

MICHIGAN STRATEGIC FUND ACT (EXCERPT)
Act 270 of 1984

CHAPTER 6

125.2061 Definitions.

Sec. 61. As used in this chapter:

(a) "MESBIC" means a small business investment company licensed under section 301(d) of the small business investment act of 1958, 15 U.S.C. 681(d).

(b) "Minority" means a person who is black, hispanic, oriental, eskimo, or an American Indian.

(c) "Minority owned business" means a business which is at least 50% owned, controlled, and managed by minorities.

(d) "Minority venture capital company" means a business which makes investments solely in minority owned businesses.

(e) "Venture capital investment" means any of the following investments in a business:

(i) Common or preferred stock and equity securities without a repurchase requirement for at least 5 years.

(ii) A right to purchase stock or equity securities.

(iii) Any debenture or loan, whether or not convertible or having stock purchase rights, which are subordinated, together with security interests against the assets of the borrower, by their terms to all borrowings of the borrower from other institutional lenders, and that is for a term of not less than 3 years, and that has no part amortized during the first 3 years.

(iv) General or limited partnership interests.

History: 1984, Act 270, Eff. Mar. 29, 1985.

Popular name: Strategic Fund

125.2062 Center for minority venture capital; establishment and operation.

Sec. 62. The fund shall establish and operate a center for minority venture capital.

History: 1984, Act 270, Eff. Mar. 29, 1985.

Compiler's note: For transfer of the Michigan strategic fund from department of treasury to department of talent and economic development, and transfer of powers and duties of board of directors of Michigan strategic fund to new board of directors, see E.R.O. No. 2014-6, compiled at MCL 125.1995.

Popular name: Strategic Fund

125.2063 Certification of minority venture capital company and MESBIC; purpose; construction of certification; statement in documents; forwarding certification applications; qualifications for initial certification; compliance.

Sec. 63. (1) The fund is empowered to certify a minority venture capital company and a MESBIC for the purpose of verifying that the business satisfies the qualifications provided by law for being an eligible recipient of investments that qualify for a credit under the single business tax act, Act No. 228 of the Public Acts of 1975, being sections 208.1 to 208.145 of the Michigan Compiled Laws, for an investment in a minority venture capital company or MESBIC certified under this chapter. The certification shall not be construed to impose liability on this state or to authorize the giving or lending of the credit of this state to any business enterprise. All documents promulgated by the department of commerce, the fund, or business enterprises in conjunction with this program shall include a statement reflecting the limited purpose of the certification and disclaiming the involvement of this state.

(2) Certification applications by a minority venture capital company or a MESBIC shall be forwarded to the fund. To qualify for its initial certification and to retain its certification, a minority venture capital company or a MESBIC shall comply with all of the following applicable requirements:

(a) Qualify as a minority venture capital company or as a MESBIC.

(b) If a minority venture capital company, has raised or has commitments for at least \$1,000,000.00 to capitalize the minority venture capital company. Amounts which the minority venture capital company is or may be obligated to repay shall not be included as money which has been raised or committed to capitalize the minority venture capital company.

(c) Demonstrate that the professional staff which will manage the minority venture capital company or MESBIC possesses relevant experience in the administration and operation of a venture capital company.

(d) Either have invested at time of application or, if the minority venture capital company or MESBIC has not yet made investments, agree to invest and to retain an investment of 100% of its portfolio in businesses operating within this state.

(e) Either have invested at time of application or, if the minority venture capital company or MESBIC has

not yet made investments or has not yet reached the applicable year of operation, agree to invest and to retain an investment of 50% of its paid-in capital by the end of the third year of operation and 70% of its paid-in capital by the end of the fifth year of operation.

(f) Agree to comply with the terms of this act and with its investment plan and management plan submitted pursuant to subdivision (g).

(g) Provide the information the fund determines to be necessary or appropriate for the fund to review in considering the application including, but not necessarily limited to, the following:

(i) A detailed investment plan describing the current and proposed activities of the minority venture capital company or MESBIC.

(ii) A management plan, including a description of the business experience and reputation of the professional staff that has been or is to be assembled, and a description of the current and proposed management structure.

(iii) A listing of the present or committed investors in the minority venture capital company or MESBIC and background information on the investors.

(h) If a minority venture capital company, agree to disclose to the fund and to allow the fund to approve or disapprove a contract entered into between the minority venture capital company and a minority owned business in which an officer or director of the minority venture capital company owns 10% or more.

(i) Agree to comply with the condition that, of the investments for which a request for certification is or will be filed under section 69a, not less than 50% shall be invested by persons who, if they receive a credit under section 36b of the single business tax act, Act No. 228 of the Public Acts of 1975, being section 208.36b of the Michigan Compiled Laws, would have that credit revoked if the minority venture capital company or MESBIC has its certification revoked within 6 years after the tax year for which the person received the credit.

History: 1984, Act 270, Eff. Mar. 29, 1985;—Am. 1987, Act 278, Imd. Eff. Jan. 6, 1988.

Popular name: Strategic Fund

125.2064 Considerations prior to certification.

Sec. 64. The fund shall also consider, prior to certifying a minority venture capital company or a MESBIC, all of the following:

(a) The current and proposed composition of the board of directors of the minority venture capital company or MESBIC and the relevant experience of the members of the board.

(b) Whether the minority venture capital company or MESBIC has a reasonable likelihood of being financially sound in the long run and capable of earning for its investors a reasonable rate of return.

(c) The current availability of minority venture capital in the geographic area in which the minority venture capital company or MESBIC will conduct business and the current availability of minority venture capital in the area for products or processes similar to those funded or to be funded by the minority venture capital company or MESBIC.

(d) The percentage of the minority venture capital company or MESBIC owned by minorities.

History: 1984, Act 270, Eff. Mar. 29, 1985.

Popular name: Strategic Fund

125.2065 Percentage of venture capital investments; encouraging certified MESBIC to meet investment requirements; "investment" defined.

Sec. 65. (1) Sixty-five percent of investments of a certified minority venture capital company shall be venture capital investments.

(2) A certified MESBIC shall be encouraged to use its best efforts to meet the investment requirements imposed by subsection (1) on certified minority venture capital companies.

(3) For purposes of this section, section 61(d), and section 63(2)(d), (e), and (i), "investment" means financial assistance provided by a MESBIC or minority venture capital company, whether through loans, guarantees, venture capital investments, or commitments.

History: 1984, Act 270, Eff. Mar. 29, 1985.

Popular name: Strategic Fund

125.2066 Minority venture capital company as certified MESBIC.

Sec. 66. A minority venture capital company certified under this chapter that thereafter becomes a MESBIC shall be considered a certified MESBIC under this chapter without separate application.

History: 1984, Act 270, Eff. Mar. 29, 1985.

Popular name: Strategic Fund

125.2067 Independent program audit.

Sec. 67. A certified minority venture capital company and a certified MESBIC shall have an independent program audit annually performed by a certified public accountant. The fund may visit and examine a certified minority venture capital company or a certified MESBIC and may delegate the authority to visit and examine to the commissioner of the financial institutions bureau.

History: 1984, Act 270, Eff. Mar. 29, 1985.

Popular name: Strategic Fund

125.2068 Effective date and duration of certification; eligibility as recipient of investments; approval and effect of tax credit disqualification.

Sec. 68. (1) Unless revoked, a certification provided under this chapter shall be effective and subject the minority venture capital company or MESBIC to the requirements of this chapter from the date of its certification until 6 years following the date of its tax credit disqualification pursuant to subsection (3).

(2) Unless the certification is revoked, from the date of its certification until the date the fund approves a tax credit disqualification for the minority venture capital company or MESBIC pursuant to subsection (3) a certified minority venture capital company and a certified MESBIC shall be an eligible recipient of investments that qualify for a credit under the single business tax act, Act No. 228 of the Public Acts of 1975, being sections 208.1 to 208.145 of the Michigan Compiled Laws, for an investment in a minority venture capital company or MESBIC certified under this chapter.

(3) Upon request of a certified minority venture capital company or a certified MESBIC the fund shall approve a tax credit disqualification for the minority venture capital company or MESBIC and thereafter the minority venture capital company or MESBIC shall not be an eligible recipient of investments that qualify under, and the fund shall not provide a tax credit certification pursuant to section 69a for credits under, Act No. 228 of the Public Acts of 1975.

History: 1984, Act 270, Eff. Mar. 29, 1985.

Popular name: Strategic Fund

125.2069 Revocation of certification; notice; remedying deficiencies and complying with requirements; determination.

Sec. 69. If the fund finds that a certified minority venture capital company or a certified MESBIC has failed to comply with the provisions of this chapter or has substantially deviated from the management plan or investment plan submitted in connection with its certification, the fund shall notify the board of directors and officers of the minority venture capital company or MESBIC that the certification will be revoked 120 days after the date of mailing of the notice. The minority venture capital company or MESBIC may notify the fund before the expiration of the 120-day period of all efforts taken to remedy the deficiencies and comply with the requirements of this chapter. The fund shall be responsible for determining whether the minority venture capital company or MESBIC is once again in compliance and, if it determines that the compliance has not been achieved, then the certification shall stand revoked on the date established by the fund.

History: 1984, Act 270, Eff. Mar. 29, 1985.

Popular name: Strategic Fund

125.2069a Tax credit certification; information; report.

Sec. 69a. (1) Upon written request to the fund not later than 90 days following an investment, the fund shall certify the following for a person subject to the tax imposed under the single business tax act, Act No. 228 of the Public Acts of 1975, being sections 208.1 to 208.145 of the Michigan Compiled Laws, who seeks to claim the credit provided under Act No. 228 of the Public Acts of 1975 for an investment in a minority venture capital company or MESBIC certified under this chapter:

(a) The date which the person made the investment.

(b) That the investment is in a certified minority venture capital company or MESBIC which has not been disqualified pursuant to section 68(3) as of the date of the investment.

(c) The amount of the investment in the certified minority venture capital company or MESBIC that was made after the effective date of the amendatory act providing for a tax credit under Act No. 228 of the Public Acts of 1975 for an investment in a minority venture capital company or MESBIC certified under this chapter.

(d) The amount of the credit to which the person is entitled under Act No. 228 of the Public Acts of 1975 for an investment in a minority venture capital company or MESBIC certified under this chapter.

(2) A minority venture capital company or MESBIC certified under this chapter and a person requesting a

tax credit certification of an investment pursuant to subsection (1) shall provide the fund with all information it requires to make the certification under subsection (1).

(3) A tax credit certification report for an investment certified under subsection (1) shall be sent by the fund to the requester and the department of treasury.

History: 1984, Act 270, Eff. Mar. 29, 1985.

Popular name: Strategic Fund