calculation, that entire
period;

(b) in the case where a company or its affiliate has
been in business for a period of not less than twelve
months, the period of fifty-two weeks immediately
prior to the date of calculation;

“date of calculation” means the date on which a company
applies to the Administrator for approval as a qualifying
investee company;

“employees” includes—

(a) officers of the company;

(b) persons who perform work or provide services
under a contract with the company, other than a
contract—

(i) that makes provision for accounting, legal
or other professional services on a
temporary, working or *ad hoc* consulting
basis; or

(ii) under which the company purchases or
hires equipment as the main purpose of
the contract and the work and services are
only incidental to that main purpose;

(c) persons who perform work or provide services for a
company at its place of business and who are
engaged or employed through a company or an
agency which provides services on a temporary
basis;

“similar hardship” means hardship which, in the opinion of the Administrator, warrants overriding the considerations referred to in regulation 9(2);

“special resolution” means—

(a) a resolution passed by a majority of not less than three-quarters of the votes cast by shareholders of a company who are entitled to vote in person or by proxy at a general meeting of the company—

(i) of which notice of not less than twenty-one days has been given, specifying the intention to propose the resolution; or

(ii) of which notice of less than twenty-one days has been given, where every shareholder entitled to vote agrees with the resolution;

(b) a resolution approved in writing by every shareholder of a company who is entitled to vote in person or by proxy at a general meeting of the company;

“total hours” means the total number of hours worked by all employees each of whom has worked for a period of not less than twenty hours, the calculation of such period including every hour or part thereof that the employee worked, whether for a qualifying trustee company or its affiliate or for both, during any week of the calculation period.

Information
included in
application

3. For the purposes of section 4(2)(h) of the Act, the information which a company intending to carry on the business of a venture capital company shall submit to the Administrator, may include, at the request of the Administrator, a share subscription agreement in a form and containing information to the satisfaction of the Administrator.

Registration
conditions

4. (1) For the purposes of section 5(g) of the Act, the Administrator may register a company as a venture capital company where he is satisfied that the company meets the following conditions:

(a) the articles of association of the company provide that—

(i) no fees or other remuneration shall be paid to a shareholder, director or officer of the company, or to an affiliate or associate of those persons except as approved annually by special resolution;

(ii) a majority of the directors of the company shall each actually reside in Trinidad and Tobago at one or more times for a period in the aggregate

of not less than one hundred and eighty-three days in any calendar year;

(iii) upon registration of the company in accordance with the Act, the company shall be subject to the provisions of the Act;

(b) equity shares issued to or to be issued by the company shall not be divided into a number of series of shares.

(2) For the purposes of subregulation (1)(a)(i), a shareholder—

(a) who receives or is proposed to receive;

(b) whose associate or affiliate receives or is proposed to receive,

any fees or other remuneration from the company, shall be deemed not to be entitled to vote in person or by proxy at a general meeting at which there is a special resolution which proposes to approve or ratify the payment of fees or other remuneration by the company.

5. For the purposes of section 8(2)(d) of the Act, the register established under that section shall contain the following additional information: Contents of register

(a) the principal place of business of the company;

(b) the total amount of equity capital that the company has, to the knowledge of the Administrator, raised;

(c) the amount that the company has, to the knowledge of the Administrator, invested in eligible investments;

(d) the authorised share capital of the company.

6. For the purposes of section 8(3) of the Act, the fee payable by a member of the public for a copy of the register shall be one dollar per page. Fee for copy of register

7. A venture capital company may, in addition to any other permitted investments referred to in the Act, invest in— Permitted investments

(a) any security, other than an equity share, in a qualifying investee company, which is issued directly to the venture capital company;

(b) the Investment Protection Account established under section 21 of the Act.

8. A venture capital company shall invest not less than eighty per cent of its equity capital in eligible investments on or before the end of the second year of its registration as a venture capital company and shall thereafter maintain that percentage of investment in eligible investments. Ratio of investment

9. (1) Subject to subparagraph (2), for the purpose of determining the equity shares of a qualifying investee company referred to in the Rights and restrictions on equity shares

Act, a share shall not be considered an equity share which has rights and restrictions—

- (a) attached to that share; or
- (b) contained in or forming part of an agreement, commitment or understanding in respect of that share which—
 - (i) create a debt between the holder or beneficial owner of the share and any other person;
 - (ii) impair or are likely to impair the ability of a venture capital company to maintain the prescribed ratio of its equity capital in the qualifying investee company for the period prescribed under section 12 of the Act;
 - (iii) impair or are likely to impair the ability of a company in which a venture capital company has made an eligible investment, to carry on an ongoing business with a reasonable expectation of profit; or
 - (iv) will entitle the holder or beneficial owner of the share to reduce the impact of any loss he may sustain in holding or disposing of the share.

(2) The rights and restrictions referred to in subparagraph (1) shall not include rights and restrictions which become operative upon the death, permanent disability, bankruptcy or other similar hardship of a shareholder of—

- (a) a venture capital company; or
- (b) a qualifying investee company in which a venture capital company makes an eligible investment,

where that shareholder is a party to a contract made between the venture capital company and the qualifying investee company.

Capital
qualification

10. (1) For the purposes of section 14 of the Act, a company wishing to be approved as a qualifying investee company shall apply in writing to the Administrator for such approval.

(2) For the purposes of section 14(b) of the Act, a qualifying investee company shall have an issued and fully paid up share capital of not more than three million dollars.

Prohibited
categories of
business

11. (1) For the purposes of section 14(c) of the Act, a venture capital company shall not invest in the shares of a company carrying on the following categories of business:

- (a) primary resource extraction, including oil and natural gas extraction;
- (b) manufacture of petrochemicals;
- (c) financial services, including services which facilitate the provision of loans, the sale of insurance or real estate, the trading in securities or the leasing of property for personal use;

- (d) retail services;
- (e) property management or the rental or leasing of land or improvements thereon;
- (f) customs brokerage.

(2) Subparagraph (1) shall not apply to—

- (a) an approved hotel and development project as defined by the Income Tax Act; or Chap. 75:01
- (b) the operation and construction of hotels as defined in Part XI of the Miscellaneous Taxes Act. Chap. 77:01

12. For the purposes of section 14(d) of the Act, a qualifying ^{Employees} investee company shall not have on its establishment more than seventy-five employees, the number of employees being calculated in accordance with the following formula:

$$\text{Number of Employees} = \frac{\text{Total Hours}}{40 \times \text{number of weeks in calculation period}}$$

13. For the purposes of section 16(1)(d) of the Act, the onus of ^{Onus of proving} demonstrating that goods and services are sold for fair market value to ^{fair market value} a qualifying investee company is on the venture capital company.

14. For the purposes of sections 2 and 19(2)(b) of the Act, a venture ^{Exit} capital company may hold an investment in a qualifying investee ^{opportunity on investment} company for a period of less than five years where, pursuant to an exit opportunity, the qualifying investee company reacquires its shares from the venture capital company within that period in accordance with the laws governing companies.

15. (1) For the purposes of section 21(1) of the Act, the percentage ^{Investment Protection Account} to be deposited into an Investment Protection Account shall be the ^{deposits and withdrawals} marginal rate percentage as defined in section 48k of the Income Tax Act prevailing at the time that the equity capital is issued or disposed of by the venture capital company.

(2) For the purposes of section 21(4) of the Act, the percentage of the investment which may be withdrawn from the Investment Protection Account shall be calculated in accordance with the following formula:

$$\text{Prescribed Percentage} = \frac{\text{Marginal Rate Percentage as defined in section 48k of the Income Tax Act}}{\text{}}$$

Notice to Administrator on certain events

Ch. 31. No. 1

Tax credit certificate Schedule

16. A venture capital company shall, within thirty days of the occurrence of the following events, notify the Administrator:

- (a) of ceasing to maintain its place of business in Trinidad and Tobago;
- (b) of changing its registered office pursuant to the Companies Ordinance;
- (c) of its acquisition of an additional or different place of business in Trinidad and Tobago or elsewhere;
- (d) of changing its financial year;
- (e) of its failure to comply with section 11(1), 16(1), 17(1), 18, 19(1), 20(1) or 22 of the Act;
- (f) that a qualifying investee company in which it holds an investment ceases to meet any of the requirements of section 14 of the Act;
- (g) that it has passed a resolution referred to in section 27(1)(c), (e) or (f) of the Act;
- (h) that it has been struck off the register of companies by the Registrar of Companies; or
- (i) that the High Court has made a winding-up order against it.

17. The tax credit certificate referred to in section 29 of the Act shall be in the form set out in the Schedule.

SCHEDULE

(Regulation 17)

TAX CREDIT CERTIFICATE	
VENTURE CAPITAL ACT, 1994	
REPUBLIC OF TRINIDAD AND TOBAGO	CONTROL NUMBER
CREDIT CERTIFICATE TO:	NAME AND ADDRESS
BOARD OF INLAND REVENUE FILE NUMBER	INVESTMENT DATE Y M D
NUMBER AND SHARES PURCHASED	INVESTMENT AMOUNT
NAME AND ADDRESS OF CORPORATION	INVESTED IN
TAX CREDIT AMOUNT	
SIGNATURE OF ADMINISTRATOR OF THE VENTURE CAPITAL INCENTIVE PROGRAMME	

Made this 10th day of December, 1996.

B. KUEI TUNG
Minister of Finance