

THE CAPITAL MARKETS (REGISTERED VENTURE CAPITAL COMPANIES) REGULATIONS

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[Subsidiary]

FIRST SCHEDULE —

FORMS

CERTIFICATE OF REGISTRATION OF A VENTURE CAPITAL COMPANY

REGISTERED VENTURE CAPITAL COMPANY DIRECTORS DECLARATION

**THE CAPITAL MARKETS (REGISTERED
VENTURE CAPITAL COMPANIES) REGULATIONS**

[Legal Notice 183 of 2007]

PART I – PRELIMINARY**1. Citation**

These Regulations may be cited as the Capital Markets (Registered Venture Capital Companies) Regulations.

2. Interpretation

In these Regulations, unless the context otherwise requires—

"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 (sub. leg);

"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.

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"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;

"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;

PART II – ELIGIBILITY

3. Eligibility Requirements

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—

- (a) been duly incorporated under the Companies Act (Cap. 486) 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 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

4. Application

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

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- 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 (Cap. 488) 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);
 - (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);
 - (l) the prescribed application fee; and
 - (m) any further information that the Authority may deem necessary to determine the application.

5. Certificate of Registration

(1) The Authority may, on satisfying itself that an applicant meets the requirements for registration, register the applicant and issue a certificate of registration in the form set out in the Second Schedule.

(2) The certificate of registration issued under this Regulation shall remain in force until it is revoked by the Authority.

6. Fees

(1) Upon registration, the registered venture capital company shall pay the prescribed approval fees in respect of itself and each of its funds.

(2) Every fund of the registered venture company shall pay the prescribed annual fee each year, provided that no annual fee shall be payable in the year of registration.

7. Letter of no objection

The registered venture capital company shall not change its shareholders, directors or fund manager unless it has received a written confirmation stating that the Authority has no objection to the proposed change.

PART IV – INVESTMENTS

8. Eligible venture capital enterprises

(1) For purposes of these Regulations, investment in an eligible venture capital enterprise shall include investments in a company or person associated or acting in concert with an eligible venture capital enterprise.

(2) The eligible venture capital enterprises for purposes of these Regulations shall be enterprises whose primary business activity does not include any of the following—

- (a) trading in real property;
- (b) banking and financial services;
- (c) retail and wholesale trading services.

PART V – FUND MANAGERS

9. Approval of fund manager

No person shall act or be appointed as a fund manager for the purposes of a registered venture capital company or any of its funds unless such person is duly approved by the Authority to manage venture capital funds.

10. Obligations of the fund manager

Notwithstanding the provisions of any management agreement, the fund manager shall

- (a) ensure that a prudent investment policy is in place in respect of each fund;
- (b) ensure that all fund investments are carried out in accordance with the disclosed investment policy and in compliance with the Capital Markets Act and Regulations and all other applicable laws; and
- (c) notify the Authority immediately and in any event in writing within twenty four hours of any event that results in less than seventy five percent of the investable funds of the registered venture capital company being invested in eligible venture capital enterprises.

11. Resignation of the fund manager

(1) A fund manager may resign by giving a written notice to the board of directors of the registered venture capital company and copied to the Authority stating the reasons for the resignation.

(2) The notice period shall be one month or such longer period as may have been stipulated in the management agreement.

12. Removal of fund manager

A fund manager shall be removed—

- (a) immediately upon the suspension or revocation of its licence by the Authority or
- (b) by one month's notice, or such longer period as may be stipulated in the management agreement, in writing by the board of directors of the registered venture capital company.

13. Hand-over to new fund manager

A fund manager shall within fourteen days of the date of resignation or removal deliver to the registered venture capital company and copy to the Authority all information and documents relating to its contractual duties including—

- (a) statements pertaining to all the funds under its management;
- (b) details of the investment portfolio and details of the cost of such investment and estimated yields;
- (c) statements relating to any incomplete transactions;
- (d) records required to be maintained by the fund manager;
- (e) duly executed transfer documents relating to any securities registered in the name of the fund manager as nominee for the registered venture capital company;
- (f) letters of resignation by the fund manager or persons appointed by the fund manager as nominee for the registered venture capital company from any directorships made pursuant to the management agreement; and

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- (g) particulars of all contact persons for purposes of follow up of the investment portfolios.

14. Appointment of new fund manager

The board of directors of the registered venture shall within one month of the resignation or removal of the fund manager, appoint another fund manager and shall within seventy two hours of the appointment forward to the Authority a certified copy of the fund manager's letter of consent to appointment in the prescribed form set out in Fourth Schedule and provide the Authority with a copy of the management agreement with the new fund manager.

PART VI – FUND RAISING

15. Prohibition on offers to the public

A registered venture capital company shall not raise funds by way of offers to the public.

16. Filing of placement memorandum

A registered venture capital company shall file the placement memorandum with the Authority at least thirty days before publication.

17. Private placements

A registered venture capital company seeking to raise funds shall publish a placement memorandum which shall contain details on the terms and conditions on which funds are to be raised from investors.

18. Placement returns

A registered venture capital company shall make returns of the funds raised to the Authority within fourteen days of the close of the offer.

PART VII – CONTINUING REPORTING OBLIGATIONS

19. Records to be maintained by Fund Manager

(1) The fund manager shall keep books of account and maintain records that accurately reflect the affairs of the funds under its management.

(2) Every record shall be preserved for at least seven years after the completion of the transaction to which it relates.

20. Quarterly Returns

Each fund manager shall within one month after the end of each quarter (including the last quarter of the financial year), file with the Authority a return that includes the following information—

- (a) details of any investments made by each fund under its management during the quarter, and the consideration paid for those investments; and
- (b) details of any disposals of investments during the quarter, and any profit derived or loss incurred from those disposals (including details of how that profit or loss was calculated).

21. Annual Returns

(1) The directors of the registered venture capital company shall within three months of the end of the registered venture capital company's financial year, file with the Authority annual returns with the following information—

- (a) name and address of each shareholder (including details of any beneficial interests) of the registered venture capital company and details of their investment;
- (b) changes in shareholding in the financial year;
- (c) names and address of each director of the registered venture capital company;

- (d) changes in the board of directors of the registered venture capital company within the year; and
- (e) annual audited accounts of the registered venture capital company for that financial year.

(2) The returns shall be accompanied by a report of the fund manager in respect of each fund under the registered venture capital company detailing—

- (a) proposed changes in information specified under Regulation 4 or the investment policy; and
- (b) particulars of investments in eligible venture capital enterprises by that fund as at the end of that year and any changes in the course of the year, including—
 - (i) the level of investment in each eligible venture capital enterprise and the return thereon; and
 - (ii) disposals of investments during that year including any profits derived or losses incurred from that disposal.

22. Additional information

Notwithstanding the foregoing, the Authority may require such further information as it may deem necessary.

PART VIII – DEREGISTRATION

23. Deregistration

The Authority may de-register a registered venture capital company where—

- (a) the board of directors of the registered venture capital company requests in writing that the venture capital company be deregistered;
- (b) the registered venture capital company ceases to meet the requirements for registration or fails to comply with the Act;
- (c) any returns or other information filed by the registered venture capital company or fund manager are found to contain false or misleading information;
- (d) the registered venture capital company fails to take such corrective action in respect of a breach as indicated by Authority within the time prescribed;
- (e) the Authority becomes aware of any facts or circumstances, which in the Authority's opinion, warrant deregistration of the registered venture capital company in the public interest.

24. Notification of Commissioner of Income Tax and publication

The Authority shall within five days of de-registration of a registered venture capital company notify the Commissioner of Income Tax and within thirty days publish the deregistration in the *Gazette*.

PART IX – MISCELLANEOUS

25. Transition provision

Any venture capital company registered prior to the commencement date of these Regulations shall within twelve months of the commencement of these Regulations comply with these Regulations.

26. Extension of transition period

The Authority may extend the period of compliance further for a period of not more than twelve months upon request of a venture capital company registered prior to the commencement of these Regulations.

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27. Deregistration on expiry of transition period

Upon the expiry of the twelve months under Regulation 25 or the extended period under Regulation 26, as the case may be, the Authority may deregister any registered venture capital company that has not complied with these Regulations

28. Prohibition on investing in related parties

A registered venture capital company shall not lend to, invest in, provide finance to, act as a guarantor to or otherwise be exposed to any of its directors, affiliate companies or companies in which any of its directors and or their close relations hold a substantial interest.

29. Verification of source of funds

A registered venture capital company shall take all reasonable measures to verify the sources of its funds as well as its investments to ensure it is not used as a conduit for funds sourced from or to be applied to criminal or socially undesirable activities including but not limited to money laundering and corruption.

30. Disclosure of registration

A registered venture company shall ensure that it includes in its written communications a statement that it is registered by the Capital Markets Authority.

FIRST SCHEDULE

FORMS

FORM 1

(r. 4)

THE CAPITAL MARKETS ACT

[Cap. 485A]

THE CAPITAL MARKETS (REGISTERED VENTURE CAPITAL COMPANIES)
REGULATIONS

APPLICATION FOR REGISTRATION AS A VENTURE CAPITAL COMPANY

Please attach annexure(s) where necessary. Any annexure(s) should be clearly identified.

1. Name of Applicant
2. Date of incorporation
3. Company Number
4. Physical and Postal Address of principal office
5. Registered Office
6. Telephone
7. Fax No.
8. Email Address
9. Details of capital structure:
 - (a) Nominal capital (KSh.)
 - (b) Number of shares of KSh. each
 - (c) Paid-up capital (KSh.)
 - (d) Number and broad description of funds:
 - (e) Components (of each Fund):
 - (i) Equity
 - (ii) Shareholder Loans

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[Subsidiary]

- (iii) Debt
- (iv) Other (Explain)

10. Details of subsidiary and associate companies with the percentage of shareholding in each

.....

.....

11. Details of holding and affiliated companies with percentage of shareholding of the holding company.

.....

.....

12. The nature of venture capital financing it is to undertake:

- (i) seed capital financing #
- (ii) start-up capital financing #
- (iii) mid-stage financing #
- (iv) subsidiary financing #
- (v) fund of funds #
- (vi) Other #

Tick as appropriate

If other, explain:

.....

.....

13. Nature of Funds to be operated:

- (i) Captive #
- (ii) Semi-captive #
- (iii) Independent fund #
- (vi) Other #

Tick as appropriate

If other, explain:

.....

.....

14. Provide the following details in respect of each shareholder. In the case of corporate shareholders, provide the relevant details in respect of the ultimate beneficial owners of the issued shares. In respect of each individual copies of the national identify cards or passport shall be annexed.

Name

Previous names (if any)

Year and place of birth

Previous names (if any)

Year and place of birth

Nationality and how acquired

Identification Card number and date issued

Postal address and telephone number

Number of shares held in applicant

Shareholdings(directly or indirectly) in other Companies

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[Subsidiary]

Directorships in other companies

.....

15. Provide the following details in respect of each Director and the Secretary. In respect of each individual copies of the national identify cards or passport shall be annexed.

Name

Previous names (if any)

Year and place of birth

Nationality and how acquired

Identification Card/ Passport number and date issued

Postal address & telephone number

Number of shares held in Applicant

Shareholdings (directly or indirectly) in other Companies

.....

Directorships in Companies

.....

Educational qualifications and year obtained

Professional qualifications and year obtained

Memberships of professional bodies

Employment/business record

Specific experience related to the provision of venture capital

In case of Secretary: Institute of Certified Public Secretaries of Kenya Registration

No. Practising Certificate No.

16. Particulars of the auditor of the registered venture capital company

Name

Physical & postal Address:

Telephone:

Email address:

Fax:

Institute of Certified Public Accountants of Kenya Registration Number:

.....

Practising Certificate No.

Provide individual responses to the following questions in respect of each of the shareholders, directors and secretary:

17. Have you at any time been placed under receivership, declared bankrupt, or compounded with or made an assignment for the benefit of creditors, in Kenya or elsewhere? If 'yes', give details

.....

18. Have you been a director, shareholder or manager of a company that has been:

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- (a) denied any licence, approval or registration to carry out business in the financial sector in any jurisdiction, or had such licence withdrawn after it was made or any authorization revoked: Yes/No

If Yes, give details

- (b) a director of a company providing banking, insurance, financial or investment advisory services whose licence has been revoked by the appropriate authority?

If Yes, give details

- (c) subjected to any form of disciplinary action, censure, warned as to future conduct or publicly criticized by any regulatory authority or professional body in any country with regard to competence, soundness of judgement or otherwise.

If yes, give details

19. Have you been involved in a violation of any law designed for protecting members of the public against financial loss due to dishonesty or incompetence. If 'yes', give details

20. Have you at any time been convicted of any criminal offence in any jurisdiction? If so, give particulars of the court in which you were convicted, the offence, the penalty imposed and the date of conviction

21. Have you or any entity in which you are or have been associated as a director, shareholder or manager, been the subject of an investigation, in any country, by a government department or agency (including tax authorities), professional association or other regulatory body? If 'yes', give details

22. Are you and/or a person associated with you now the subject of any proceeding that could result in a 'yes' answer to the above questions (19), (20), (21) and (22)? If 'yes', give details.

23 (1) Are you a shareholder or director of a member company of any securities exchange? If 'yes', give details

(2) Have you been—

- (a) refused membership of any securities organization? If 'yes', give details

- (b) expelled from or suspended from trading on or membership of any securities organization? If 'yes' give details

- (c) subjected to any other form of disciplinary action by any stock exchange? If 'yes', give details.

We (Director), (Director)

and (Secretary) declare that all the information given in this application form is complete and true.

Dated this day of 20

Signed:

.....) Director

.....) Director

.....) Secretary

Capital Markets

[Subsidiary]

SECOND SCHEDULE

[r. 5(1)]

CERTIFICATE OF REGISTRATION OF A VENTURE CAPITAL COMPANY

THE CAPITAL MARKETS ACT

[Cap. 485A]

**THE CAPITAL MARKETS (REGISTERED VENTURE
CAPITAL COMPANIES) REGULATIONS 2007****CERTIFICATE OF REGISTRATION OF A VENTURE CAPITAL COMPANY**

REGISTRATION

NO.....

This is to certify that is a Registered Venture Capital Company.

Given under the seal of the Capital Markets Authority this day
of

.....

CHAIRMAN

.....

CHIEF EXECUTIVE

THIRD SCHEDULE

[r. 4(h)]

REGISTERED VENTURE CAPITAL COMPANY DIRECTORS DECLARATION

THE CAPITAL MARKETS ACT

[Cap. 485A]

**THE CAPITAL MARKETS (REGISTERED VENTURE
CAPITAL COMPANIES) REGULATIONS 2007****REGISTERED VENTURE CAPITAL COMPANY DIRECTORS DECLARATION***The following Declarations shall be submitted with this application form:*

We, the undersigned, being all the directors of

Limited (the applicant herein) hereby declare as follows:

1. We have exercised all due diligence in relation to seeking this registration. We accept full responsibility for the accuracy of all information given to the Authority.
2. We confirm that after having made all reasonable enquiries, and to the best of our knowledge and belief, there is no false or misleading statement or material omission which would render the information provided to be false or misleading to the Authority.
3. We have read and understood the Regulations and the provisions of the Act governing Registered Venture Capital Companies and undertake to ensure compliance with the same.

Dated this day of 20

Signed:

.....) Director

.....) Director

FOURTH SCHEDULE

[r. 4(e)]

THE CAPITAL MARKETS ACT

[Cap. 485A]

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

STATEMENT OF CONSENT BY FUND MANAGER

..... Limited, being duly licensed by the Capital Markets Authority as a Fund Manager and approved to manage Venture Capital Companies (Licence No.) hereby accepts appointment as the Fund Manager of Limited and undertakes to comply with the Capital Markets Act and Regulations in executing all functions and duties attached to this appointment.

We declare that we have undertaken all due diligence exercises in relation to the proposed investment policy and funds in respect of which this application is being filed.

We undertake to inform the Authority immediately it comes to our knowledge that the Applicant has breached or failed to comply with any requirements.

Signed:

.....) Director

.....) Director/Secretary
