

(Legislative Supplement No. 57)

LEGAL NOTICE NO. 183

THE CAPITAL MARKETS ACT

(Cap. 485A)

IN EXERCISE of the powers conferred by section 12 of the Capital Markets Act, the Capital Markets Authority makes the following Regulations:—

THE CAPITAL MARKETS (REGISTERED VENTURE CAPITAL COMPANIES) REGULATIONS, 2007

PART I—PRELIMINARY

1. These Regulations may be cited as the Capital Markets (Registered Venture Capital Companies) Regulations, 2007. Preliminary

2. In these Regulations, unless the context otherwise requires— Interpretation.

“affiliate” means any subsidiary or holding company of such registered venture capital company and any subsidiary of such holding company;

“captive fund” means a fund which draws all its investment capital from the parent company of the registered venture capital company holding that fund and invests such capital for the interests of that parent company, or a fund that has such other comparable structure acceptable to the Authority;

“close relation” means a spouse, parent, sibling, child, father-in-law, son-in-law, daughter-in-law, mother-in-law, brother-in-law, sister-in-law, grand child or spouse of a grandchild;

“day” means any calendar day excluding Saturdays, Sundays and public holidays;

“fund” means the pool of capital held by a registered venture capital company for investment in venture capital, in accordance with a specifically declared investment policy;

“fund manager” means a company that manages the funds and investments of a registered venture capital company;

“fund of funds” means a fund (as defined) that exclusively invests in other venture capital companies;

“Income Tax Rules” means the Income Tax (Venture Capital Company) Rules 1997; LN.103/1997.

“independent director” means a director who—

- (i) is not and has not been in the employment of the registered venture capital company in an executive capacity within the five year period preceding the date of application;
- (ii) is not associated to an adviser or consultant to the registered venture capital company or a member of the registered venture capital company's senior management or a significant customer or supplier to the registered venture capital company or with an entity that receives significant contributions from the registered venture capital company or a venture capital enterprise in which the registered venture capital company is invested or within a period of five years preceding the date of the application, has not had any business relationship with the registered venture capital company (other than service as a director);
- (iii) has no personal service contract(s) with any of the shareholders, directors, or members of the senior management of the registered venture capital company;
- (iv) is not employed by a company at which an executive officer of the registered venture capital company serves as a director; or
- (v) is not a close relation of any person described above.

“independent fund” means a fund which draws its investment funds from investors generally and is independently invested and managed or a fund that has such other comparable structure acceptable to the Authority;

“mid-stage financing” means investment by a registered venture capital company in an eligible venture capital enterprise in the form of—

- (a) capital expenditure or working capital to support and promote commercialization of technology or product;
- (b) additional capital expenditure or working capital to increase production capacity, marketing or product development; or
- (c) funding for an eligible venture capital enterprise expecting to be listed on a stock exchange;

“registered venture capital company” means a venture capital company registered as such by the Authority;

“seed-capital financing” means financing provided by a registered venture capital company for the purpose of research, assessment and development of an initial concept or prototype for product development and initial marketing;

“semi-captive fund” means a fund which draws its investment capital from both the parent of the registered venture capital company holding it and other investors, but invests primarily in line with the interests of that parent or that has such other comparable structure acceptable to the Authority;

“small and medium size business” means a business enterprise which at the time of first investment by the registered venture capital company has assets with a market value or annual turnover of less than Five Hundred Million shillings;

“start-up financing” means financing provided by a registered venture capital company for the purpose of commencing operations, production or implementation of a concept or prototype where a venture capital enterprise has completed the seed stage of development;

“subsidiary financing” means financing provided for the purchase by one registered venture capital company of the entire or part of the equity interests of another registered venture capital company in an eligible venture capital enterprise to allow for total or partial exit by the latter;

“substantial interest” means a cumulative of both direct and indirect holding of twelve and one half percent or more in the equity of a venture capital enterprise;

“venture capital company” means a company incorporated under the Companies Act with the primary objective of providing substantial risk capital to small and medium size businesses in Kenya through equity, quasi-equity investments or other instruments whether convertible into equity or not as well as managerial or technical expertise to such business entities;

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“venture capital enterprise” means a small or medium sized business entity incorporated under the Companies Act which is in need of venture capital investment for purposes of financing a new product or for expansion of the business entity;

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PART II—ELIGIBILITY

3. A venture capital company shall be entitled upon making an application to the Authority in the prescribed form and on payment of the prescribed fee to be registered under these Regulations as a registered venture company if it has—

Eligibility
Requirements

- (a) been duly incorporated under the Companies Act as a company limited by shares;
- (b) as its principal object the provision of risk capital to small and medium size businesses in Kenya;
- (c) a minimum paid up share capital of one hundred million shillings;
- (d) a minimum fund of one hundred million shillings;
- (e) audited financial statements for the three years immediately preceding the date of application, the latest of which shall

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not be older than six months as at the date of application (where applicable);

- (f) have a demonstrable track record as a venture capital company of at least three years or in the alternative, one or more of its directors shall have a demonstrable track record in the management of venture capital funds for a period of at least three years;
- (g) engaged a fund manager duly licensed by the Authority;
- (h) a board of directors of which at least one third of the directors are independent directors;
- (i) appointed an auditor who is a member of the Institute of Certified Public Accountants of Kenya; and
- (j) appointed a secretary who is a member of the Institute of Certified Public Secretaries of Kenya.

PART III—REGISTRATION

Application.

4. (1) An application for registration shall be made by a venture capital company in the prescribed form set out in the First Schedule and shall be accompanied by the following—

- (a) a certified copy of the applicant's certificate of incorporation or certificate of compliance;
- (b) a certified copy of the applicant's memorandum and articles of association;
- (c) a certified copy of the board resolution approving the application for registration;
- (d) details of the investment policy in respect of each fund to be operated by the applicant setting out the following particulars—
 - (i) investment objectives;
 - (ii) minimum and maximum investment amounts in any single enterprise;
 - (iii) investment rules, investment process (including minimum commitment and investment periods and procedures for draw down) and exposure limits to individual eligible venture capital enterprises;
 - (iv) preferred mode of divestiture from eligible venture capital enterprises;
 - (v) disclose a clear strategy for the diversification of investments in eligible venture capital enterprises.
 - (vi) policies on fees and charges;
 - (vii) profile of companies invested in (where applicable); and
 - (viii) details of risks factors that are specific to the chosen

investment sectors, or sectors intended to be invested in;

- (e) a letter of acceptance of the appointment from the fund manager in the prescribed Form set out in Fourth Schedule;
- (f) the management agreement between the registered venture capital company and the fund manager containing the particulars required under Regulation 10;
- (g) audited financial statements of the applicant for the last three financial years immediately preceding the date of application (where applicable), provided that where at the date of the application is—
 - (i) more than three months, but less than six months have lapsed since the end of the immediately preceding financial year in respect of which the latest audited financial statements relate, the applicant shall provide unaudited accounts for the first three months following the end of the financial year;
 - (ii) more than six months have lapsed since the end of the immediately preceding financial year in respect of which the audited financial statements relate, the applicant shall provide interim audited financial statements for the first six months following the end of the financial year;
 - (iii) more than nine months have elapsed since the end of the immediately preceding financial year in respect of which the latest audited financial statements relate, the applicant, shall in addition to the interim audited financial statements required under (ii) above, provide unaudited accounts for the three months period following the end of the six months to which the interim audited financial statements relate;
- (h) a declaration by the directors in the prescribed form set out in the Third Schedule;
- (i) declarations by each of the directors in respect of questions 18 to 24 of the First Schedule;
- (j) a bank reference from a commercial bank duly licensed under the Banking Act stating the length of its relationship with the applicant and containing a statement on the manner in which the applicant has managed its account(s); (where applicable) Cap. 488.
- (k) business references from at least two companies in which the applicant has invested explaining the nature and duration of the investment(s) and the contribution applicant has made to the business of the company providing the reference (where applicable);