

Draft of REGULATION
OF THE MINISTER OF ECONOMY¹⁾
of [. . .] 2006
on Financial Support
granted by the National Capital Fund

Pursuant to Article 14, Section 2 of the Act of 4 March 2005 on the National Capital Fund (Journal of Laws, No. 57, item 491), it is ordered as follows: -----

§ 1. The Regulation lays down detailed conditions for the granting, procedure for transfer and method of accounting for and refunding of financial support granted by the National Capital Fund.-----

§ 2. 1. Financial support shall be granted by the National Capital Fund under the condition that a capital fund commits itself to make investments: -----

- 1) consisting in subscription for new shares or the issue of new shares, participation in partnerships or other entities having no legal personality, as well as in subscription for debt instruments of the entrepreneurs in which the fund has subscribed for shares or undertaken to participate and in granting loans to them, provided that the shares subscribed for are not subject to public offering, nor are shares of a public company in the meaning of the Act of 29 July 2005 on Public Offering and Conditions Governing the Introduction of Financial Instruments to the Organised Trading, and Public Companies (Journal of Laws, No. 184, item 1539 and Journal of Laws of 2006, No. 157, item 1119); -----
- 2) in the form of monetary contributions; -----
- 3) for a period of 10 years from the date the capital fund has been set up, and the period may be extended by 2 years, if economic reasons justify it, including, in particular, those related to ensuring the possibility of profitable conclusion of the investment;
- 4) in the entrepreneurs that conduct a product or service research or development stage or launch a product or service on the market for the first time or roll out their activity, develop a new product or service market or enhance their productive or service capabilities;
- 5) with special consideration of supporting investments in innovative technologies and entrepreneurs with a large development potential;-----
- 6) being directed by economic criteria as concerns the selection of investment projects, after the conduction of profitability and investment risk analysis, including especially an environmental

impact, on the basis of a business plan reliably drawn up which includes detailed product or service analysis and sales and profits prognoses; -----

- 7) observing the principles of limiting investment risk, acting according to best knowledge and good practices in the management of a capital fund; -----
- 8) with the intermediary of persons or an entity managing the capital fund, remunerated in the way promoting the achievement of an investment goal by connecting the remuneration with the results achieved by the fund;-----
- 9) in the entrepreneur who will oblige itself to limit by 20% the maximum upper limit or maximum qualified amounts of public aid to which it is entitled, other than the public aid granted under this Regulation, in a period of three years from the date when it has received resources from the capital fund for the first time; this obligation does not apply to public aid granted on the basis of Community framework concerning state aids for research and development²⁾ or other framework substituting it or a regulation on a group exemption in this matter; -----

2. Interest charged on the entrepreneur's debt instruments subscribed for by the capital fund or on loans granted by the capital fund to the entrepreneur may not be less than the reference rate determined by the European Commission, published in the European Union Official Journal, in force at the date the debt instruments are subscribed for or the loan agreement is concluded.

3. In the case of unsecured debt instruments or unsecured loans, interest may not be less than the reference rate referred to in Section 2 above, increased by 400 basis points³⁾ or more, if the Lombard interest rate calculated by the National Bank of Poland, published in the Official Journal of the National Bank of Poland, increased by 100 basis points⁴⁾, in force at the date the debt instruments are subscribed for or the loan agreement is concluded, is higher than the reference rate. -----

4. The total value of resources of the capital funds using financial support from public resources in the context of operations conducted with the use of higher risk capital and engaged in the same entrepreneur and its affiliated entities in the meaning of the Act of 29 September 1994 on Accountancy (Journal of Laws of 2002, No. 76, item 694, as amended⁵⁾) may not exceed the equivalent in Polish zloties of 1.500.000 euros at an average rate announced by the National Bank of Poland at the date preceding the date of signing an investment agreement

between the capital fund and the entrepreneur. -----

5. The total value of the capital fund's resources engaged in the entrepreneur and its affiliated entities may not exceed 20% of the total value of declared contributions into this fund.

6. The value of the entrepreneur's debt instruments subscribed for by the capital fund and loans granted to the entrepreneur may not exceed 30% of all financial resources received by the entrepreneur from this capital fund. -----

7. The total value of capital fund management costs, including the value of costs of investment preparation and investment portfolio monitoring, may not exceed 5% of annual average contributions into the capital fund. -----

§ 3. Financial support may not be granted to capital funds investing in entrepreneurs:

1) allotting the resources received from the capital fund for conducting business activities in the scope of:-----

a) factoring and leasing, -----

b) tenancy or lease of assets,-----

c) legal services,-----

d) accounting services,-----

e) wholesale or retail commerce;-----

2) conducting business activities in the scope of:-----

a) iron and steel production, -----

b) coalmining⁶⁾, -----

c) shipbuilding⁷⁾;-----

3) who meet the criteria for the entrepreneur in difficulty, laid down in the legal provisions of the European Union⁸⁾ or are under restructuring conducting with the use of public aid.

§ 4. 1. Costs eligible to be covered by support in the form of non-returnable benefits for financing part of costs incurred by the capital fund for investment preparation and investment portfolio monitoring shall be costs that: -----

1) have been incurred by the capital fund during the term of the agreement on granting financial support referred to in Article 13 of the Act of 4 March 2005 on the National Capital Fund

(Journal of Laws, No. 57, item 491), hereinafter referred to as the “Act”;

- 2) concern the entrepreneur with whom the capital fund entered into an investment agreement.

2. The costs necessary for investment preparation shall include: ----

- 1) remuneration of persons employed directly for investment preparation together with contributions for obligatory social insurance and other obligatory contributions deducted from the remuneration;-----
- 2) business travel costs of persons employed directly for investment preparation, according to rates specified in provisions on the amount of, and conditions for determination of, receivables to which the employee working in a state or local government unit of the budgetary sphere is entitled due to business travels;-----
- 3) costs of legal services, notarial services, financial statements audits, drawing up business plans, technical opinions, environmental impact assessments, financial and other services purchased by the capital fund or an entity managing the capital fund and directly related to investment preparation-----
- incurred until the date of the conclusion of an investment agreement between the capital fund and the entrepreneur. -----

3. The costs necessary for investment portfolio monitoring shall include: -----

- 1) business travel costs of persons representing the capital fund in the entrepreneur’s statutory bodies and participating in shareholders’ general meeting of the entrepreneur, incurred in connection with the participation in the operations of those bodies, according to rates specified in provisions on the amount of, and conditions for determination of, receivables to which the employee working in a state or local government unit of the budgetary sphere is entitled due to business travels;-----
- 2) cost of legal services, notarial services, financial statements audits, financial opinions, environmental impact assessments, technical and other services purchased by the capital fund or an entity managing the capital fund and directly related to investment portfolio monitoring, provided that their use is necessary for investment portfolio monitoring

- incurred from the date of subscription by the capital fund for the instruments referred to in § 2, Section 1, Point 1 above until the conclusion date of the investment, referred to in § 6.

4. The costs eligible for being covered by support shall not include:

- 1) expenses made in breach of Article 22 of the Act of 2 July 2004 on Economic Activity Freedom (Journal of Laws, No. 173, item 1807 as amended⁹⁾); -----
- 2) expenses incurred by the capital fund and paid by the entrepreneur in which the fund has invested; -----
- 3) value of output tax on goods and services. -----

§ 5.1. Financial support may be transferred by the National Capital Fund in the forms referred to in Article 11, Section 1, Points 1-4 of the Act, not earlier than on the date the contributions for the capital fund are made by the investors of the capital fund.--

2. Financial support in the form of non-returnable benefits referred to in Article 11, Section 1, Point 5 of the Act, shall be transferred to the capital fund on the basis of incurred and documented costs eligible for being covered by financial support.--

§ 6. The conclusion of the investment of the capital fund shall be understood as the date of the last crediting this fund's account with resources coming from the refund, sale or redemption of all or part of instruments referred to in § 2, Section 1, Point 1, hereinafter referred to as "resources coming from the conclusion of the investment".-----

§ 7.1. Financial support granted to the capital fund by the National Capital Fund in the forms laid down in Article 11, Section 1, Points 1-3 of the Act and contributions to the capital fund which have been made by the investors of the capital fund shall be settled by the repayment of resources coming from the conclusion of the investment:-----

- 1) in the first turn, to the investors of the capital fund until the moment of receiving amounts equal to the contributions made; -----
- 2) in the second turn, to the National Capital Fund until the moment of receiving an amount equal to the granted financial support; -----
- 3) in the third turn, to the investors of the capital fund until the moment of receiving the return rate in an amount specified in the agreement on granting financial support;
- 4) in the fourth turn, to the National Capital Fund until the moment of receiving the return rate

specified in the agreement on granting financial support.-----

2. The resources which will remain after the settlement referred to in Section 1 above shall be divided among persons and an entity managing the fund, investors of the fund and the National Capital Fund in accordance with the agreement on granting financial support.

§ 8. Financial support granted to the capital fund by the National Capital Fund in the form specified in Article 11, Section1, Point 4 of the Act shall be settled by the repayment of resources coming from the conclusion of the investment of the capital fund in the first turn to the National Capital Fund up to the amount of the granted financial support and until the moment of receiving the return rate specified in the agreement on granting financial support, and subsequently respectively according to the rules laid in § 7 above.

§ 9. The amounts of resources referred to in Article 11, Section 4 of the Act are subject to refund to the National Capital Fund within 30 days from the date when the National Capital Fund has determined that they have been used by the capital fund in a way contrary to the designation specified in the agreement on granting financial support together with interest in an amount set as for tax arrears calculated from the date the resources have been transferred to the capital fund.-----

§ 10. The Regulation shall come into force after the lapse of 14 days from its promulgation.

In agreement:-----

Minister of Finance-----

Minister of Economy -----

1) The Minister of Economy manages the governmental administration sector – economy on the basis of § 1, Section 2, Point 1 of the Regulation of the President of the Council of Ministers of 18 July 2006 on the Detailed Scope of Operations of the Minister of Economy (Journal of Laws, No. 131, item 909).

2) Community Framework For State Aid For Research and Development, EU Official Journal C 45 of 17 February 1996, page 5. -----

3) According to the Commission Notice on the method for setting of the reference and discount rates (97/C 273/03).-----

- ⁴⁾ According to the Commission Notice on the method for setting of the reference and discount rates (97/C 273/03).-----
- ⁵⁾ Amendment to the unified text of the above mentioned Act were announced in Official Journals of 2003, No. 60, item 535; No. 124, item 1152; No. 139, item 1324; and No. 229, item 2276; of 2004, No. 96, item 959; No. 145, item 1535; No. 146, item 1546; No. 213, item 2155; and 2005, No. 10, item 66 and No. 184, item 1539 and No. 267, item 2252 and of 2006, No. 157, item 1119. -----
- ⁶⁾ In the meaning of Commission Regulation (EC) No. 1407/2002 of 23 July 2002 on State aid to the coal industry (EC Official Journal L 205 of 2 August 2002, No. 1), -----
- ⁷⁾ In the meaning of Framework on State aid to shipbuilding (EC Official Journal C 317 of 30 December 2003).

- ⁸⁾ In the meaning of Points 9-11 of the Community guidelines on State aid for rescuing and restructuring firms in difficulty (EC Official Journal C 244 of 1 October 2004).-----
- ⁹⁾ Amendments to the above mentioned Act were announced in Official Journals of 2004, No. 281, item 2777; of 2005, No. 33, item 289; No. 94, item 788; and No. 143, item 1199; and No. 175, item 1460; No. 177, item 1468; No. 178, item 1480; No. 179, item 1485; No. 180, item 1494; No. 183, item 1538; and 2006, No. 17, item 127, No. 144, item 1043 and 1045, No. 158, item 1121 and No. 171, item 1225.-----