

LAWS OF TRINIDAD AND TOBAGO

VENTURE CAPITAL ACT

CHAPTER 81:08

Act

22 of 1994

Amended by

38 of 1997

7 of 1999

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LAWS OF TRINIDAD AND TOBAGO

2

Chap. 81:08

Venture Capital

Index of Subsidiary Legislation

	<i>Page</i>
Venture Capital Regulations (LN 4/1997)	26

CHAPTER 81:08

VENTURE CAPITAL ACT

ARRANGEMENT OF SECTIONS

SECTION

PART I

PRELIMINARY

1. Short title.
2. Interpretation.
- 2A. Body Corporate.
3. Appointment of Administrator.
- 3A. Secondment of officers.
- 3B. Duties of Administrator in regard to funds and resources of Programme.

PART II

REGISTRATION OF VENTURE CAPITAL COMPANIES

4. Application for registration.
5. Registration.
6. Place of business.
7. Cancellation of registration.
8. Establishment and inspection of register.

PART III

BUSINESS AND INVESTMENTS

9. Restrictions on business and authorised capital.
10. Restriction on shares and Memorandum and Articles.
11. Minimum capital requirements.
12. Commencement of investment.
13. Issue of additional equity capital.
14. Approval as qualifying investee company.
15. Eligible investment in qualifying investee companies.

PART IV

PROHIBITIONS

16. Prohibited investments.
17. Control of qualifying investee companies prohibited.

ARRANGEMENT OF SECTIONS—*Continued*

SECTION

18. Non-arm's length investment prohibited.
19. Aggregate investment of venture capital company.
20. Action where investment is prohibited.

PART V

**INVESTMENT PROTECTION ACCOUNT AND
ELIGIBLE INVESTMENTS**

21. Investment Protection Account.
22. Eligible investments.
23. Changes in eligibility.

PART VI

**REPORTING, EXAMINATION AND PAYMENTS
TO MINISTER**

24. Records and returns.
25. Examination of records by Administrator.
26. Appointment and powers of an investigator.
27. Payments to Minister.
28. Forgiveness of liability of venture capital company.

PART VII

TAXATION INCENTIVES

29. Tax credit certificate.
30. Dividends.

PART VIII

OFFENCES

31. Offences.

PART IX

MISCELLANEOUS

32. Regulations.

CHAPTER 81:08

VENTURE CAPITAL ACT

An Act to provide for the establishment, regulation and administration of the Venture Capital Companies registered under the Act and for related purposes. 22 of 1994.

[17TH JUNE 1996]

Commencement.
[92/1996].

PART I

PRELIMINARY

1. This Act may be cited as the Venture Capital Act. Short title.

2. In this Act—

Interpretation.
[38 of 1997].

“Administrator” means the Administrator of the Venture Capital Incentive Programme appointed by the President under section 3;

“affiliate”, when used to indicate a relationship between companies, means a company where one is the subsidiary of the other, or both are subsidiaries of the same company, or—

- (a) each of them is controlled by the same person or group of persons;
- (b) one of them is controlled by one person and the other is controlled by an associate;

“associate”, when used to indicate a relationship with a person, means—

- (a) a company of which that person owns, directly or indirectly, shares carrying at least twenty per cent of the voting rights for the election of the directors of the company;
- (b) a partner of that person;
- (c) a spouse, parent, child, grandparent, brother or sister of that person;

“chargeable profits” has the meaning assigned to it under section 2(1) of the Corporation Tax Act; Ch. 75:02.

“company” means a body corporate registered under the Companies Act; Ch. 81:01.

“Court” means the High Court of Justice of Trinidad and Tobago;

“eligible investment” means an investment in the equity shares of a qualifying investee company;

“equity capital” means the consideration in money received by—

- (a) a company, before or after its registration under this Act as a venture capital company, for its issued shares; or
- (b) a qualifying investee company for its issued equity shares;

“equity share” means a share of a class of shares carrying voting rights under all circumstances, but does not include a share having prescribed rights and restrictions;

“exit opportunity” means a disposition made in the following circumstances:

- (a) a sale of equity shares made pursuant to a public offering of those shares;
- (b) a sale of equity shares made to a third party purchasing a qualifying investee company;
- (c) such other circumstances as may be prescribed;

“financial institution” or “institution” has the meaning assigned to it by the Financial Institutions Act;

Ch. 79:09.

“Investment Protection Account” or “Account” means an account established by a venture capital company under section 21;

“major shareholder” means a person whose shares in a company, together with the shares owned by his associates and affiliates, carry in the aggregate at least ten per cent of the voting rights, under any circumstances, attached to shares in the company;

“Minister” means the Minister to whom responsibility for finance is assigned;

“permitted investment” means an investment in—

- (a) liquid reserves on deposit at a financial institution licensed under the Financial Institutions Act;
- (b) other prescribed investments;

“qualifying investee company” means a company approved by the Administrator under section 14;

“tax credit certificate” means a tax credit certificate issued by the Administrator under section 29;

“Treasury Bill” means a Treasury Bill issued under the Treasury Bills Act; Ch. 71:40.

“venture capital company” means a company registered by the Administrator as a venture capital company under section 5;

“Venture Capital Incentive Programme” means the Programme that administers the tax credit to investors in Venture Capital companies and supervises the establishment, regulation and administration of venture capital companies and qualifying investee companies registered under the Act.

2A. The Venture Capital Incentive Programme is hereby established as a Body Corporate. Body Corporate. [38 of 1997].

3. (1) The President shall appoint a fit and proper person to be the Administrator of the Venture Capital Incentive Programme upon such terms and conditions to be fixed by the President. Appointment of Administrator. [38 of 1997].

(2) The Administrator may be removed from office by the President for misconduct or inability or failure to perform his duties properly or for failure to comply with subsection (8).

(3) The Administrator shall be paid such remuneration and allowances as may be fixed by the President.

(4) Subject to the provisions of this Act and any other written law, the Administrator, while holding office, shall not occupy any other office or employment, whether remunerated or not, but the Administrator may, with the approval of the President, become a director or member of the board of any organisation or other agency to which the government subscribes, contributes or gives support.

(5) In the event of the absence or inability of the Administrator from whatever cause arising to perform his duties, the President may appoint a fit and proper person to act temporarily in place of the Administrator.

(6) The Administrator, with the approval of the Minister, shall appoint, upon such terms and conditions as he may think fit, such persons as may be considered necessary to assist the Administrator in the performance of his duties.

(7) A person appointed or employed under this section shall not borrow money from a venture capital company.

(8) Where a person appointed or employed under this section is or becomes a shareholder in a venture capital company before or after his appointment or employment, whether directly or indirectly, he shall notify the Minister in writing of such shareholding and the Minister shall require that person to dispose of such shareholding or interest within a specified time.

(9) The Administrator shall, before the thirty-first day of March in each year, furnish to the Minister for laying before Parliament, a report of his activities during the previous year.

Secondment of
officers.
[38 of 1997].

3A. (1) An officer in the public service may with the approval of the Public Service Commission and the consent of the Minister agree to be appointed on secondment to the service of the Venture Capital Incentive Programme, upon such terms and conditions as may be acceptable to the administrator and the officer.

(2) Where secondment is effected, the Venture Capital Incentive Programme shall make such arrangements as may be necessary to preserve the rights of the officer seconded to any pension, gratuity, or other allowance for which he would have been eligible had he not been seconded.

(3) A period of secondment shall not exceed two years.

(4) The officer shall, upon secondment to the Venture Capital Incentive Programme, draw the full pay of the post to which he is seconded and shall be eligible for increments, if any, normally payable in such a post.

(5) During the period of secondment an officer shall be deemed to remain on the establishment of his Ministry or Department and shall be eligible for promotion *in absentia*.

(6) An officer who has been seconded to the Venture Capital Incentive Programme in pursuance of this section may, with the approval of the Public Service Commission, be transferred from the Venture Capital Incentive Programme to an office in the Public Service on the termination of his service with the Venture Capital Incentive Programme.

3B. (1) The funds and resources of the Venture Capital Incentive Programme shall be money allocated by Parliament for the use of the Venture Capital Incentive Programme and shall be applied in meeting any obligation or discharging any function of the Venture Capital Incentive Programme.

Duties of Administrator in regard to funds and resources of Programme. [38 of 1997].

(2) The Administrator shall keep proper accounts and records of the transactions and affairs of the Venture Capital Incentive Programme and shall do all things necessary to ensure that all payments out of the moneys of the Venture Capital Incentive Programme are correctly made and properly authorised and that adequate control is maintained over the assets of or in the custody of the Venture Capital Incentive Programme and over the incurring of liability by the Venture Capital Incentive Programme.

(3) The Administrator shall submit to the Minister, no later than three months after the close of the financial year, a financial statement for every financial year in respect of the financial affairs of the Venture Capital Incentive Programme.

(4) The accounts of the Venture Capital Incentive Programme shall be audited by the Auditor General annually or by an Auditor authorised by him for such purposes.

(5) The Administrator shall forward to the Minister, a copy of the statement of accounts of the Venture Capital Incentive Programme together with any report made by the Auditor General and the Minister shall ensure that the audited statement of accounts and report are laid in Parliament within three months thereafter, or if Parliament is not in session, within one month after the commencement of the next sitting.

(6) The financial year of the Venture Capital Incentive Programme shall be the financial year as defined in section 3 of the Constitution.

PART II

REGISTRATION OF VENTURE CAPITAL COMPANIES

Application for
registration.

4. (1) A company intending to carry on the business of a venture capital company shall, before commencing that business, apply to the Administrator to be registered as a venture capital company.

(2) The company shall, together with its application for registration under this section, submit to the Administrator a proposal stating—

- (a) the name of the company and the date of its incorporation;
- (b) the address of its registered office;
- (c) its authorised share capital;
- (d) the number of issued shares and the amount received for the shares;
- (e) the number of any additional equity shares which the company proposes to issue and the proposed price for the issued shares;
- (f) the nature and amount of any outstanding debts of the company;
- (g) the number, names and addresses of its directors, officers and shareholders, and the number of shares held by each; and
- (h) any other prescribed information.

(3) A proposal submitted under subsection (2) shall—

- (a) be signed by at least one director and one officer of the company; and
- (b) be accompanied by a certified copy of the memorandum and articles of association of the company.

Registration.

5. The Administrator may register a company as a venture capital company where he is satisfied that the company—

- (a) is incorporated as a company under the Companies Act;
- (b) has a name or description which includes the words “venture capital”;

Ch. 81:01.

- (c) has not previously carried on business;
- (d) has, at the time of its application for registration as a venture capital company —
 - (i) an initial share capital of not less than fifty thousand dollars; and
 - (ii) an authorised share capital of not less than five million dollars and not more than twenty million dollars;
- (e) has only one class of shares with no special rights or restrictions;
- (f) has a memorandum of association that restricts the objects of the company to assisting the development of business by —
 - (i) making investments allowed under this Act;
 - (ii) providing business and managerial expertise to companies in which it has made or proposes to make an eligible investment;
- (g) meets other prescribed conditions.

6. A venture capital company shall, within thirty days of its registration, establish and maintain a place of business in Trinidad and Tobago.

Place of business.

7. (1) The Administrator may suspend or cancel the registration of a venture capital company where he is satisfied that the company —

Cancellation of registration.

- (a) obtained its registration fraudulently by furnishing false or misleading information or documents;
 - (b) failed to supply prescribed information or records;
 - (c) supplied information pursuant to the Act which contained false or misleading information;
 - (d) failed to comply with any condition of approval given by the Administrator under the Act;
 - (e) contravened the provisions of the Act.
- (2) The Administrator shall in writing —
- (a) notify the company of his intention to suspend or cancel its registration; and

(b) give reasons and invite the company to show cause why the suspension or cancellation shall not take effect within fourteen days of the receipt of the notice.

(3) Where the Administrator suspends the registration of a venture capital company, he may—

- (a) in writing state conditions to be complied with by the suspended company; and
- (b) reinstate the registration of the company with or without conditions.

Establishment and inspection of register.

8. (1) The Administrator shall establish and maintain a register of venture capital companies registered under this Act.

(2) The register shall contain the following information pertaining to every venture capital company:

- (a) the name of the company;
- (b) the date of its registration;
- (c) the address of its registered office; and
- (d) other information prescribed by the Minister.

(3) The Administrator shall—

- (a) make the register available for inspection by members of the public during normal business hours;
- (b) provide copies of the register to members of the public,

upon payment by the member of the public of a fee to be prescribed by the Minister.

PART III

BUSINESS AND INVESTMENTS

Restrictions on business and authorised capital.

9. (1) A venture capital company shall not carry on any activity other than—

- (a) making eligible investments;
- (b) providing business and managerial expertise to a qualifying investee company in which it has made or proposes to make an eligible investment;
- (c) making permitted investments.

(2) Except with the approval of the Administrator, a venture capital company shall not carry on business with equity capital in excess of twenty million dollars.

(3) A venture capital company shall not borrow money for any reason.

(4) The contravention of this section does not invalidate the acts of a venture capital company, including the disposition of property to or by that company.

10. (1) A venture capital company shall not, without the written approval of the Administrator, alter—

- (a) its memorandum of association;
- (b) the provision in its articles of association governing rights and restrictions of shares;
- (c) its authorised share capital.

Restriction on shares and Memorandum and Articles.

(2) All the issued shares of a venture capital company shall be fully paid for in cash.

11. (1) A venture capital company shall within twelve months from the date of its registration, have and maintain at least five hundred thousand dollars in paid-up equity capital.

Minimum capital requirements. [38 of 1997].

(2) The Administrator shall cancel the registration of a venture capital company which fails to comply with subsection (1) and the provision of section 7(2) apply in relation to such cancellation.

12. (1) A venture capital company shall commence its investment in a qualifying investee company within twelve months from the date of its registration.

Commencement of investment.

(2) A venture capital company shall invest the prescribed ratio of its equity capital in qualifying investee companies within the periods prescribed.

13. (1) A venture capital company shall, within seven days of the issue of additional equity capital, notify the Administrator of such issue.

Issue of additional equity capital.

(2) Where a venture capital company proposes to increase its authorised share capital, the company shall apply to the Administrator who may approve of the increase in such circumstances as may be prescribed.

Approval as
qualifying
investee
company.

14. The Administrator may grant a certificate of approval to a company as a qualifying investee company where he is satisfied that the company—

Ch. 81:01.

(a) is either registered under the Companies Act or is designated a CARICOM enterprise under the CARICOM Enterprises Act;

Ch. 81:04.

(b) has no less and no more than the issued and fully paid share capital as prescribed by the Minister;

(c) is not established for the purpose of carrying on any of the prohibited categories of business as may be prescribed;

(d) has no more than the prescribed number of employees.

Eligible
investment in
qualifying
investee
companies.

15. Subject to the provisions of this Act, a venture capital company may make an investment in a qualifying investee company, which investment shall consist of the direct acquisition from the qualifying investee company of equity shares issued for the purpose of raising new equity capital.

PART IV

PROHIBITIONS

Prohibited
investments.

16. (1) A venture capital company shall not make or hold an investment in a qualifying investee company where the proceeds of that investment are directly or indirectly used or intended to be used, in whole or in part, by the qualifying investee company—

(a) for lending;

(b) for investment outside of Trinidad and Tobago, except where the investment is directly in support of the activities of the company;

(c) for investment in land, except where the use of the land is directly in support of the activities of the company;

- (d) for purchasing goods or services from a director, shareholder or other officer of a venture capital company other than goods or services that are sold at fair market value to the company in the ordinary course of the business of the vendor;
- (e) for acquiring securities;
- (f) for the payment of all or part of a debt obligation, unless the Administrator considers that the payment is necessary for the financial viability of the company or the debt was incurred with the prior approval of the Administrator in anticipation of an investment in the company by the venture capital company;
- (g) as part of a transaction or series of transactions directly or indirectly involving—
 - (i) the purchase or redemption of previously issued shares of the company;
 - (ii) the discharge of any part of the liability of a shareholder of the company;
 - (iii) the payment of dividends;
 - (iv) the funding of all or part of the purchase by the company of any of the assets of a proprietorship, partnership, joint venture, trust or company at a value that is greater than the open market value of the assets purchased;
 - (v) other prescribed events;
- (h) for such other disbursements as may be prescribed by the Minister.

(2) For the purposes of this section and sections 17, 18 and 19, a “qualifying investee company” includes an affiliate or associate of the qualifying investee company.

17. (1) A venture capital company shall not make or hold an investment in a qualifying investee company where it and any other venture capital company, either alone or in conjunction with one or more of their—

- (a) associates or affiliates;

Control of
qualifying
investee
companies
prohibited.

- (b) shareholders of their associates or affiliates;
- (c) directors or their associates;
- (d) officers or their associates,

will own, directly or indirectly, shares carrying more than fifty per cent of the votes for the election of directors of the qualifying investee company or will, in any manner, control the qualifying investee company.

(2) Where the Administrator considers that a qualifying investee company in which a venture capital company makes an investment is in financial difficulty, he may permit the venture capital company to temporarily control the qualifying investee company on terms and conditions as he may determine.

Non-arm's
length
investment
prohibited.

18. (1) A venture capital company shall not make an investment in a qualifying investee company where any of the shares of the venture capital company are held by a person who is or was at any time during the two years preceding the investment—

- (a) a major shareholder of the qualifying investee company;
- (b) an associate of a major shareholder of the qualifying investee company;
- (c) a voting trust whereby the trustee votes shares of the qualifying investee company;
- (d) the qualifying investee company or an associate or affiliate of the qualifying investee company.

(2) A venture capital company shall not make or hold an investment in a qualifying investee company where the qualifying investee company or an associate, affiliate, director, officer or shareholder of the qualifying investee company provides or has provided a loan, guarantee or other financial assistance to—

- (a) an associate or affiliate of the venture capital company;
- (b) a director, officer or major shareholder of the venture capital company.

Aggregate
investment of
venture capital
company.

19. (1) Subject to subsection (2), a venture capital company shall hold each investment it makes in a qualifying investee company for a period of at least five years but not exceeding ten years.

(2) Notwithstanding subsection (1), a venture capital company may hold an investment in a qualifying investee company for less than five years where the venture capital company—

- (a) is permitted under the Act to dispose of the investment at an earlier date;
- (b) disposes of the investment at an earlier date pursuant to an exit opportunity and immediately invests an amount equal to the original cost of the disposed investment in an investment in another qualifying investee company.

20. (1) Where the investment of a venture capital company is or becomes prohibited, the company shall, within six months of the date of the prohibited investment, dispose of the investment. Action where investment is prohibited.

(2) Subsection (1) does not apply where, within six months of the date of the prohibited investment, the circumstances that caused the investment to be prohibited are changed to the extent that the investment is no longer prohibited.

(3) Where the Administrator is satisfied that the non-compliance by the venture capital company of provisions under this Part occurred in spite of its exercise of reasonable prudence, he may, with or without conditions, relieve the company from the consequences of non-compliance for a period he considers appropriate.

PART V

INVESTMENT PROTECTION ACCOUNT AND ELIGIBLE INVESTMENTS

21. (1) Every venture capital company shall establish and maintain at a financial institution licensed under the Financial Institutions Act an account to be known as an Investment Protection Account into which shall be deposited— Investment Protection Account. Ch. 79:09.

- (a) such percentage as may be prescribed by the Minister in respect of the consideration paid to the venture capital company in respect of the issue of shares for which a tax credit is applied for under section 29;

(b) such percentage as may be prescribed by the Minister in respect of the amount received by the venture capital company from the disposal of an investment in a qualifying investee company or such other percentage of the original cost of the disposed investment as may be prescribed by the Minister.

(2) No withdrawals may be made from an Investment Protection Account without the prior written authorisation of the Administrator as specified in this section.

(3) Subsection (2) does not apply to income earned on sums deposited into an Investment Protection Account and paid or credited to another account of the venture capital company.

(4) Where the Administrator is satisfied that a venture capital company makes or proposes to make an investment in a qualifying investee company in accordance with this Act, the Administrator may, upon such conditions as he may stipulate, in writing authorise a withdrawal from the Investment Protection Account for the benefit of the venture capital company of an amount equal to such percentage of the investment as may be prescribed by the Minister or the amount remaining in the account, whichever is the lesser.

(5) Where a venture capital company is required to make a payment to the Minister under section 27, the Minister may, on the written authorisation of the Administrator, deliver to the financial institution at which the Investment Protection Account is maintained, a demand for payment of the amount due.

(6) Where the financial institution receives a demand under subsection (5), the institution shall immediately withdraw from the Investment Protection Account of the venture capital company in question the amount demanded and pay the amount over to the Minister forthwith.

Eligible
investments.

22. A venture capital company shall not make an investment other than an investment in—

- (a) eligible investments; or
- (b) permitted investments.

23. (1) Where a qualifying investee company in which a venture capital company has made an eligible investment no longer complies with the requirements for qualification under section 14, the venture capital company shall, within six months of the date of the non-compliance, dispose of its investment in the qualifying investee company.

Changes in eligibility.

(2) Subsection (1) does not apply where, within six months of the date of non-compliance by the qualifying investee company, the circumstances that caused the company not to qualify are changed to the extent that the company qualifies.

PART VI

REPORTING, EXAMINATION AND PAYMENTS TO MINISTER

24. (1) Every venture capital company shall—

- (a) keep adequate records and books of accounts at its place of business in Trinidad and Tobago;
- (b) within six months of the end of its financial year, prepare and file with the Administrator a return, in such form and containing such information as may be required by the Administrator.

Records and returns.

(2) A venture capital company required by this section to keep records and books of accounts shall retain every such record and book of account together with every account or voucher necessary to verify the information contained in such record or book of account for a period of at least six years from the year to which the records or books relate.

(3) A venture capital company which contravenes this section commits an offence.

25. (1) The Administrator or a person authorised in writing by the Administrator may, during the normal business hours of—

Examination of records by Administrator.

- (a) a venture capital company;
- (b) a company that was previously a venture capital company; or

(c) a qualifying investee company in which the venture capital company has made an investment,

examine the books, accounts or other documents of those respective companies in order to determine whether the venture capital company or the company that was previously a venture capital company has complied with the provisions of this Act.

(2) A person who is authorised by the Administrator pursuant to subsection (1) shall, where requested by the company he is examining, produce evidence of his written authority to the company.

(3) The Administrator or person authorised by him may make copies of any books, accounts, records or other documents which he is entitled to examine under this section.

Appointment
and powers of
an investigator.

26. (1) The Administrator may make an order—

- (a) appointing an investigator to carry out an investigation for the purposes of the Act; and
- (b) determining the scope of the investigation.

(2) The Court may, upon application made by the Administrator or by an investigator appointed under subsection (1) and, upon being satisfied by information on oath that it is necessary and in the public interest for any purpose relating to an investigation under subsection (1), make an order authorising the investigator—

- (a) to enter the premises or property of a person at any reasonable time for the purpose of carrying out the investigation;
- (b) to require the production of any records, securities or things for the purpose of the investigation;
- (c) on giving a receipt, to remove any records, securities or things inspected or examined for the purpose of further investigation;
- (d) to require a person, by not less than fourteen days' notice in writing, to appear before him to give evidence on oath or in any other manner as the investigator considers necessary to conduct the investigation;

(e) to do such other things as the Court considers necessary or expedient for the purpose of the investigation.

(3) An application to the Court under subsection (2) may be made *ex parte* and heard *in camera* unless the Court otherwise directs.

(4) An investigation conducted pursuant to this section shall be completed as soon as practicable and the records, securities or things removed shall be returned to the person producing them, within thirty days of the completion of the investigation.

- (5) No person shall withhold, destroy, conceal or refuse to—
- (a) give any information;
 - (b) produce any record, security or thing,

reasonably required by an investigator for the purpose of conducting an investigation under this section.

(6) A person required to appear before an investigator pursuant to subsection (2) may appear in person or through his attorney or agent.

(7) A person who, without lawful excuse, fails or refuses to comply with the order of the Court under subsection (2) is liable on summary conviction to a fine of twenty-five thousand dollars.

27. (1) Where a venture capital company—

- (a) has its registration as a venture capital company cancelled;
- (b) is struck off the register of companies by the Registrar of Companies;
- (c) passes a voluntary winding up resolution;
- (d) has a winding up order made against it by the Court;
- (e) passes a resolution requesting cancellation of its registration as a venture capital company;
- (f) passes a resolution reducing its share capital,

the company shall, except where it reduces its share capital, make a payment to the Minister equal to the amount deposited into its Investment Protection Account under section 21(1)(a) in respect of the issue of its shares.

Payments to
Minister.

(2) Where a venture capital company passes a resolution reducing its share capital, the company shall make a payment to the Minister equal to the amount deposited into its Investment Protection Account under section 21(1)(a) in respect of its reduced shares.

(3) The amount paid to the Minister shall not exceed the aggregate of the tax credits allowed in respect of the shares.

(4) The amount to be paid to the Minister is a debt due to the State.

Forgiveness of liability of venture capital company.

28. (1) Where the Administrator is satisfied that a venture capital company has complied with the provisions of this Act, the Administrator may, with respect to amounts invested in an eligible investment, make a forgiveness order at any time after the expiration of five years from the date of making the eligible investment.

(2) Where the Administrator makes a forgiveness order under subsection (1), the liability of the venture capital company to make a payment under section 27 is reduced by such amount as may be prescribed.

(3) In determining the amount of a forgiveness order, the Administrator shall take into account any matters he considers relevant, including without restriction any liability of the venture capital company under section 27 that will remain outstanding after making the order.

PART VII

TAXATION INCENTIVES

Tax credit certificate. [7 of 1999].

29. (1) Where a person purchases shares issued—

(a) by a company prior to the date of its registration as a venture capital company, where the prescribed percentage of the amount received in respect of those shares was paid into the Investment Protection Account of the company and the shares were issued within six months before the date of registration of the company as a venture capital company;

- (b) by a company after the date of its registration as a venture capital company,

the venture capital company shall, on behalf of the person, apply to the Administrator for a tax credit certificate which may be used by that person to claim a tax credit under section 48K of the Income Tax Act.

Ch. 75:01.

(2) Where an application is made under subsection (1), the Administrator may issue a tax credit certificate in the name of the shareholder where he is satisfied that—

- (a) the venture capital company has established and maintained the Investment Protection Account as required by section 21;
- (b) no tax credit certificate has previously been issued in respect of the shares;
- (c) the equity capital in respect of which the tax credit certificate is applied for has been approved;
- (d) the shareholder has acquired the shares directly from the venture capital company or its authorised agent; and
- (e) the shareholder was resident in Trinidad and Tobago at the date he subscribed for the shares.

(3) The tax credit certificate issued under this section shall state—

- (a) the Board of Inland Revenue file number of the shareholder;
- (b) the year of income in which the shares were purchased;
- (c) the number of shares purchased by the shareholder;
- (d) the amount received by the venture capital company from the shareholder for the shares.

(4) The tax credit certificate shall be issued by the Administrator within forty-five days of the date of receipt of the application.

(5) Notwithstanding subsection (4), where on account of a vacancy in the office of Administrator, a tax credit certificate

is not issued to a shareholder within the period stated in that subsection, the certificate shall be issued by the new Administrator within twenty-one days of his appointment.

Dividends. **30.** A venture capital company shall not distribute dividends out of the profits derived from its permitted investments.

PART VIII

OFFENCES

Offences. **31.** (1) A person who knowingly makes a statement in any record, evidence or information submitted or given under the Act that—

(a) is false or misleading with respect to a material fact; or

(b) omits to state a material fact, the omission of which makes the statement false or misleading,

commits an offence.

(2) A person who knowingly makes a statement in a proposal, report, return or other record required to be filed or furnished under this Act that—

(a) is false or misleading with respect to a material fact; or

(b) omits to state a material fact, the omission of which makes the statement false or misleading,

commits an offence.

(3) A person who hinders, molests or interferes with a person doing anything that he is authorised to do under this Act commits an offence.

(4) The director, shareholder or other officer of a venture capital company commits an offence where—

(a) the director, shareholder or other officer supplies information to the Administrator which the director, shareholder or other officer knew or ought to have known to be false or misleading; and

- (b) the Administrator issues a tax credit certificate to a shareholder under section 29 on the basis of the information supplied by the director, shareholder or other officer.
- (5) The director, shareholder or other officer of a company which is or was a venture capital company, who—
- (a) authorised, permitted or acquiesced in a transaction or event which he knew or ought reasonably to have known at the time of the authorisation, permission or acquiescence, would render the company incapable of making a payment to the Minister under section 27 is, in addition to the penalty under subsection (6), liable to make a payment to the Minister equal to the amount which the company is incapable of paying;
- (b) commits an offence under subsection (4) is, in addition to the penalty under subsection (6), liable to pay an amount equal to the tax credits allowed in respect of the relevant shares.
- (6) A person who commits an offence under this Act for which no penalty is provided is liable—
- (a) in the case of an individual, to a fine of fifty thousand dollars and to imprisonment for twenty-four months; and
- (b) in the case of a company, to a fine of one hundred thousand dollars.

PART IX

MISCELLANEOUS

32. The Minister may make Regulations, subject to negative resolution of Parliament, prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act. Regulations.

SUBSIDIARY LEGISLATION

VENTURE CAPITAL REGULATIONS

ARRANGEMENT OF REGULATIONS

REGULATION

1. Citation.
2. Definitions.
3. Information included in application.
4. Registration conditions.
5. Contents of register.
6. Fee for copy of register.
7. Permitted investments.
8. Ratio of investment.
9. Rights and restrictions on equity shares.
10. Capital qualification.
11. Prohibited categories of business.
12. Employees.
13. Onus of proving fair market value.
14. Exit opportunity on investment.
15. Investment Protection Account deposits and withdrawals.
16. Notice to Administrator on certain events.
17. Tax credit certificate.

SCHEDULE.

VENTURE CAPITAL REGULATIONS

4/1997.

made under section 32

1. These Regulations may be cited as the Venture Capital Regulations. Citation.

2. In these Regulations— Definitions.

“Act” means the Venture Capital Act;

“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.

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:

Registration 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.

LAWS OF TRINIDAD AND TOBAGO

30

Chap. 81:08

Venture Capital

[Subsidiary]

Venture Capital Regulations

Contents of register.

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

- (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.

Fee for copy of register.

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.

Permitted investments.

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

- (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.

Ratio of investment.

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.

Rights and restrictions on equity shares.

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

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. Capital qualification.

(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.

LAWS OF TRINIDAD AND TOBAGO

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—

Ch. 75:01.

(a) an approved hotel and development project as defined by the Income Tax Act; or

Ch. 77:01.

(b) the operation and construction of hotels as defined in Part XI of the Miscellaneous Taxes Act.

Employees.

12. For the purposes of section 14(d) of the Act, a qualifying 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:

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

Onus of proving fair market value.

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

Exit opportunity on investment.

14. For the purposes of sections 2 and 19(2)(b) of the Act, a venture capital company may hold an investment in a qualifying

investee company for a period of less than five years where, pursuant to an exit opportunity, the qualifying investee company re-acquires 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 to be deposited into an Investment Protection Account shall be the 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.

Investment Protection Account deposits and withdrawals. Ch. 75:01.

(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:

$$\text{Prescribed Percentage} = \frac{\text{Marginal Rate Percentage as defined in section 48K of the Income Tax Act}}{80}$$

80

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

Notice to Administrator on certain events.

- (a) of ceasing to maintain its place of business in Trinidad and Tobago;
- (b) of changing its registered office pursuant to the Companies Act;
- (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;

Ch. 81:01.

LAWS OF TRINIDAD AND TOBAGO

34

Chap. 81:08

Venture Capital

[Subsidiary]

Venture Capital Regulations

- (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.

Tax credit certificate. Schedule.

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

(Regulation 17).

SCHEDULE

<p>TAX CREDIT CERTIFICATE VENTURE CAPITAL ACT Ch. 81:08</p>	
<p>REPUBLIC OF TRINIDAD AND TOBAGO</p>	<p>CONTROL NUMBER</p>
<p>CREDIT CERTIFICATE TO:</p>	<p>NAME AND ADDRESS</p>
<p>BOARD OF INLAND REVENUE FILE NUMBER</p>	<p>INVESTMENT DATE Y M D</p>
<p>NUMBER AND SHARES PURCHASED</p>	<p>INVESTMENT AMOUNT</p>
<p>NAME AND ADDRESS OF CORPORATION</p>	<p>INVESTED IN</p>
<p>TAX CREDIT AMOUNT</p>	
<p>_____ SIGNATURE OF ADMINISTRATOR OF THE VENTURE CAPITAL INCENTIVE PROGRAMME</p>	