

Text of the Act agreed finally after consideration of Senate's amendments

ACT  
of 4 March 2005  
on the National Capital Fund

Chapter 1  
General Provisions

Article 1

This Act regulates the creation, tasks, rules of funding, organization and functioning of Krajowy Fundusz Kapitałowy Spółka Akcyjna (National Capital Fund Joint Stock Company), hereinafter referred to as the "National Capital Fund", and the terms of granting financial support to enterprises through risk capital funds.(VC funds)

Article 2

The terms below used in this Act shall have the following meaning:

- 1) Risk capital fund – a legal person or an organizational unit without legal personality, whose exclusive object is to make investments;
- 2) investments – the investments as understood by the provisions on accountancy;
- 3) enterprises – micro-enterprises as well as small and medium-sized enterprises which meet the conditions set out in Annex 1 to Regulation 70/2001/EC of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises (OJ L 10 of 13.01.2001), amended by Regulation 364/2004/EC of 25 February 2004 (OJ EC L 63 of 28.02.2004);
- 4) revenue and profit – revenue and profit as understood by the provisions on accountancy.

Article 3

1. Bank Gospodarstwa Krajowego, hereinafter referred to as "BGK", shall set up the National Capital Fund as a joint-stock company under the provisions of the Commercial Companies Code.
2. On the date of creation of the National Capital Fund, BGK shall be its sole shareholder.

3. The draft Articles of Association of the National Capital Fund and its draft amendments shall be subject to approval of the competent minister for economy.

#### **Article 4**

The National Capital Fund shall be governed by the provisions of the Commercial Companies Code unless otherwise stated in the provisions of this Act.

#### **Article 5**

The sole object of the National Capital Fund shall be to provide financial support to risk capital funds which invest in enterprises established in the territory of the Republic of Poland, and especially in innovative or research and development enterprises.

#### **Article 6**

In addition to revenue derived from the objects referred to in Article 5, other revenue of the National Capital Fund shall be:

- 1) earmarked subsidies from the State Budget, as set out in the budget law;
- 2) funds from the European Union budget and other funds originating from foreign sources, which are non-repayable;
- 3) other revenues.

### **Chapter 2**

#### **Authorities of the National Capital Fund**

#### **Article 7**

1. The Supervisory Board of the National Capital Fund shall consist of five members.
2. The competent minister for economy and the competent minister for sciences shall each appoint one member to the Supervisory Board. Those ministers shall also have the power to recall their respective members from the Supervisory Board.
3. Members of the Supervisory Board shall be appointed for a joint term of office.

#### **Article 8**

1. The Investment Committee shall be the advisory authority of the Management Board of the National Capital Fund, responsible for rendering opinions on the projects to receive financial support.
2. The Investment Committee shall consist of five members.

3. The Supervisory Board of the National Capital Fund shall appoint and recall members of the Investment Committee and adopt its regulations. The regulations shall lay down, in particular, the organization of the Investment Committee, the method of tasks performance, the qualifications of Investment Committee members, the terms of their remuneration and the detailed procedure for exclusion, as referred to in Article 9 Section 1.

#### **Article 9**

1. A member of the Investment Committee shall be excluded from rendering opinions on a risk capital fund project if a shareholder, stockholder, member of the managing or supervisory authority of that fund or a person managing or supervising that fund is such member's spouse, actually cohabits with the member, is a relative by blood or marriage up to twice removed or a person related to the member through adoption, custody or guardianship.
2. The reasons for the exclusion referred to in Section 1 shall continue despite the end of the underlying marriage, adoption, custody or guardianship.
3. The exclusion referred to in Section 1 is effected by the Investment Committee by a resolution at the request of a member of the Investment Committee or at the request of the Management Board or a member of the Supervisory Board of the National Capital Fund. The person concerned shall not take part in the voting.

#### **Article 10**

The Supervisory Board may suspend or recall before the end of the term of office those members of the Management Board who are responsible for having signed an agreement with a risk capital fund on granting financial support without an opinion of the Investment Committee.

### **Chapter 3**

#### **Terms and Procedures for Granting Support**

#### **Article 11**

1. The National Capital Fund shall grant financial support to risk capital funds by way of:
  - 1) taking up and acquiring their shares or stock;
  - 2) participating in risk capital funds operating in the form of limited partnerships, partnerships limited by shares or other organizational units without legal personality;
  - 3) acquiring their investment certificates or units of participation;
  - 4) acquiring bonds, bonds convertible into shares, privileged bonds or subscription warrants issued by such risk capital funds;
  - 5) making non-repayable payments to finance some of the expenses incurred by a risk capital fund to prepare investments and to monitor a portfolio of such investments.

2. The amount of the financial support referred to in Section 1 Items 1-4 granted by the National Capital Fund shall not exceed the total of payments to the risk capital fund made by the entities investing in that fund.
3. The amount of non-repayable payments to finance some of the expenses referred to in Section 1 Item 5 above shall not exceed 65% of such expenses.
4. The amounts of funds provided as financial support to a risk capital fund shall be repayable to the National Capital Fund in the event they are used contrary to their designation defined in the agreement on granting financial support.

#### Article 12

1. The National Capital Fund shall provide financial support to the risk capital fund selected in an open tender of offers.
2. Offers in a tender may be submitted by a capital fund or an entity managing a risk capital fund.
3. Announcing a tender of offers the National Capital Fund shall specify at the minimum:
  - 1) a period of not less than 90 days for submitting offers;
  - 2) the forms and terms of providing financial support;
  - 3) the date and procedure, and the criteria for the offer selection.
4. The announcement of the tender of offers shall be published in a nationwide daily and in the Public Information Bulletin.
5. In order for an offer referred to in Section 2 above to be considered it must have the following attachments:
  - 1) the current extract confirming entry in the relevant records or register, referring to the legal status of the entity submitting the offer and the activities conducted by the offeror;
  - 2) the financial statements of the entity submitting the offer for the last financial year, or in the case of a shorter period of activities, for the period of such activities;
  - 3) a police clearance certificate for the persons referred to in Section 6 Item 7.
6. An offer should contain information concerning:
  - 1) the organization and legal status of the risk capital fund;
  - 2) the date the risk capital fund was created and its expected duration;
  - 3) the investment objective and the investment policies of the risk capital fund and a risk analysis;
  - 4) the geographic scope and sectors of investment activities pursued by the risk capital fund;
  - 5) the size of investment projects and their expected duration and the minimum expected rate of return;

- 6) the expected forms and the expected amounts of financial support, together with the forecast cost of investment preparation and monitoring of the investments portfolio;
  - 7) personal data of the persons who have a decisive influence on investment decisions of the risk capital fund, including in particular members of its managing authority or persons handling fund's affairs, together with a description of their qualifications and professional experience;
  - 8) the assumed total amount as well as dates and terms of making payments to the risk capital fund by the entities investing in that fund;
  - 9) the rights of risk capital fund investors, with a particular focus on their rights to share in the fund's income;
  - 10) a marketing plan and intended investments of the risk capital fund;
  - 11) previous experience of the risk capital fund managers with regard to investments of innovative and research and development enterprises.
7. The National Capital Fund shall be entitled to request documents in addition to those listed in Section 5 above if necessary for the proper evaluation of the offer.
  8. The outcome of the tender of offers, together with the rationale, shall be published in a nationwide daily and the Public Information Bulletin.

### Article 13

The National Capital Fund and the entity selected in the tender of offers shall enter into an agreement on granting financial support.

### Article 14

1. The grant of financial support by the National Capital Fund shall be governed by the provisions on public aid to enterprises.
2. The competent minister for economy shall, in consultation with the competent minister for public finance, specify in an ordinance the detailed conditions, procedures for granting, methods of accounting for and returning financial support on the basis of the provisions of this Act with regard to particular entities, having regard in particular to the efficacy of implementing the objective, including support for investments in innovative technologies and enterprises with a high development potential, the categories of projects which cannot receive financial support, as well as the efficiency of spending the funds referred to in Article 6, and assuring conformity of the financial support being granted with the terms of eligibility for public aid.

### Article 15

1. An agreement on granting financial support shall specify in particular:

- 1) the designation, amount, form, conditions and procedures for granting support, and in the event all or part of the support is granted as non-repayable payments referred to in Article 11 Section 1 Item 5, a note to that effect;
  - 2) the effects of non-performance or improper performance of the agreement;
  - 3) the requirements concerning annual reporting on the investments made by the capital fund, as stipulated in the agreement, together with an evaluation of the investments portfolio;
  - 4) the terms of access granted to auditors appointed by the National Capital Fund to the capital fund's books and records;
  - 5) the detailed conditions and procedures for returning and accounting for the financial support.
2. The draft agreement on granting financial support shall be subject to an opinion of the Investment Committee referred to in Article 8 Section 1.
  3. The risk capital fund which is a party to an agreement on granting financial support shall provide the National Capital Fund with the following information:
    - 1) changes on the managing authority of the risk capital fund or changes of the persons handling fund's affairs;
    - 2) the filing of an application for initiation of recovery or insolvency proceedings against the risk capital fund or the enterprise for which the capital fund made an investment under the agreement referred to in Section 1
      - within seven days after the occurrence of any of the above events.
  4. The parties to the agreement referred to in Section 1 shall not exclude or limit their liability for willful misconduct or flagrant negligence.

## Article 16

The financial support referred to in Article 5 may be granted to a risk capital fund exclusively for the purpose of making an investment in the enterprises which:

- 1) are subject to the unlimited tax obligation in the Republic of Poland according to Article 3 Section 1 of the Personal Income Tax Act of 26 July 1991 (Journal of Laws 2000, No. 14, Item 176, as amended<sup>1</sup>) or Article 3 Section 1 of the Corporate

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<sup>1</sup> Revisions of the full text of the said Act have been published in Journal of Law 2000 No. 22, Item 270, No. 60, Item 703, No. 70, Item 816, No. 104, Item 1104, No. 117, Item 1228 and No. 122, Item 1324, 2001 No. 4, Item 27, No. 8, Item 64, No. 52, Item 539, No. 73, Item 764, No. 74, Item 784, No. 88, Item 961, No. 89, Item 968, No. 102, Item 1117, No. 106, Item 1150, No. 125, Item 1370 and No. 134, Item 1509, 2002 No. 19, Item 199, No. 25, Item 253, No. 74, Item 676, No. 78, Item 715, No. 89, Item 804, No. 135, Item 1146, No. 141, Item 1182, No. 169, Item 1384, No. 181, Item 1515, No. 200, Item 1679 and No. 240, Item 2058, 2003 No. 7, Item 79, No. 45, Item 391, No. 65, Item 595, No. 84, Item 774, No. 90, Item 844, No. 96, Item 874, No. 122, Item 1143, No. 135, Item 1268, No. 137, Item 1302, No. 166, Item 1608, No. 202, Item 1956, No. 222, Item 2201, No. 223, Item 2217 and No. 228, Item 2255 and 2004 No. 29, Item 257, No. 54, Item 535, No. 93, Item 894, No. 99, Item 1001, No. 109, Item 1163, No. 116, Item 1203 and 1207, No. 120, Item 1252, No. 123,

Income Tax Act of 15 February 1992 (Journal of Laws 2000, No. 54, Item 654, as amended<sup>2</sup>);

- 2) have no outstanding tax or social insurance liabilities, provided that this condition is considered met if any outstanding amounts payable by the enterprise have been spread into installments or deferred under a final decision of the competent tax office or the competent branch of the Social Insurance Institution;
- 3) do not provide financial services, are not engaged in production or trade in weapons, tobacco products, alcoholic beverages or narcotic substances or real estate;
- 4) are engaged in activities important for regional development, including job creation.

#### Article 17

The financial statements of the risk capital funds which entered into an agreement on granting financial support shall be audited by an expert auditor.

#### Article 18

1. The risk capital fund which receives financial support from the National Capital Fund shall not invest in a commercial company whose stockholder, shareholder, member of the managing or supervisory authority or his/her spouse, relative by blood or marriage up to twice removed are related through capital or personal links to the shareholder, stockholder or persons managing or supervising that risk capital fund.
2. The provision of Section 1 shall apply accordingly to the financial support granted by a risk capital fund to an enterprise which is not a commercial company.

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Item 1291, No. 162, Item 1691, No. 210, Item 2135, No. 263, Item 2619 and No. 281, Item 2779 and Item 2781.

<sup>2</sup> Revisions of the full text of the said Act have been published in Journal of Law 2000 No. 60, Item 700 and 703, No. 86, Item 958, No. 103, Item 1100, No. 117, Item 1228 and No. 122, Item 1315 and 1324, 2001 No. 106, Item 1150, No. 110, Item 1190 and No. 125, Item 1363, 2002 No. 25, Item 253, No. 74, Item 676, No. 93, Item 820, No. 141, Item 1179, No. 169, Item 1384, No. 199, Item 1672, No. 200, Item 1684 and No. 230, Item 1922 2003 No. 45, Item 391, No. 96, Item 874, No. 137, Item 1302, No. 180, Item 1795, No. 202, Item 1957, No. 217, Item 2124 and No. 223, Item 2218 and 2004 No. 6, Item 39, No. 29, Item 257, No. 54, Item 535, No. 93, Item 894, No. 121, Item 1262, No. 123, Item 1291, No. 146, Item 1546, No. 171, Item 1800, No. 210, Item 2135 and No. 254, Item 2533.

## Chapter 4

### Amendments to Current Regulations, and Adjusting and Final Provisions

#### Article 19

In Article 17 Section 1 of the Corporate Income Tax Act of 15 February 1992 (Journal of Laws 2000, No. 54, Item 654, as amended<sup>3</sup>), Item 41 is added, reading as follows:

“41) earmarked subsidies from the State Budget, funds from the European Union budget and other funds from foreign sources, which are non-repayable, received by the National Capital Fund.”.

#### Article 20

BGK shall set up the National Capital Fund not later than three months after the announcement of this Act.

#### Article 21

This Act shall enter into force four months after its announcement, except for Articles 1, 3-5, 7, 8 and 20 which shall enter into force 14 days after such announcement.

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<sup>3</sup> Revisions of the full text of the said Act have been published in Journal of Law 2000 No. 60, Item 700 and 703, No. 86, Item 958, No. 103, Item 1100, No. 117, Item 1228 and No. 122, Item 1315 and 1324, 2001 No. 106, Item 1150, No. 110, Item 1190 and No. 125, Item 1363, 2002 No. 25, Item 253, No. 74, Item 676, No. 93, Item 820, No. 141, Item 1179, No. 169, Item 1384, No. 199, Item 1672, No. 200, Item 1684 and No. 230, Item 1922, 2003 No. 7, Item 79, No. 45, Item 391, No. 96, Item 874, No. 137, Item 1302, No. 180, Item 1759, No. 202, Item 1957, No. 217, Item 2124 and No. 223, Item 2218 and 2004 No. 6, Item 39, No. 29, Item 257, No. 54, Item 535, No. 93, Item 894, No. 116, Item 1203, No. 121, Item 1262, No. 123, Item 1291, No. 146, Item 1546, No. 171, Item 1800, No. 210, Item 2135 and No. 254, Item 2533.