

ACT 680

VENTURE CAPITAL TRUST ACT, 2004

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ACT 680

VENTURE CAPITAL TRUST ACT, 2004¹

AN ACT to provide for the establishment of a fund to be known as the Venture Capital Trust to provide financial resources for the development and promotion of venture capital financing for small and medium enterprises in specified sectors of the Ghanaian economy; the management of the Fund and to provide for related matters.

*Establishment of the Venture Capital Trust***1. Establishment of the Trust**

There is established by this Act a Venture Capital Trust which shall have perpetual succession and a common seal, may sue and be sued and have in all other respects the powers of a body corporate.

2. Object of the Trust

(1) The object of the Trust is to provide financial resources for the development and promotion of venture capital financing for small and medium enterprises in priority sectors of the economy as shall be specified from time to time.

(2) For the purpose of achieving the object of the Trust, moneys from the Trust shall be applied to the relevant activities determined by the Board including in particular,

- (a) the provision of credit and equity financing to eligible venture capital financing companies to support small and medium enterprises which qualify for equity and quasi-equity financing, and
- (b) the provision of moneys to support any other activities and programmes for the promotion of venture capital financing, as determined by the Board in consultation with the Minister.

3. Sources of money for the Trust

The sources of money for the Trust are

- (a) an amount of money equivalent to twenty-five percent of the proceeds of the National Reconstruction Levy with effect from the 2003 financial year;
- (b) any other moneys that the Minister with the approval of Parliament may determine;
- (c) fees and any other moneys earned by the Trust in the performance of its functions under this Act;
- (d) money that accrues to the Trust from investment made by the Board;
- (e) grants, donations, gifts, and other voluntary contributions to the Trust; and
- (f) any other moneys or property that may become lawfully payable and vested in the Board for the Trust.

1. This Act was assented to on 17th March, 2004 and notified in the *Gazette* on 19th November, 2004.

4. Bank account for the Trust

(1) Moneys of the Trust shall vest in the Board and shall be paid into bank accounts that shall be opened by the Board with the approval of the Accountant-General.

(2) The Minister responsible for Finance shall, within thirty days of receipt of notification of payment of the proceeds of the National Reconstruction Levy revenue, pay directly from the Consolidated Fund into the bank accounts opened under subsection (1) the proportion of the National Reconstruction Levy revenue that is required to be paid to the Trust under section 3 (a).

5. Categories of accounts of the Trust

(1) The moneys of the Trust shall be divided into the categories of accounts determined by the Board.

(2) There shall be assigned to each category of account the proportion of the moneys of the Trust determined by the Board in consultation with the Minister.

*The Board and Management of the Trust***6. The Board of the Trust**

(1) The governing body of the Trust is a board of trustees consisting of

- (a) the chairperson,
- (b) one representative of the Ministry of Finance and Economic Planning not below the rank of director,
- (c) one representative of the Ministry of Private Sector Development not below the rank of director,
- (d) the Administrator of the Trust under section 22,
- (e) one representative of the Ghana Securities Industry Association,
- (f) one representative of the Ghana Association of Bankers,
- (g) one representative of the Ghana Insurers Association, and
- (h) two other individuals, one each from the formal and informal sectors of the economy one of whom is a woman.

(2) The chairperson and members of the board of trustees shall be appointed by the President acting in accordance with article 70 of the Constitution.

(3) The President shall in appointing a member of the Board under subsection (1) consider that person's integrity, knowledge, expertise and experience in matters relevant to the functions of the Board.

(4) *Omitted.*²

(5) The Board may on behalf of the Trust

- (a) enter into contracts;

2. The Trust is the corporate entity.

- (b) acquire, purchase and hold movable and immovable property; and
- (c) convey, assign and transfer movable and immovable property or an interest in property vested in the Trust.

7. Functions of the Board

(1) The Board is responsible for the management of the moneys of the Trust and shall for that purpose

- (a) pursue policies to achieve the object of the Trust;
- (b) collect or arrange to be collected, moneys lawfully due to the Trust through procedures to be determined by the Minister;
- (c) monitor and evaluate the operations and performance of venture capital financing companies in respect of moneys received from the Trust;
- (d) ensure accountability of the Trust by defining appropriate procedures for its management;
- (e) disburse moneys from the Trust;
- (f) invest some of the moneys of the Trust in safe securities that the Board considers financially beneficial to the Trust;
- (g) receive and process applications for funds from venture capital financing companies;
- (h) put in place structures and guidelines that will ensure that venture capital finance companies live up to their responsibilities stated in the agreement between the venture capital financing companies and the small and medium enterprises which the Board funds;
- (i) in consultation with the Minister formulate policies to determine among other things
 - (i) the terms under which moneys from the Trust will be allocated to eligible venture capital financing companies under this Act;
 - (ii) the maximum amount of money that may be granted by the Trust to an applicant; and
 - (iii) the sectors of the economy in which the moneys from the Trust may be invested;
- (j) publish manuals or guidelines the Board considers necessary to regulate the conduct and operations of venture capital financing companies in relation to moneys from the Trust;
- (k) approve the broad terms and conditions of agreements to be entered into between venture capital financing companies and the small and medium enterprises in relation to disbursements made from moneys from the Trust; and
- (l) perform any other functions as are incidental to the achievement of the object of the Trust.

(2) The Minister may give general directives in writing to the Board on matters of policy.

8. Tenure of office of members

(1) The chairperson and the members of the Board, other than the Chief Executive of the Trust, shall hold office for a period of four years and are eligible for re-appointment.

(2) A member of the Board may at any time by letter addressed to the President through the Minister resign from office.

(3) A member who is absent from four consecutive meetings of the Board without sufficient cause ceases to be a member of the Board.

(4) The chairperson or any other member of the Board may be removed from office by the President for

- (a) inability to perform the functions of the office;
- (b) for stated misbehavior; or
- (c) for any other just cause.

9. Vacancies on the Board

(1) The chairperson of the Board shall notify the Minister of vacancies that occur in the membership of the Board within one month of the occurrence of the vacancy.

(2) The President on being notified of a vacancy shall request the appropriate body to nominate another person for appointment.

(3) Where the vacant position is that of the chairperson, the Minister shall notify the President who shall in consultation with the Council of State appoint a new chairperson.

(4) Where a person is appointed to fill a vacancy, that person shall hold office for the remainder of the term of the previous member and is eligible, subject to this Act, for re-appointment.

10. Meetings of the Board

(1) The Board shall meet at least once every three months for the despatch of business at the times and in the places determined by the Board.

(2) The chairperson shall, on the request of not less than one third of the membership of the Board convene an extraordinary meeting of the Board.

(3) The quorum at a meeting of the Board is five members.

(4) The chairperson shall preside at the meetings of the Board, and in the absence of the chairperson, a member of the Board elected by the members present from among their number shall preside.

(5) Matters before the Board shall be decided by a majority of the members present and voting.

(6) The person presiding at a meeting of the Board shall in the event of equality of votes have a casting vote.

(7) The Board may co-opt a person to act as an adviser at its meetings but a co-opted person is not entitled to vote at the meeting.

(8) The validity of the proceedings of the Board shall not be affected by a vacancy among its members or by a defect in the appointment or qualification of a member.

(9) Except as otherwise provided under this section, the Board shall determine and regulate the procedure for its meetings.

11. Committees of the Board

The Board may for purposes of achieving the object of the Trust appoint committees of the Board comprising members of the Board or non-members or both and may assign to them the functions that the Board may determine except that a committee composed entirely of non-member shall only advise the Board.

12. Disclosure of interest

(1) A member of the Board who has an interest in a matter being considered or dealt with by the Board shall disclose the nature of that interest at a meeting of the Board and shall not take part in the deliberation or decision of the Board with respect to the matter.

(2) A member who has an interest in a matter before the Board but who fails to disclose that interest under subsection (1) shall be removed from the Board.

13. Allowances for members of the Board

The chairperson and the other members of the Board shall be paid the allowances that the Minister may determine.

14. Disbursement from the Trust

The moneys of the Trust shall be disbursed by the Board in proportions and to eligible venture capital financing companies as the Board may determine.

15. Application for funding

(1) A venture capital financing company that satisfies the conditions specified in section 16 may apply to the Trust for funding.

(2) An application for funding from the Trust shall be in the form that the Minister may on the advice of the Board prescribe.

(3) The application shall be accompanied with a non-refundable processing fee as determined by the Board.

(4) On the receipt of an application, the Board may conduct the necessary investigations on the applicant and may request the applicant to submit the documents that it considers necessary for the determination of the application.

(5) The Board shall within twenty-eight days after the receipt of an application

- (a) grant the application if
 - (i) the funds of the Trust are not exhausted;
 - (ii) it is satisfied that the applicant has fulfilled all the conditions listed under section 16; and

- (iii) the applicant has fulfilled any other conditions required for the grant of an application prescribed under this Act;
- (b) refuse to grant the application where it determines the applicant to be ineligible.

(6) Where the Board grants an application, it shall inform the applicant in writing of the moneys allocated to the applicant and subject to subsection (5) specify the terms and conditions on which the grant has been made.

(7) Where an applicant is granted credit facilities by the Board the applicant shall bear the full credit risk of the facility.

(8) An applicant dissatisfied with a decision of the Board in respect of an application may petition the Commission on Human Rights and Administrative Justice for a review of the decision.

16. Eligibility for funding

A venture capital financing company qualifies to apply for funding from the Trust if that venture capital financing company

- (a) is incorporated in Ghana as a limited liability company under the Companies Act, 1963 (Act 179);
- (b) has a name that includes "Venture Capital", or a similar abbreviation;
- (c) has as its sole authorised business, the business of assisting the development of small businesses by making equity and quasi-equity investments and providing business and managerial expertise to small businesses in which it has made or proposes to make an eligible investment;
- (d) is managed by an investment adviser licensed by the Securities and Exchange Commission who is in good standing;
- (e) has met the minimum equity capital requirements prescribed by regulations made under this Act;
- (f) has in place adequate governance, internal control, and monitoring procedures for selection of investment projects and for monitoring and management of these projects;
- (g) undertakes to enter into an agreement on broad terms and conditions approved by the Board with a small and medium enterprise it provides funding for; and
- (h) meets other conditions prescribed by the Board.

17. Management of equity and credit accounts

(1) A venture capital financing company which has received moneys from the Trust shall apply the moneys to provide equity or credit financing or equity and credit financing to qualifying small and medium enterprises in accordance with policy guidelines provided by the Board.

(2) A venture capital financing company shall enter into a written agreement with a small and medium enterprise to which it provides funding.

18. Tax incentives

A venture capital financing company shall enjoy such tax incentives as shall be provided in the Internal Revenue Act, 2000 (Act 529) as amended.

19. Reporting by venture capital financing companies

The Minister shall, on the advice of the Board, prescribe the form of reports to be submitted by venture capital financing companies allocated funding from the Trust and the intervals at which the reports are to be submitted.

20. Administrative expenses of the Trust

The administrative and any other expenses of the Trust shall be paid out of moneys approved by Parliament for the purpose.

21. Tax exemption

The Trust is exempt from payment of any form of tax.

*Administrative and Financial Provisions***22. Administrator and functions**

(1) The President shall appoint, in accordance with the advice of the Board given in consultation with the Public Services Commission, an Administrator of the Trust.

(2) The Administrator shall hold office on the terms and conditions specified in the letter of appointment.

(3) The Administrator shall be a member of the Board.

(4) The Administrator is responsible for the day-to-day administration of the affairs of the Trust and shall ensure the implementation of the decisions of the Board.

23. Appointment of other staff

(1) The President acting in accordance with article 195 of the Constitution, shall appoint other officers or employees necessary for the effective performance of the functions of the Trust and the Board.

(2) The President may delegate the power of appointment under subsection (1) in accordance with article 195 (2) of the Constitution.

(3) The Board may on the recommendations of the Administrator engage the services of experts and consultants as determined by the Board.

24. Accounts and audit

(1) The board shall keep proper books of account and records in the form approved by the Auditor-General.

(2) The books of account kept for the Trust by the Board shall be audited by the Auditor-General within six months after the end of each financial year.

(3) In addition to the annual audit, technical audits may be conducted on selective basis by the Auditor-General.

25. Annual report

(1) The Board shall submit to the Minister as soon as is practicable and in any event not more than eight months after the end of each financial year, a report on the activities and operation of the Trust during the year to which the report relates and shall include

- (a) the audited accounts of the Trust and the Auditor-General's report on the accounts of the Trust; and
- (b) any other information that the Board may consider necessary.

(2) The Minister shall within two months after the receipt of the annual report submit the report to Parliament with a statement that the Minister considers necessary.

26. Financial year

The financial year of the Trust shall be the same as the financial year of the Government.

27. Regulations

The Minister on the advice of the Board may, by legislative instrument, make Regulations for the effective implementation of this Act and in particular prescribe

- (a) the form for application for funds from the Trust;
- (b) other conditions for qualification of an applicant;
- (c) further conditions for the grant of an application for funds from the Trust;
- (d) matters to be contained in policy guidelines and manuals issued by the Board;
- (e) equity capital requirement for venture capital financing companies; and
- (f) the form of reports to be submitted by venture capital financing companies.

28. Interpretation

In this Act unless the context otherwise requires,

“**Auditor-General**” includes an auditor appointed by the Auditor-General;

“**Board**” means the Board established for the Trust under section 6;

“**Minister**” means the Minister responsible for Finance;

“**small and medium enterprises**” means an industry, project, undertaking or economic activity which employs not more than one hundred persons and whose total asset base, excluding land and building, does not exceed the cedi equivalent of \$1 million in value;

“**Trust**” means the Venture Capital Trust established under section 1;

“**venture capital financing company**” means a company incorporated under the Companies Act, 1963 (Act 179) that has as its sole authorised business, the business of assisting in the development of small and medium enterprises by making investments equity and quasi-equity investments and providing business and managerial

expertise to small businesses in which it has made or proposes to make an eligible investment.

29. Amendments

The Financial Institutions (Non-Banking) Act, 1993³ is hereby amended by the deletion of paragraph 6 on Venture Capital Funding Companies from the Schedule.

3. P.N.D.C.L. 328.