

**ORDINANCE
OF THE MINISTER OF ECONOMY¹⁾**

of 15 June 2007

on financial support granted by the National Capital Fund²⁾

(Dz. U. of 29 July 2007)

Pursuant to Article 14 (2) of the Act of 4 March 2005 on the National Capital Fund (Dz. U. No 57, item 491) it is hereby ordained:

Article 1. The Ordinance specifies the detailed conditions for granting and mode for transferring and methods of accounting for and returning financial support granted by the National Capital Fund.

Article 2. 1. Financial support shall be granted by the National Capital Fund provided that a capital fund commits to implement investments:

- 1) consisting in the acquisition of new shares or issuing new stocks, participation in partnerships or other units without legal personality, and in taking up debt instruments from enterprises in case of which the fund took up stocks or shares or undertook to participate in, and in giving loans to the enterprise; however, the taken up stocks are neither the subject of a public bid nor the stocks of a public company within the meaning of the Act of 29 July 2005 on public offering and terms and conditions of introducing financial instruments to the organised trading system and on public companies (Dz. U. No 184, item 1539 and of 2006 No 157, item 1119);
- 2) in the form of financial contribution;
- 3) within 10 years from the day of signing the agreement on granting financial support, however, this period may be extended by 2 years if justified by economic reasons, in particular those related to guaranteeing the possibility of profitable completion of investment;
- 4) in enterprises carrying out research or development of a product or service, or launching a product or service into the market for the first time, or extending their scope of activity, developing the market of the product or service or increasing their production or service capacity;
- 5) with particular focus on supporting investments in innovative technologies and enterprises with strong development potential;
- 6) choosing investment projects in accordance with economic criteria, having conducted the investment cost-effectiveness and risk analysis, in particular environmental impact assessments, based on reliable business plan including a detailed product or service analysis and sales and profits forecast;
- 7) in accordance with the principles of investment risk management, pursuant to the best knowledge and to good practices in capital fund management;
- 8) through persons managing the capital fund or the entity managing the capital fund remunerated in accordance with the fund's outcomes in order to motivate them to achieving the investment objectives;
- 9) in the enterprise which commits to reduce the maximum ceilings or eligible amounts of State aid it is entitled to, other than aid granted under this Ordinance, by 20% in the period of three years from the day it received resources from the capital funds for the first time; this obligation shall not apply to State aid granted under the Community Framework for State aid for research and development³⁾ or other framework or block exemption regulation in this field;
- 10) after consulting the committee appointed by the capital fund investors in accordance with an agreement or a statute.

2. Enterprise's debt instruments taken up by the capital fund or loans granted to an enterprise by the capital fund may not bear interest below the reference rate specified by the European Commission and published in the Official Journal of the European Union in effect at the day of taking up debt instruments or concluding the loan agreement.

3. As regards to unsecured debt instruments or unsecured loans, the interest rate may not be lower than the reference rate, referred to in paragraph 2, increased by 400 or more basis points⁴⁾ if the National Bank of Poland collateral loan rate, published in the NBP Official Journal, increased by 100 basic points⁵⁾, in the effect at the day of taking up debt instruments or concluding the loan agreement, is higher than the reference rate.

4. The total value of capital funds' resources supported by public funds under measures implemented with the use of risk capital involved in the same enterprise and its related entities within the meaning of the provisions of the Act of 29 September 1994 on accounting (Dz. U. of 2002 No 76, item 694, as amended⁶⁾) may not exceed the Polish zloty equivalent of EUR 1 500 000 using the mid-market exchange rate announced by the National Bank of Poland as of the day preceding the day of signing the investment agreement between the capital fund and the enterprise.

5. The total value of capital fund resources involved in the enterprise and its related entities may not exceed 20% of the total amount of declared payments to the fund.

6. The value of enterprise's debt instruments taken up by the capital fund and loans granted to an enterprise may not exceed 30% of all financial resources received by the enterprise from the capital fund.

7. The total value of capital fund management costs, including the value of the costs of investment preparation and monitoring of the investments portfolio, may not exceed, on a yearly average, 5 % of payments made to the capital fund.

Article 3. 1. Financial support may not be granted to capital funds investing in enterprises that:

- 1) allocate resources received from the capital fund for carrying out economic activity within the scope of:
 - a) factoring and leasing,
 - b) assets' lease or rental,
 - c) legal services,
 - d) accounting services,
 - e) wholesale and retail;
- 2) carry out economic activity in the scope of:
 - a) production of iron and steel,
 - b) coal mining⁷⁾,
 - c) shipbuilding⁸⁾;
- 3) fulfil the criteria of firm in difficulty specified in the European Union legislation⁹⁾ or in the period of restructuring carried out with the help of State aid.

2. Financial support may not be granted to capital funds that, in their marketing plan and information on planned capital fund investment referred to in Article 12 (6) (10) of the Act of 4 March 2005 on the National Capital Fund, hereinafter referred to as "the Act", shall make investments in enterprises conditional solely on:

- 1) enterprises' export activity, in particular on the quantity of exported products, establishing and operating foreign distribution network;
- 2) the priority of using domestic products by enterprises.

Article 4. 1. Eligible for the support in the form of non-repayable payments to cover part of the costs incurred by the capital fund in relation to investment preparation and monitoring of the investments portfolio are the costs which:

- 1) were incurred by the capital fund over the duration of the agreement on granting financial support, referred to in Article 13 of the Act;
- 2) concern the enterprise, the capital fund concluded the investment agreement with.

2. Costs necessary for preparing investment include:

- 1) remuneration for persons employed directly in the investment preparation process, including social security contributions and other compulsory contributions calculated from remuneration,
- 2) costs of business travels of persons employed directly in the investment preparation process, in accordance with rates specified in the provisions on the amounts due to a person employed in a state or self-government unit of public sector on account of business travels and conditions under which the amounts are determined,
- 3) costs of legal and notary services, auditing financial reports, preparing business plans, technical expertise, environmental impact assessments, financial and other services purchased by a capital

- fund or the capital fund managing entity and directly linked to the investment preparation process
- incurred until the day of concluding the investment agreement between a capital fund and an enterprise.
3. Costs necessary for the monitoring of the investments portfolio include:
- 1) costs of business travels of persons representing the capital fund in statutory bodies and participating in general meeting of enterprise's shareholders or partners incurred in relation to participation in works of these bodies, according to rates specified in the provisions on the amounts due to a person employed in a state or self-government unit of public sector on account of business travels and conditions under which the amounts are determined,
 - 2) costs of legal and notary services, auditing financial reports, financial expertise, environmental impact assessments, technical and other services purchased by a capital fund or the capital fund managing entity directly linked to the monitoring of the investments portfolio provided that they are indispensable for the monitoring of the investments portfolio
- incurred after the day of taking up instruments, referred to in Article 2 (1) (1), by the capital fund, until the day of the investment completion referred to in Article 6.
4. Costs eligible for the support do not include:
- 1) payments made in breach of Article 22 of the Act of 2 July 2004 on freedom of economic activity (Dz. U. No 173, item 1807, as amended¹⁰);
 - 2) expenses incurred by the capital fund and paid by the enterprise the fund invested in;
 - 3) input value added tax.

Article 5. 1. Financial support provided by the National Capital Fund in forms referred to in Article 11 (1) (1)-(4) of the Act may be transferred after the day of making the payments to the capital fund by the capital fund investors.

2. Financial support in the form of non-repayable payments, referred to in Article 11 (1) (5) of the Act, shall be granted to the capital fund on the basis of incurred and documented eligible costs.

Article 6. The completion of the capital fund investment shall mean the day of last crediting of resources from repayment, sale and amortisation of all or some of instruments referred to in Article 2 (1) (1), hereinafter referred to as "funds derived from the investment completion", on the fund's account.

Article 7. 1. Financial support granted to the capital fund by the National Capital Fund in the forms, specified in Article 11 (1) (1)-(3), and payments to the capital fund made by the capital fund investors shall be settled by paying funds derived from the investment completion:

- 1) first, to the capital fund investors, until the amount equivalent to the payments made is reached;
- 2) second, to the National Capital Fund, until the amount equivalent to the granted financial support is reached;
- 3) next, to the capital fund investors, until the rate of return in the amount specified in the agreement on granting financial support is reached;
- 4) finally, to the National Capital Fund, until the rate of return specified in the agreement on granting financial support is reached;

2. Funds left after the settlement, referred to in paragraph 1, shall be divided between persons or entity managing the fund, fund investors and the National Capital Fund, in accordance with the agreement on granting financial support.

Article 8. Financial support granted to the capital fund by the National Capital Fund in the form specified in Article 11 (1) (4) of the Act shall be settled by paying funds derived from the investment completion, first of all, to the National Capital Fund up to the amount of the granted financial support and until the rate of return specified in the agreement on granting financial support is reached, and then as specified in Article 7.

Article 9. The funds, referred to in Article 11 (4) of the Act, shall be reimbursed to the National Capital Fund within 30 days from the date on which the National Capital Fund determines that they were used by the capital fund contrary to what had been specified in the agreement on granting financial support plus interest in the amount specified as for tax arrears, payable from the date of transferring funds to the capital fund.

Article 10. The Ordinance shall enter into force 14 days after its publication.

- ¹⁾ The Minister of Economy is in charge of economy as a sector of government administration, pursuant to Article 1 (2) (1) of the President of the Council of Ministers of 18 July 2006 on the detailed scope of activity of the Minister of Economy (Dz. U. No 131, item 909).
- ²⁾ This ordinance was notified to the European Commission on 11 January 2007 under number N 26/2007 – Poland, pursuant to Article 20 of the Act of 30 April 2004 on the procedural issues concerning State aid (Dz. U. of 2007 No 59, item 404).
- ³⁾ The Community Framework for State aid for research and development (OJ EU C 45 of 17.02.1996, p. 5).
- ⁴⁾ In accordance with the Commission notice on the method for setting the reference and discount rates (97/C 273/03).
- ⁵⁾ In accordance with the Commission notice on the method for setting the reference and discount rates (97/C 273/03).
- ⁶⁾ Amendments to the consolidated text of the Act were published in Dz. U. 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 and No 213, item 2155, of 2005 No 10, item 66, No 184, item 1539 and No 267, item 2252 and of 2006 No 157, item 1119 and No 208, item 1540.
- ⁷⁾ Within the meaning of the Commission Regulation (EC) No 1407/2002 of 23 July 2002 on State aid to the coal industry (OJ EC L 205 of 02.08.2002, p. 1).
- ⁸⁾ Within the meaning of the Framework on State aid to shipbuilding (OJ EC C 317 of 30.12.2003).
- ⁹⁾ Within the meaning of points 9-11 of the Community guidelines on State aid for rescuing and restructuring firms in difficulty (OJ EC C 244 of 1.10.2004).
- ¹⁰⁾ Amendments to the Act were published in Dz. U. of 2004 No 281, item 2777, of 2005 No 33, item 289, No 94, item 788, No 143, item 1199, No 175, item 1460, No 177, item 1468, No 178, item 1480, No 179, item 1485, No 180, item 1494 and No 183, item 1538 and of 2006 No 17, item 127, No 144, item 1043 and 1045, No 158, item 1121, No 171, item 1225 and No 235, item 1699.