

VENTURE CAPITAL TRUST FUND ACT, 2004 (ACT 680)

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REPUBLIC OF GHANA

**THE SIX HUNDRED AND EIGHTIETH
ACT
OF THE PARLIAMENT OF THE REPUBLIC OF GHANA
ENTITLED
VENTURE CAPITAL TRUST FUND ACT, 2004**

AN ACT to provide for the establishment of a Fund to be known as the Venture Capital Trust Fund to provide financial resources for the development and promotion of venture capital financing for Small and Medium Enterprises (SMEs) in specified sectors of the Ghanaian economy; the management of the Fund and to provide for related matters.

DATE OF ASSENT: 17th November, 2004.

BE IT ENACTED by Parliament as follows:

PART I—ESTABLISHMENT OF THE VENTURE CAPITAL TRUST FUND

Section 1—Establishment of the Trust Fund

There is established by this Act a Venture Capital Trust Fund referred to in this Act as the "Trust Fund".

Section 2—Object of the Trust Fund

(1) The object of the Trust Fund is to provide financial resources for the development and promotion of venture capital financing for Small and Medium Enterprises (SMEs) 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 Fund, monies from the Trust Fund shall be applied to such relevant activities as the Board of the Fund may determine including in particular,

(a) the provision of credit and equity financial to eligible venture capital financing companies to support Small and Medium Enterprises which qualify for equity and quasi-equity financing;

(b) the provision of monies to support other activities and programs for the promotion of venture capital financing, as the Board may determine, in consultation with the Minister.

Section 3—Sources of Money for the Trust Fund

The sources of money for the Trust Fund 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) such other monies as the Minister with the approval of Parliament may determine;
- (c) fees and other monies earned by the Trust Fund in pursuance of its functions under this Act;
- (d) money that accrues to the trust Fund from investment made by the Board;
- (e) grants, donations, gifts, and other voluntary contributions to the Trust Fund; and
- (f) other moneys or property that may in any manner become lawfully payable and vested in the Board for the Trust Fund.

Section 4—Bank Account for the Trust Fund

- (1) Monies of the Trust Fund 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 of 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 into the Fund under section 3(a).

Section 5—Categories of Accounts of the Trust Fund

- (1) The monies in the Trust Fund shall be divided into such categories of accounts as the Board may determine.
- (2) There shall be assigned to each category of Account such proportion of the Trust Fund as the Board shall in consultation with the Minister determine.

PART II—THE BOARD AND MANAGEMENT OF THE TRUST FUND

Section 6—The Board of the Fund

- (1) There is established by this Act a Board of Trustees for the Trust Fund comprising
 - (a) a 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 Fund 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 consultation with the Council of State.

(3) The President shall in appointing a member of the Board under subsection (1) have regard to the persons integrity, knowledge, expertise and experience in matters relevant to the functions of the Board.

(4) The Board shall be a body corporate with perpetual succession and shall have a common seal and may sue and be sued in its corporate name.

(5) The Board may

(a) enter into contracts;

(b) acquire, purchase and hold movable and immovable property; and

(c) convey, assign and transfer any movable and immovable property or any interest in property vested in it.

Section 7—Functions of the Board

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

(a) pursue policies to achieve the object of the Trust Fund;

(b) collect or arrange to be collected, monies lawfully due to the Trust Fund through procedures to be determined by the Minister;

(c) monitor and evaluate the operations and performance of venture capital financing companies in respect of monies received from the Trust Fund;

(d) ensure accountability of the Trust Fund by defining appropriate procedures for its management;

(e) disburse monies from the Trust Fund;

(f) invest some of the monies of the Trust Fund in such safe securities as it considers financially beneficial to the Trust Fund;

(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 SMEs they fund;

(j) in consultation with the Minister, formulate policies to determine among other things

(i) the terms under which any monies from the Trust Fund 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 Fund to an applicant; and

- (iii) the sectors of the economy in which the monies from the Trust Fund may be invested;
 - (j) publish such manuals or guidelines as it considers necessary to regulate the conduct and operations of venture capital financing companies in relation to monies from the Trust Fund;
 - (k) approve the broad terms and conditions of agreements to be entered into between venture capital financing companies and SMEs in relation to disbursements made from monies from the Trust Fund; and
- (1) perform such other functions as are incidental to the achievement of the object of the Trust Fund.
 - (2) The Minister may give general directives in writing to the Board on matters of policy.

Section 8—Tenure of Office of Members

- (1) The chairperson and any member of the Board other than the Chief Executive of the Trust Fund shall hold office for a period of four years and is on the expiration of that period eligible for re-appointment.
- (2) A member of the Board other than an ex-officio member 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 shall cease 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.

Section 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 shall subject to the provisions of this Act be eligible for re-appointment.

Section 10—Meetings of the Board

- (1) The Board shall meet for the despatch of business at times and in places that the Board may determine but shall meet at least once every three months.

- (2) The chairperson shall upon 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 shall be five members.
- (4) The chairperson shall preside at every meeting at which the chairperson is present and where the chairperson is absent, 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 second or casting vote.
- (7) The Board may co-opt any person to act as an adviser at its meetings but no co-opted person is 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.

Section 11—Committees of the Board

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

Section 12—Disclosure of Interest

- (1) A member of the Board who has an interest in any 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 any 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.

Section 13—Allowances for Members of the Board

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

Section 14—Disbursement From the Trust Fund

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

Section 15—Application for Funding

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

- (2) An application for funding from the Trust Fund shall be in such form as the Minister may on the advice of the Board prescribe.
- (3) The application shall be accompanied with such non-refundable processing fee as the Board shall determine.
- (4) Upon the receipt of an application, the Board may conduct such investigations on the applicant and may request the applicant to submit such documents as 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 Fund 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 monies allocated to the applicant and subject to subsection (5) specify any terms and conditions upon 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.

Section 16—Eligibility for Funding

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

- (a) is incorporated in Ghana as a limited liability company under the Companies Code, 1963 (Act 179);
- (b) has a name that includes "Venture Capital", or any similar abbreviation;
- (c) has as its sole authorized 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 any SME it provides funding for; and

(h) meets other conditions prescribed by the Board.

Section 17—Management of Equity and Credit Accounts

(1) A venture capital financing company which has received monies from the Trust Fund shall apply the monies 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 any SME to which it provides funding.

Section 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.

Section 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 Fund and the intervals at which the reports are to be submitted.

Section 20—Administrative Expenses of the Trust Fund

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

Section 21—Tax Exemption

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

PART III—ADMINISTRATIVE AND FINANCIAL PROVISIONS

Section 22—Administrator and Functions

(1) There shall be appointed by the President in accordance with the advice of the Board given in consultation with the Public Services Commission an Administrator of the Trust Fund.

(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 shall be responsible for the day-to-day administration of the affairs of the Board and shall ensure the implementation of the decisions of the Board.

Section 23—Appointment of Other Staff

(1) The President acting in accordance with the advice of the Board given in consultation with the Public Services Commission shall appoint other officers or employees necessary for the effective performance of the functions of 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 such experts and consultants as the Board may determine.

Section 24—Accounts and Audit

(1) The board shall keep proper books of account and records in such form as the Auditor-General may approve.

(2) The books of account kept for the Fund by the Board shall be audited by the Auditor-General or by an auditor appointed 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 or by an auditor appointed by the Auditor-General.

Section 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 Fund during the year to which the report relates and shall include

(a) the audited accounts of the Trust Fund and the Auditor-General's report on the accounts of the Trust Fund; and

(b) any other information as 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 such statement as the Minister considers necessary.

Section 26—Financial Year

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

Section 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 Fund;

(b) other conditions for qualification of an applicant;

(c) further conditions for the grant of an application for funds from the Trust Fund;

(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.

Section 28—Interpretation

In this Act unless the context otherwise requires

"Board" means the Board established for the Trust Fund under section 6 of this Act;

"Minister" means the Minister responsible for Finance;

"Small and Medium enterprises" means an industry, project, undertaking or economic activity which employs not more than 100 persons and whose total asset base, excluding land and building, does not exceed the cedi equivalent of \$1 million in value;

"Trust Fund" means the Venture Capital Trust Fund established under section 1;

"Venture capital financing company" means a company incorporated under the Companies Code 1963 (Act 179) that has as its sole authorized 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.

Section 29—Amendments

The Financial Institutions (Non-Banking) Law, 1993 (P.N.D.C.L. 328) is hereby amended by the deletion of paragraph 6 on Venture Capital Funding Companies from the Schedule.

Date of Gazette Notification: 19th November, 2004.