
APPENDIX A

Maryland statutes and regulations governing the state's investment financing programs

ENTERPRISE FUND.**§ 5-501. Fund Created; Limitations on Investment and Ownership.**

(a) In this section the term "Fund" means the Enterprise Fund established under this section.

(b) Where the Department is otherwise authorized by law to make grants, the Department may require repayment, with interest at a rate to be determined by the Department, of all or a portion of a grant upon the occurrence of conditions specified by the Department.

(c)

(1) Where the Department is otherwise authorized by law to make grants, including grants authorized under Sec. 7-314 of the State Finance and Procurement Article, the Department may use moneys appropriated for grants to provide equity investment financing for a business enterprise.

(2) In providing equity investment financing under this subsection, the Department may not acquire an ownership interest in the enterprise in which the equity investment is made that exceeds 25 percent.

(3) The Department shall divest itself from any enterprise in which an equity investment is made under this subsection within 15 years after making the investment.

(4) The liability of the State and of the Department in providing equity investment financing under this subsection is limited to its investments under this subsection.

(5) The Department shall adopt regulations specifying:

(i) The types of business enterprises in which investments may be made under this subsection and the basic standards an enterprise is required to meet to qualify for investments under this subsection; and

(ii) The amount of funds available for investments under this subsection and the criteria upon which investment decisions will be made by the Department.

§ 5-502. Sources of Funds.

(a) There is an Enterprise Fund in the Department established as a nonlapsing, revolving special fund managed and supervised by the Secretary.

(b) The Fund may consist of the following:

(1) Moneys appropriated by the State to the Fund;

(2) Moneys made available to the Fund through appropriate federal programs or private contributions;

(3) Income from investments that the State Treasurer makes from moneys in the Fund;

(4) Repayments of principal and interest from loans made from the Fund;

- (5) Proceeds from the sale, disposition, lease or rental by the Department of collateral related to any financing provided by the Department under this section;
- (6) Premiums, fees, royalties, and repayments of principal, interest and investment paid to the Department by or on behalf of a business enterprise in which the Department has made an equity investment, or by or on behalf of an investor providing an investment guaranteed by the Department under this section;
- (7) Recovery of an equity investment made by the Department in a business enterprise, including any arrangement under which the Department's investment in the business enterprise is recovered through:
 - (i) A requirement that the Department receive a proportion of cash flow, commissions, royalties, or payments of a patent; or
 - (ii) The repurchase from the Department of any evidence of equity participation, such as notes, stocks, bonds or debentures;
- (8) Repayments received from conditional grants extended by the Department; and
- (9) Any other moneys made available to the Department.

§ 5-503. Use of Funds by Department.

(a)

- (1) The Department may use the Fund for the following purposes:
 - (i) To make grants or loans, at a rate of interest to be determined by the Department;
 - (ii) To provide equity investment financing for a business enterprise;
 - (iii) To provide guarantees of loans, equity investment, or other private financings to expand the capital resources of a business enterprise;
 - (iv) To purchase advisory services and technical assistance to enable the Department to better support economic development; and
 - (v) To pay expenses for administrative, legal and actuarial services for the Department.
- (2) Unless otherwise determined by the Secretary, moneys in the Fund that have been generated by a particular division within the Department shall be allocated for the use of that division.

(b)

- (1) The State Treasurer shall hold and the State Comptroller shall account for the Fund.
- (2) Any investment earnings of the Fund shall be paid into the Fund.

MARYLAND VENTURE CAPITAL TRUST.

§ 5-301. Definitions.

- (a) In this section the following words have the meanings indicated.
- (b) "Participating investors" means any persons or legal entities which invest money in the Maryland Venture Capital Trust.
- (c) "Seed capital financing" means financing provided to a business enterprise in the initial stages of its development and includes financing to finish research and development of a product, develop marketing plans, and provide for initial facilities, inventory, and working capital for the business enterprise.
- (d) "Trust" means the Maryland Venture Capital Trust.
- (e) "Venture Capital Fund" means an investment fund providing capital to a business enterprise at any stage of its development before any public offering of stock.

§ 5-302. Liberal Construction.

This subtitle shall be liberally construed to effect its purposes.

§ 5-303. Legislative Findings.

- (a) The General Assembly finds that:
 - (1) Small businesses are a major source of new jobs and innovations in the State;
 - (2) The State's research capacity could spur innovation in new and existing businesses to create and maintain jobs in the State; and
 - (3) An inadequate supply of seed and venture capital has limited the commercialization of research and development activity in the State.
- (b) The General Assembly intends that the Maryland Venture Capital Trust shall:
 - (1) Help fill the critical gap in the State's economy caused by the inadequate supply of seed and venture capital funds; and
 - (2) Stimulate the commercialization of research and development to create and sustain businesses throughout the State in all regions of the State.

§ 5-304. Trust; Board of Trustees.

- (a) The Trust is a body politic and corporate and is constituted as a public instrumentality of the State.
- (b) A Board of Trustees shall manage the Trust and shall exercise all of its corporate powers.
- (c)
 - (1) The Governor shall appoint 7 individuals, with the advice and consent of the Senate, to constitute the Trust's Board of Trustees.

The Board of Trustees shall be citizens of the State. In appointing the trustees, the Governor shall give due consideration to geographic representation of the State.

(2) Each trustee shall serve at the pleasure of the Governor without compensation, except that each trustee shall be entitled to reimbursement for expenses under the Standard State Travel Regulations, as provided in the State budget.

(3) Four of the trustees shall represent the participating investors and each must have been recommended to the Governor as a trustee by the participating investors.

(4) At least 1 trustee must have expertise in venture capital financing.

(5) At least 1 trustee must have experience as a small business enterprise owner.

(6) The Governor shall appoint 1 of the trustees to serve as Chairperson of the Board of Trustees.

(7) The Board of Trustees may act with a majority vote of a quorum of the Board of Trustees. A quorum shall consist of a majority of the trustees then serving on the Board of Trustees.

(d)

(1) The term of a trustee is 4 years.

(2) The terms of the trustees are staggered as required by the terms provided for members of the Board on July 1, 1990.

(3) At the end of a term, a trustee continues to serve until a successor is appointed and qualifies.

(4) A trustee who is appointed after a term has begun serves only for the rest of the term and until a successor is appointed.

§ 5-305. Trust Powers.

(a) The Trust may:

(1) Solicit and accept for investment in the Trust money from any source including not more than \$2,000,000 in appropriations from the State;

(2) Enter into agreements with the participating investors setting forth the terms governing the investment of money in the Trust by the participating investors;

(3) By preparing and publishing requests for proposals, solicit offerings by venture capitalists and venture capital funds that meet the purposes and requirements of the Trust, which shall be set forth in the requests for proposals;

(4) Select certain venture capital funds in which to invest money from the Trust, subject to the requirements set forth in Sec. 5-306 of this subtitle;

(5) Invest in any venture capital funds selected by the Trust in amounts deemed appropriate by the Board of Trustees;

(6) Retain investment earnings in excess of investment earnings the Trust is required to pay the participating investors; and

(7) Do all things necessary and lawful to carry out the powers expressly granted to the Trust by this subtitle.

(b) The Trust may not hold or accept from any single investor a cumulative total in principal investments in excess of \$5,000,000.

(c) The Trust may not accept more than a cumulative investment of \$15 million from the Maryland State Retirement and Pension Systems.

§ 5-306. Preferred Proposals; Limitations.

(a) The trustees shall give preference to venture capital fund proposals that:

(1) Provide financing predominantly to business enterprises that conduct a substantial amount of business in the State;

(2) Require venture capital funds to match the money invested by the Trust with money invested by private investors on at least a 1 to 3 ratio; and

(3) Ensure that a majority of the money invested by the Trust be for seed capital financing in Maryland.

(b) Seed capital investments shall not exceed more than \$1 million for any one business.

§ 5-307. Audits; Reports.

(a) The books and records of the Trust shall be subject to audit by the State at its discretion and annually by an independent auditor approved by the State, at the expense of the Trust.

(b)

(1) The Trust shall report to the Governor, the Maryland Economic Development Commission and, subject to Sec. 2-1312 of the State Government Article, to the General Assembly, within the first 90 days of each fiscal year.

(2) The report shall set forth the complete operating and financial statement covering the Trust's operations and summarize the Trust's activities during the preceding fiscal year.

§ 5-308. Trust Exemptions.

The Trust shall be exempt from:

(1) Taxation by the State and local government;

(2) The General Procurement Law provisions of Division II of the State Finance and Procurement Article; and

(3) The provisions of Division I of the State Personnel and Pensions Article that govern the State Personnel Management System.

§ 5-309. No Liability of State.

(a) All debts, claims, obligations, and liabilities of the Trust and its subsidiaries, whenever incurred, shall be the debts, claims, obligations, and liabilities of the Trust only and not of the State, its agencies, instrumentalities, officers, or employees.

(b) The debts, claims, obligations, and liabilities of the Trust may not be considered to be a debt of the State or a pledge of its credit.

Title 24
DEPARTMENT OF BUSINESS AND ECONOMIC
DEVELOPMENT

Subtitle 05 ECONOMIC DEVELOPMENT

Chapter 16 Enterprise Investment Program

Authority: Article 83A, §§2-101, 2-105, and 5-501—5-503, Annotated Code of Maryland

.01 Purpose.

These regulations prescribe the policies, procedures, and authorizations for providing equity investment to enterprises under the Enterprise Investment Program.

.02 Objective.

The basic objective of the Program is to provide financial assistance to qualified applicants for the creation and expansion of new enterprises.

.03 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Act" means Article 83A, §§5-501—5-503, Annotated Code of Maryland.

(2) "Applicant" means an enterprise that applies for equity investment provided pursuant to this chapter.

(3) "Department" means the Department of Business and Economic Development.

(4) "Director" means the Director of the Program, as designated by the Secretary.

(5) "Enterprise" means a business entity, including a sole proprietorship, a partnership, a corporation, limited liability company, or a joint venture carrying on or proposing to carry on a business within the State and meeting the requirements of Regulation .04 of this chapter.

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(6) "Equity investment" means any investment provided under the Program, including investment in a qualified security of an enterprise.

(7) "Funding agreement" means the agreement between the Department and a successful applicant that sets forth the terms of the equity investment.

(8) "Person" means an individual, corporation, partnership, joint venture, association, joint stock company, trust, or unincorporated organization.

(9) "Program" means the organizational unit within the Department that administers the equity investment provided pursuant to this chapter.

(10) "Qualified security" means any:

- (a) Note, bond, debenture, or other evidence of indebtedness;
- (b) Stock or other form of equity;
- (c) Certificate of interest or participation in a profit-sharing agreement;
- (d) Investment contract;
- (e) Certificate of deposit for a security;
- (f) Certificate of interest of participation in a patent or patent application or in royalty or other payments under a patent or patent application; or
- (g) Interest or instrument commonly known as a "security" or any certificate for, receipt for, guarantee of, or option, warrant, or right to subscribe to or purchase any qualified security.

(11) "Secretary" means the Secretary of Business and Economic Development, or the Secretary's designee.

.04 Eligible Applicants.

To be eligible for equity investment from the Program, an applicant shall satisfy the Director that the applicant:

- A. Has annual revenues not exceeding an amount determined by the Secretary;
- B. Operates in an industry targeted for assistance by the Secretary;
- C. Has not been, nor have any of its principals been, convicted of a felony;

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D. Maintains, or will maintain, its principal place of business in Maryland;

E. Has the legal capacity and all necessary legal authorization to incur the obligations of the equity investment; and

F. Has complied with all applicable State and federal law.

.05 Equity Investment Criteria.

In determining whether to provide an equity investment to an enterprise, the Department shall consider the following factors:

A. The creditworthiness of the enterprise and the likelihood the Department will receive a return on the equity investment;

B. The marketability of the enterprise's products or services and the abilities of its management; and

C. The number of jobs to be created or retained and the amount of overall economic benefit to State residents to be derived from the equity investment.

.06 Equity Investment Terms.

A. The proceeds of the equity investment may be used for the purposes approved by the Director, which include, but are not limited to:

- (1) Working capital;
- (2) Salaries;
- (3) Marketing materials;
- (4) Acquisition of inventory, equipment, or real property;
- (5) Construction;
- (6) Renovation;
- (7) Leasehold improvements; or
- (8) Research and development.

B. The amount of an equity investment shall be in a range of \$150,000 to \$250,000 per enterprise, unless a greater amount is authorized by the Secretary.

C. The Department may not acquire an ownership interest exceeding 25 percent of any enterprise.

D. The terms of an equity investment approved by the Director shall be set forth in a funding agreement.

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E. At the Director's discretion, a funding agreement may consist of:

- (1) An investment agreement;
- (2) A limited partnership agreement;
- (3) A preferred stock purchase agreement; or
- (4) Other documents the Program may require.

F. The Department shall divest itself of any enterprise in which an equity investment is made within 15 years after the Department's investment.

.07 Application and Processing Procedures.

A. An application for equity investment shall be in a form and content prescribed by the Program.

B. An applicant shall submit the following information to the Program:

- (1) A description of the enterprise and its management, product, and market, including a business plan;
- (2) A statement of the amount, immediacy of need, and projected use of the requested equity investment;
- (3) A statement of the potential economic impact of the requested equity investment; and
- (4) Other information the Director requires.

.08 Nondiscrimination.

An applicant shall comply with all applicable federal, State, and local laws regarding discrimination and equal opportunity in employment, including the provisions of the Governor's Code of Fair Employment Practices, COMAR 01.01.1995.19.

.09 Drug-Free and Alcohol-Free Workplace.

An applicant shall comply, and remain in compliance, with the State's policy concerning drug-free and alcohol-free workplaces, as set forth in COMAR 01.01.1989.18, and shall make a good-faith effort to eliminate illegal drug use and alcohol and drug abuse from places at which work is performed that has been financed in whole or in part with the proceeds of the Department's equity investment.

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.10 Program Administration.

An action or decision required or permitted to be taken or made by the Department pursuant to the Act or these regulations, including execution of equity financing documents, may be taken by the Secretary, the Secretary's designee, the Assistant Secretary for Financing Programs of the Department, or, to the extent delegated by the Secretary, the Director.

.11 Waiver.

The Department may waive or vary particular provisions of these regulations to the extent that the waiver is not inconsistent with the Act if:

A. Conformance to the requirements of any federal, State, or local programs in connection with an equity investment necessitates waiver or variance of a regulation; or

B. In the determination of the Director, the application of a regulation in a specific case or in an emergency situation would be inequitable or contrary to the purposes of the Act.

Administrative History

Effective date: August 29, 1994 (21:17 Md. R. 1440)

Title 24
DEPARTMENT OF BUSINESS AND ECONOMIC
DEVELOPMENT

Subtitle 05 ECONOMIC DEVELOPMENT

Chapter 17 Challenge Investment Program

Authority: Article 83A, §§2-102 and 2-105, Annotated Code of Maryland

.01 Applicability.

Regulations .01—.05 and .07—.11 under COMAR 24.05.16 apply.

.02 Equity Investment Terms.

A. The proceeds of the equity investment may be used for the purposes approved by the Director, which include, but are not limited to:

- (1) Working capital;
- (2) Salaries;
- (3) Marketing materials;
- (4) Acquisition of inventory, equipment, or real property;
- (5) Construction;
- (6) Renovation;
- (7) Leasehold improvements; or
- (8) Research and development.

B. The amount of an equity investment shall be in a range of \$20,000 to \$100,000 per enterprise, unless a greater amount is authorized by the Secretary.

C. The Department may not acquire an ownership interest exceeding 25 percent of any enterprise.

D. The terms of an equity investment approved by the Director shall be set forth in a funding agreement.

E. At the Director's discretion, a funding agreement may consist of:

- (1) An investment agreement;
- (2) A limited partnership agreement;
- (3) A preferred stock purchase agreement; or

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(4) Other documents the Program may require.

F. The Department shall divest itself of any enterprise in which an equity investment is made within 15 years after the Department's investment.

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