

1 **7-17-3. Definitions.** – The following words and terms, unless the context clearly
2 indicates a different meaning, shall have the following meanings:

3 (1) “Affiliate of a certified capital company or insurance company” means:

4 (i) Any person who directly or indirectly owns, whether through rights, options,
5 convertible interests or otherwise, controls or holds power to vote fifteen percent (15%) or more
6 of the outstanding voting securities or other voting ownership interests of the certified capital
7 company or insurance company, as applicable;

8 (ii) Any person fifteen percent (15%) or more of whose outstanding voting securities or
9 other voting ownership interests are directly or indirectly beneficially owned, whether through
10 rights, options, convertible interests or otherwise, controlled or held with power to vote by the
11 certified capital company or insurance company, as applicable;

12 (iii) Any person directly or indirectly controlling, controlled by, or under common control
13 with the certified capital company or insurance company, as applicable;

14 (iv) A partnership or limited liability company in which the certified capital company or
15 insurance company, as applicable, is a general partner, manager or managing member;

16 (v) Any person who is an officer, director, employee or agent of the certified capital
17 company or insurance company, as applicable, or an immediate family member of such officer,
18 director, employee or agent.

19 (2) “Allocation date” means the date on which the certified investors of a certified
20 capital company are allocated tax credits by the authority pursuant to section 7-17-6 of this
21 chapter.

22 (3) “Authority” means the Rhode Island Economic Development Corporation or its
23 designee.

24 (4) “Certified capital” means an investment of cash by a certified investor in a certified
25 capital company which fully funds the purchase price of an equity interest in the certified capital
26 company or a qualified debt instrument issued by the certified capital company or any
27 combination thereof.

28 (5) “Certified capital company” means a partnership, limited partnership, corporation,
29 trust or limited liability company, whether organized on a profit or not-for profit basis, that has as
30 its primary business activity the investment of cash in qualified businesses and that is certified by
31 the authority as meeting the criteria set forth in this chapter.

32 (6) “Certified investor” means any insurance company that invests certified capital
33 pursuant to an allocation of tax credits under section 7-17-6 of this chapter.

34 (7) “Early stage business” means a qualified business that either: is in development, has

1 been operational for less than four (4) years or during the fiscal year immediately preceding the
2 year of a certified capital company's initial investment in such business had gross revenues of less
3 than one million dollars (\$1,000,000), on a consolidated basis, as determined in accordance with
4 generally accepted accounting principles; and is in need of capital for pre-startup, startup,
5 survival, expansion, new product development, or similar business purpose.

6 (8) "Person" means any individual, person or entity, including a corporation, general or
7 limited partnership, sole proprietorship, trust or limited liability company or limited liability
8 partnership.

9 (9) "Qualified business" means a business that is headquartered and has its principal
10 business operations located in the state with at least seventy-five percent (75%) of its employees
11 working within the state, and, at the time of a certified capital company's first investment in that
12 business, is a small business concern as defined in 13 CFR 121.301(c) of the small business size
13 regulations of the United States Small Business Administration. A business that is predominantly
14 engaged in professional services provided by accountants, lawyers, physicians, real estate
15 development, gaming, banking or lending and insurance shall not constitute a qualified business.

16 (10) "Qualified debt instrument" means a debt instrument issued to a certified investor
17 by a certified capital company which has the following characteristics: (i) a maturity date of at
18 least five (5) years from date of issuance; (ii) an issue price to the certified investor of at least par
19 value; (iii) a repayment schedule which is no faster than a level principal amortization over five
20 (5) years; (iv) does not permit the certified investor to receive prepayment of interest; and (v)
21 contains no interest, distribution, or payment features that are related to the profitability of the
22 certified capital company or the performance of the certified capital company's investment
23 portfolio until such time as the certified capital company is permitted to make distributions other
24 than qualified distributions under section 7-17-10 of this chapter.

25 (11) "Qualified distribution" means any distribution or payment by a certified capital
26 company in connection with any of the following:

27 (i) Reasonable costs and expenses of forming, organizing and syndicating the certified
28 capital company, including the costs of financing and insuring the obligations of the certified
29 capital company so long as, at the time the certified capital company initially receives its
30 investment of certified capital from its certified investors, the certified capital company has initial
31 capital available for investment in qualified investments in the form of cash or permissible
32 investments equal to at least fifty percent (50%) of the amount of certified capital such certified
33 capital company initially received as investment from its certified investors;

34 (ii) Reasonable costs and expenses of managing and operating the certified capital

1 company, including, but not limited to, reasonable and necessary fees paid for professional
2 services related to the formation and operation of the certified capital company and an annual
3 management fee in an amount that does not exceed two and one-half percent (2.5%) of the
4 certified capital of the certified capital company; and

5 (iii) Any projected increase in federal or state taxes, including penalties and interest
6 related to state and federal income taxes, of the equity owners of a certified capital company
7 resulting from the earnings or other tax liability of the certified capital company without regards
8 to any revenue or expenses from other operations of affiliates of the certified capital company, to
9 the extent that the increase is related to the ownership, management or operation of a certified
10 capital company or issuance, repayment or redemption of the qualified debt instruments of the
11 certified capital company.

12 (12) “Qualified investment” means the investment of cash by a certified capital company
13 in a qualified business for the purchase of:

14 (i) any debt, debt participation, equity or hybrid security of any nature and description
15 whatsoever issued by the qualified business, including a debt instrument or security which has the
16 characteristics of debt but which provides for conversion into equity or equity participation
17 instruments such as options or warrants, as long as the qualified business is a Slater business or an
18 early stage business, or if the authority permits at the request of a certified capital company; or

19 (ii) any equity security of any nature and description whatsoever issued by that qualified
20 business; or

21 (iii) a debt security of the qualified business if the debt has a maturity of at least five (5)
22 years and if both of the following conditions are met:

23 (a) the debt is unsecured; and

24 (b) the debt is convertible into or issued in connection with equity securities or equity
25 participation instruments such as options or warrants.

26 (13) “Slater Center Business” means any qualified business given this designation by the
27 authority.

28 (14) “State” means the State of Rhode Island and Providence Plantations, and the various
29 departments and agencies thereof.

30 (15) “State premium tax liability” means any liability incurred by an insurance company
31 under the provisions of sections 44-17-1 et seq. or, if any tax imposed by sections 44-17-1 et seq.
32 is repealed or reduced by the state, any other tax imposed on an insurance company by the state.

33 (16) “Tax credit” means the credit against state premium tax liability which is earned by
34 a certified investor in connection with an investment of certified capital in a certified capital

1 company pursuant to this chapter.

2 (17) "Tax credit allocation claim" means a claim for allocation of tax credits prepared
3 and executed by an insurance company on a form provided by the authority and filed by a
4 certified capital company with the authority. The form shall include an affidavit of the insurance
5 company pursuant to which an insurance company shall become legally bound and irrevocably
6 committed to make an investment of certified capital in a certified capital company in the amount
7 allocated, even if such amount is less than the amount of the claim, subject only to the receipt of
8 an allocation pursuant to section 6 of this chapter.

9 (18) "Tax credit allocation claim filing date" means the date the authority will first accept
10 tax credit allocation claims on behalf of certified investors.

11 **7-17-4. Regulations and requirements for certified capital company.** – (a) The
12 authority shall promulgate rules and regulations for making an application to become a certified
13 capital company. The applicant shall pay a nonrefundable application fee of seven thousand five
14 hundred dollars (\$7,500) at the time of filing the application with the authority.

15 (b) A certified capital company's equity capitalization at the time of seeking certification
16 shall be a minimum of five hundred thousand dollars (\$500,000) and shall be in the form of
17 unencumbered cash, marketable securities or other liquid assets. The certified capital company
18 must maintain such equity capitalization until such time as it receives an allocation of certified
19 capital pursuant to 7-17-6 of this chapter.

20 (c) The authority shall determine that the applicant's cash, marketable securities and
21 other liquid assets are at least five hundred thousand dollars (\$500,000). As part of its application,
22 each applicant shall submit to the authority its balance sheet, audited with an unqualified opinion
23 of an independent certified public accountant, of a date no more than thirty-five (35) days prior to
24 the date of the application.

25 (d) At least two (2) principals of the applicant or at least two (2) persons employed or
26 engaged to manage the funds of the applicant shall have no less than four (4) years of experience
27 making venture capital investments, which may include investments made in connection with a
28 state or federally sponsored venture capital program (the "experienced individuals"). As part of
29 its application, each applicant will provide to the authority affidavits, with detailed resumes or
30 equivalent biographic materials appended, from the experienced individuals stating that their
31 experience meets the requirement of this subsection (d). In addition, the experienced individuals
32 will provide to the authority affidavits stating that they have not violated federal or state securities
33 or banking laws or been convicted of any crime involving fraud.

34 (e) The applicant will provide an affidavit stating that within sixty (60) days of the

1 investment of certified capital in the certified capital company, at least one (1) of the experienced
2 individuals of the certified capital company shall reside in the state and be primarily located in an
3 office of the certified capital company based in this state.

4 (f) Any offering material involving the sale of securities of the certified capital company
5 shall include the following statement:

6 “By authorizing the formation of a certified capital company, the State of Rhode Island
7 does not necessarily endorse the quality of management or the potential for earnings of such
8 company and is not liable for damages or losses to a certified investor in the company. Use of the
9 word ‘certified’ in an offering does not constitute a recommendation or endorsement of the
10 investment by the Rhode Island Economic Development Corporation or the state. In the event
11 applicable provisions of this law are violated, the state may require forfeiture of unused tax
12 credits and repayment of used tax credits.”

13 (g) Within thirty (30) days of application, the authority shall issue the certification or
14 shall refuse the certification and communicate in detail to the applicant the grounds for the
15 refusal, including criteria for the removal of those grounds. If an applicant submits an amended
16 application within fifteen (15) days of receipt of refusal by the authority, the authority shall have
17 fifteen (15) days from the receipt of such amended application by which to communicate its
18 approval or refusal of such amended application to the applicant. The authority shall review and
19 approve or reject applications in the order submitted, and in the event more than one (1)
20 application is received by the authority on any date, all such applications shall be reviewed and
21 approved simultaneously, except in the case of incomplete applications or applications for which
22 additional information is requested by the authority and is not supplied by the applicant within the
23 allowable time limits established by the authority.

24 (h) No insurance company or any affiliate of an insurance company shall directly or
25 indirectly own, whether through rights, options, convertible interests or otherwise, fifteen percent
26 (15%) or more of the voting equity interests of a certified capital company or manage a certified
27 capital company or control the direction of investments for a certified capital company. This
28 provision shall not preclude a certified investor, insurance company or any other party from:

29 (i) exercising its legal rights and remedies, which may include interim management of a
30 certified capital company, in the event that a certified capital company is in default of its statutory
31 obligations or its contractual obligations to a certified investor, insurance company or other
32 person; or

33 (ii) establishing controls to insure that the certified capital company satisfies the
34 requirements of section 7-17-7 of this chapter.

1 (i) A certified capital company may obtain one or more guaranties, indemnities, bonds,
2 insurance policies or other payment undertaking for the benefit of its certified investors from any
3 person; provided that, in no case shall more than one (1) certified investor of the certified capital
4 company or affiliates of such certified investor be entitled to provide such guaranties,
5 indemnities, bond, insurance policies or other payment undertaking in favor of the certified
6 investors of the certified capital company and its affiliates in the state.

7 (j) Nothing in this subsection shall limit an insurance company's ownership of nonvoting
8 equity interests in a certified capital company.

9 **7-17-5. Premium tax credits.** – (a) Any certified investor who makes an investment of
10 certified capital pursuant to an allocation of tax credits under section 7-17-6 of this chapter shall,
11 in the year of investment, earn a vested credit against state premium tax liability equal to one
12 hundred percent (100%) of the certified investor's investment of certified capital. A certified
13 investor shall be entitled to take up to ten percent (10%) of the vested tax credit to reduce the
14 certified investor's state premium tax liability for any taxable year of the certified investor
15 beginning with the annual payment for the tax year ending December 31, 2005, plus an amount of
16 unused tax credits which are carried forward pursuant to subsection (b) of this section beginning
17 with the estimated payments for the tax year ending December 31, 2005.

18 (b) The tax credit that may be applied against state premium tax liability in any one (1)
19 year may not exceed the state premium tax liability of the certified investor for such taxable year.
20 All unused tax credits against state premium tax liability may be carried forward indefinitely and
21 used in any subsequent year until the tax credits are utilized in full.

22 (c) A certified investor claiming a tax credit against state premium tax liability earned
23 through an investment in a certified capital company shall not be required to pay any additional
24 retaliatory tax levied pursuant to section 27-2-17 (or such part of section 44-17-1 as relates to
25 minimum taxes imposed on foreign or alien companies) as a result of claiming that tax credit.

26 (d) A certified investor is not required to reduce the amount of tax pursuant to the state
27 premium tax liability included by the certified investor in connection with rate making for any
28 insurance contract written in this state because of a reduction in the certified investor's tax
29 liability based on the tax credit allowed under this chapter.

30 (e) If the taxes paid by a certified investor with respect to its state premium tax liability
31 constitute a credit against any other tax which is imposed by this state, the certified investor's
32 credit against such other tax shall not be reduced by virtue of the reduction in the certified
33 investor's tax liability based on the tax credit allowed under this chapter.

34 **7-17-6. Certified investor tax credit claims.** – (a) The aggregate amount of certified

1 capital for which tax credits shall be allowed for all certified investors under this chapter shall not
2 exceed fifty million dollars (\$50,000,000) which is the amount which would entitle all certified
3 investors in certified capital companies to take aggregate tax credits of five million dollars
4 (\$5,000,000) per year for ten (10) years. No certified capital company, on an aggregate basis with
5 its affiliates, may file tax credit allocation claims in excess of the maximum amount of certified
6 capital for which tax credits may be allowed as provided in this subsection.

7 (b) Certified capital for which tax credits are allowed will be allocated to certified
8 investors in certified capital companies in amounts equal to the amounts requested in tax credit
9 allocation claims received by the authority on the tax credit allocation claim filing date from such
10 certified capital companies on behalf of their certified investors except as specified under the
11 provisions of subsections (c) and (d) of this section. Any tax credit allocation claims filed with
12 the authority prior to the tax credit allocation claim filing date will be deemed to have been filed
13 on the tax credit allocation claim filing date.

14 (c) In the event that two (2) or more certified capital companies file tax credit allocation
15 claims with the authority on behalf of their respective certified investors on the same day, and the
16 amount of such tax credit allocation claims exceeds in the aggregate the limit of available tax
17 credits under the provisions of subsection (a) of this section, capital for which tax credits are
18 allowed shall be allocated among the certified investors who filed on that day on a pro rata basis
19 with respect to the amounts claimed. The pro rata allocation for any one (1) certified capital
20 company shall be the product of a fraction, the numerator of which is the amount of the tax credit
21 allocation claim filed on behalf of the certified investors of such certified capital company and the
22 denominator of which is the total of all tax credit allocation claims filed on behalf of all certified
23 investors on such day, multiplied by the aggregate limitation as provided in subsection (a) of this
24 section or such lesser amount of tax credits that remains unallocated on such day.

25 (d) No tax credits shall be allocated to the certified investors of any certified capital
26 company if that allocation would result in less than ten million dollars (\$10,000,000) of tax
27 credits being allocated to such investors of such certified capital company. If the certified
28 investors of one (1) or more certified capital companies that filed tax credit allocation claims do
29 not receive allocations of tax credits by operation of the previous sentence, the pro rata allocation
30 described in subsection (c) of this section shall be made as if the tax credit allocation claims filed
31 on behalf of such certified investors had not been filed in the first place. If the operation of this
32 subsection (d) results in no tax credits being allocated, then the ten million dollars (\$10,000,000)
33 minimum referenced above in this section shall be reduced by five percent (5%) and the authority
34 shall repeat the operation. If this modification once again results in no tax credits being allocated

1 then the authority shall repeat the operation of this section until the tax credits have been
2 allocated.

3 (e) Within ten (10) business days after the authority receives a tax credit allocation claim
4 filed by a certified capital company on behalf of one (1) or more of its certified investors, the
5 authority shall notify the certified capital company of the amount of tax credits allocated to each
6 of the certified investors in such certified capital company.

7 (f) In the event a certified capital company does not receive investments of certified
8 capital equaling the amount of tax credits allocated to a certified investor for which it filed a tax
9 credit allocation claim within ten (10) business days of its receipt of notice of allocation, that
10 portion of the tax credits allocated to such certified investor in the certified capital company in
11 excess of the amount of certified capital invested in the certified capital company by such
12 certified investor will be forfeited, and the authority will reallocate that certified capital among
13 the other certified capital companies on a pro rata basis with respect to the tax credit allocation
14 claims filed on behalf of the certified investors of each such certified capital company.

15 Further, in the event a certified capital company does not receive investments of certified
16 capital in the aggregate equaling or exceeding ten million dollars (\$10,000,000) within ten (10)
17 business days of the certified capital company's receipt of notice of allocation then, at the
18 discretion of the authority, all of the tax credits allocated to the certified investors of that certified
19 capital company may be forfeited. If forfeited, the authority shall reallocate those tax credits
20 among the certified investors of the other certified capital companies on a pro rata basis with
21 respect to the tax credit allocation claims filed on behalf of such certified investors.

22 (g) The maximum amount of tax credit allocation claims that may be filed on behalf of
23 any one (1) certified investor, on an aggregate basis with its affiliates, in one (1) or more certified
24 capital companies, shall not exceed the lesser of either (i) ten million dollars (\$10,000,000), or (ii)
25 ten (10) times the largest annual state premium tax liability incurred by the certified investor on
26 an aggregate basis with its affiliates during the three (3) tax years preceding the year of the tax
27 credit allocation claim filing date for which final returns have been filed.

28 **7-17-7. Qualified investment requirement.** -- (a) To continue to be certified, a certified
29 capital company must make qualified investments according to the following schedule:

30 (1) Within the period ending three (3) years after its allocation date, a certified capital
31 company must have made qualified investments cumulatively equal to thirty percent (30%) of its
32 certified capital. An investment of one dollar (\$1.00) in a Slater Business shall be deemed to be
33 equivalent to a one dollar and fifty cents (\$1.50) investment for purposes of this paragraph.

34 (2) Within the period ending five (5) years after its allocation date, a certified capital

1 company must have made qualified investments cumulatively equal to fifty percent (50%) of its
2 certified capital. Fifty percent (50%) of such investments required to be made under this
3 subsection must have been made in early stage businesses. An investment of one dollar (\$1.00)
4 in a Slater Business shall be deemed to be equivalent to a one dollar and fifty cents (\$1.50)
5 investment for purposes of this paragraph, including the early stage business investment
6 requirement.

7 (b) The aggregate cumulative amount of all qualified investments made by the certified
8 capital company from its allocation date will be considered in the calculation of the percentage
9 requirements under this chapter. Any funds received from a qualified investment may be
10 invested in another qualified investment and shall count toward any requirement in this chapter
11 with respect to investments of certified capital.

12 (c) Any business which is classified as a qualified business or early stage business, as
13 applicable, at the time of the first investment in said business by a certified capital company shall
14 remain classified as a qualified business or early stage business, as applicable, and may receive
15 follow-on investments from any certified capital company so long as the qualified business or
16 early stage business, as applicable, continues to be headquartered and have its principal business
17 operations located in the state, and such follow-on investments shall be qualified investments
18 even though such business may not meet the definition of a qualified business or early stage
19 business, as applicable, at the time of such follow-on investments.

20 (d) No qualified investment may be made if the aggregate investment by the certified
21 capital company in the qualified business following such investment would exceed fifteen percent
22 (15%) of the total certified capital of the certified capital company at the time of investment.

23 (e) At its option, a certified capital company, prior to making a proposed investment in a
24 specific business, may request from the authority a written opinion that the investment which it
25 proposes to make should be considered a qualified investment and, if applicable, whether a
26 qualified business is an early stage business. Upon receiving such a request, the authority shall
27 have ten (10) business days to determine whether or not the proposed investment meets the
28 definition of a qualified investment or whether the qualified business meets the definition of an
29 early stage business and notify the certified capital company of its determination and an
30 explanation thereof. If the authority fails to notify the certified capital company with respect to
31 the proposed investment within the ten (10) business day period, the proposed investment shall be
32 deemed to be a qualified investment or, if applicable, the qualified business will be deemed to be
33 an early stage business. If the authority determines that the proposed investment does not meet
34 all of the criteria set forth in this section, the authority may nevertheless consider the business a

1 qualified investment and approve the investment if the authority determines that the proposed
2 investment will further state economic development.

3 **7-17-8. Permitted investments.** -- All certified capital not currently invested in qualified
4 investments by the certified capital company must be invested in one (1) or more of the
5 following:

6 (1) cash deposited with a federally-insured financial institution;

7 (2) certificates of deposit in a federally-insured financial institution;

8 (3) investment securities that are obligations of the United States, its agencies or
9 instrumentalities, or obligations that are guaranteed fully as to principal and interest by the United
10 States;

11 (4) debt instruments rated at least "AA" or its equivalent by a nationally recognized rating
12 organization, or issued by, or guaranteed with respect to payment by, an entity whose unsecured
13 indebtedness is rated at least "AA" or its equivalent by a nationally recognized credit rating
14 organization, and which is not subordinated to other unsecured indebtedness of the issuer or the
15 guarantor, if any, as the case may be;

16 (5) obligations of this state, or any municipality in this state, or any political subdivision
17 thereof and rated at least "AA" or its equivalent by a nationally recognized credit rating
18 organization, and which is not subordinated to other unsecured indebtedness of the issuer or the
19 guarantor, if any, as the case may be;

20 (6) commercial paper rated at least "A1" or "P1" or its equivalent by a nationally
21 recognized credit ratings organization, with a maturity of not more than three hundred sixty-five
22 (365) days; or

23 (7) any interests in money market funds or other mutual funds, the portfolios of which are
24 limited to cash and permissible investments;

25 (8) swaps or other hedging transactions with a counter party rated at least "A" or its
26 equivalent by a nationally recognized rating agency designed to realize and/or protect the value of
27 a qualified investment; or

28 (9) any other investments approved in advance and in writing by the authority.

29 **7-17-9. Reporting requirements.** -- Each certified capital company shall report and/or
30 provide, as appropriate, to the authority with copies to the chairperson of the house finance
31 committee and the chairperson of the senate finance committee:

32 (1) As soon as practicable after the receipt of certified capital:

33 (i) the name of each certified investor from which the certified capital was received,
34 including such certified investor's insurance premium tax identification number;

1 (ii) the amount of each certified investor's investment of certified capital and tax credits;
2 and

3 (iii) the date on which the certified capital was received.

4 (2) On an annual basis, on or before January 31:

5 (i) the amount of the certified capital company's certified capital at the end of the
6 immediately preceding year;

7 (ii) whether or not the certified capital company has invested more than fifteen percent
8 (15%) of its total certified capital in any one (1) qualified business; and

9 (iii) a description of all qualified investments that the certified capital company made
10 during the previous calendar year.

11 (3) Each annual audited financial statement, which shall include the opinion of an
12 independent certified public accountant regarding those financial statements, within ninety (90)
13 days of the close of the fiscal year. The audit or other review by the independent certified public
14 accountant shall address the methods of operation and conduct of the business of the certified
15 capital company to determine if the certified capital company is complying with the statutes and
16 program rules.

17 (4) On or before January 31 of each year, each certified capital company shall pay an
18 annual, nonrefundable certification fee of five thousand dollars (\$5,000) to the authority;
19 provided, that no such fee shall be required within six (6) months of the initial certification date
20 of a certified capital company.

21 **7-17-10. Qualified distributions.** -- (a) A certified capital company may make qualified
22 distributions at any time. In order to make a distribution other than a qualified distribution, a
23 certified capital company must have made qualified investments in an amount cumulatively equal
24 to at least one hundred percent (100%) of its certified capital. In addition, in order to make a
25 distribution other than a qualified distribution at least fifty percent (50%) in terms of dollars
26 invested of its qualified investments shall have been made in early stage businesses. A certified
27 capital company may, however, make payments of principal and interest on its indebtedness
28 without any restriction whatsoever, including payments of principal and interest on the
29 indebtedness of the certified capital company on which certified investors earned tax credits.

30 (b) Distributions from a certified capital company to its certified investors and equity
31 holders, excluding qualified distributions, but including cash payments of principal and interest
32 on any qualified debt instruments issued by it, in excess of the certified capital company's original
33 certified capital and any additional capital contributions to the certified capital company, may be
34 audited by a nationally recognized certified public accounting firm acceptable to the authority, at

1 the expense of the certified capital company, if the authority directs such audit be conducted. The
2 audit shall determine whether aggregate cumulative distributions from the certified capital
3 company to all certified investors and equity holders, excluding qualified distributions but
4 including cash payments of principal and interest on any qualified debt instruments issued by it,
5 have resulted in distributions in excess of the certified capital company's original certified capital
6 and any additional capital contributions to the certified capital company. If any distribution
7 results in such a distribution exceeding the amount of the certified capital company's original
8 certified capital and any additional capital contributions to the certified capital company, then the
9 certified capital company shall pay to the state's general fund thirty-three and one-third percent
10 (33 1/3%) of such excess.

11 (c) If a business in which a qualified investment is made relocates its principal business
12 operations to another state during the term of the certified capital company's investment in the
13 business, the cumulative amount of qualified investments made by the certified capital company
14 for purposes of satisfying the requirements of subsection (a) of this section only is reduced by the
15 amount of the certified capital company's qualified investments in the business that has relocated.
16 This subsection does not apply if the business demonstrates that it has returned its principal
17 business operations to this state not later than the ninetieth (90th) day after the date of its
18 relocation.

19 **7-17-11. Recertification and decertification of certified capital company. -- (a) The**
20 authority shall conduct an annual review of each certified capital company to determine if the
21 certified capital company is abiding by the requirements of certification, to advise the certified
22 capital company as to the eligibility status of its qualified investments, and to ensure that no
23 investment has been made in violation of this chapter. Each certified capital company shall pay
24 the cost of the annual review, according to a reasonable fee schedule adopted by the authority.

25 (b) If a certified capital company certifies to the authority its good faith belief that it has
26 complied with the provisions of section 7-17-7(a)(2) of this chapter, within sixty (60) days of
27 receipt of such certification by the authority, the authority shall conduct a review of the qualified
28 investments of the certified capital company and shall certify in writing to the certified capital
29 company whether or not the certified capital company had complied with the provisions of
30 section 7-17-7(a)(2) of this chapter. The certified capital company shall pay the costs of the
31 review according to a reasonable fee schedule adopted by the authority.

32 (c) Any material violation of section 7-17-7 of this chapter shall be grounds for
33 decertification of a certified capital company. If the authority determines that a certified capital
34 company is not in compliance with the requirements of section 7-17-7 of this chapter, it shall, by

1 written notice, inform the officers of the certified capital company that the certified capital
2 company may be subject to decertification in one hundred twenty (120) days from the date of
3 mailing of the notice, unless the deficiencies are corrected and the certified capital company is
4 again in compliance with all requirements for certification.

5 (d) At the end of the one hundred twenty (120) day grace period, if the certified capital
6 company is still not in compliance with section 7-17-7 of this chapter, the authority may send a
7 notice of decertification to the certified capital company, the chairperson of the house finance
8 committee and the chairperson of the senate finance committee, and to all other appropriate state
9 agencies.

10 (e) Decertification of a certified capital company may cause the recapture of tax credits
11 previously claimed and the forfeiture of future tax credits to be claimed by certified investors
12 with respect to such certified capital company, as follows:

13 (1) Decertification of a certified capital company within three (3) years of its allocation
14 date shall cause the recapture of all tax credits previously claimed and the forfeiture of all future
15 tax credits to be claimed by certified investors with respect to such certified capital company,
16 except as set forth in subsection (e)(4) of this section;

17 (2) When a certified capital company meets all requirements for continued certification
18 under section 7-17-7(a)(1) of this chapter and subsequently fails to meet the requirements for
19 continued certification under the provisions of section 7-17-7(a)(2) of this chapter, those tax
20 credits which have been or shall be taken by certified investors within the first three (3) years in
21 which the tax credits provided for by this chapter may be taken shall not be subject to recapture or
22 forfeiture; however, all tax credits that have been or shall be taken by certified investors after the
23 third (3rd) year in which tax credits may be taken shall be subject to recapture or forfeiture.

24 (3) Once a certified capital company has met all requirements for continued certification
25 under sections 7-17-7(a)(1) and (2) of this chapter, and is subsequently decertified, those tax
26 credits which have been or will be taken by certified investors within the first five (5) years in
27 which the tax credits under this chapter may be taken will not be subject to recapture or forfeiture.
28 Those tax credits to be taken subsequent to the fifth (5th) year in which the tax credits may be
29 taken shall be subject to forfeiture only if the certified capital company is decertified on or before
30 the fifth (5th) anniversary of its allocation date.

31 (4) Once a certified capital company has invested an amount cumulatively equal to one
32 hundred percent (100%) of its certified capital in accordance with this act, all tax credits claimed
33 or to be claimed by its certified investors shall no longer be subject to recapture or forfeiture.

34 (f) Once a certified capital company has invested an amount cumulatively equal to one

1 hundred percent (100%) of its certified capital in accordance with this act, the certified capital
2 company shall no longer be subject to regulation by the authority except for the requirements of
3 subsection (b) of section 7-17-10.

4 (g) The authority shall send written notice to the address of each certified investor whose
5 tax credit has been subject to recapture or forfeiture, using the address last shown on the last
6 premium tax filing.

7 (h) The authority shall have the authority to waive any recapture or forfeiture of tax
8 credits if, after considering all facts and circumstances, it determines that such waiver will have
9 the effect of furthering state economic development.

10 **7-17-12. Transferability of tax credits.** -- The tax credit earned pursuant to this chapter
11 may be transferred or sold to any other person with state premium tax liability. The authority
12 shall promulgate regulations to facilitate the transfer or sale of the tax credits. Any such transfer
13 of sale shall not affect the time schedule for taking the tax credit as provided in this chapter. Any
14 tax credits recaptured pursuant to section 7-17-11 of this chapter shall be the liability of the
15 taxpayer which actually claimed the tax credits.

16 **7-17-13. Rules and regulations.** -- The authority, in conjunction with the tax
17 administrator of the Rhode Island division of taxation, shall make and promulgate rules and
18 regulations necessary to carry out the provisions of this chapter within one hundred twenty (120)
19 days of the effective date of this chapter. Such rules and regulations shall provide that the
20 authority shall begin accepting applications for certification as a certified capital company not
21 later than thirty (30) days after the issuance of the authority's promulgated rules and regulations.
22 In addition, such rules and regulations shall further provide the tax credit allocation claim filing
23 date on which the authority will accept tax credit allocation claims on behalf of certified investors
24 investing in certified capital companies shall be no earlier than ninety (90) days and no later than
25 one hundred twenty (120) days after the date on which the authority will first accept applications
26 for certification. All such rules and regulations shall be promulgated in conformity with the
27 Rhode Island Administrative Procedures Act, chapter 35 of title 42.

28 CHAPTER 18

29 RHODE ISLAND ECONOMIC DEVELOPMENT INFRASTRUCTURE ACT

30 **7-18-1. Short title.** – This chapter shall be known as “The Rhode Island Economic
31 Development Infrastructure Act.”

32 **7-18-2. Legislative findings.** – Having found and declared: that there exists in our state a
33 scarcity of facilities to headquarter, house and promote small businesses within the state; that the
34 state has an opportunity to adopt a program to establish a public/private partnership between the

1 Rhode Island Economic Development Corporation and an “infrastructure development company
2 or companies” that will provide for investment in facilities to houses early stage and small
3 enterprises in this state by allowing tax credits to those investors paying taxes in Rhode Island
4 which make investments in such infrastructure development company or companies.

5 **7-18-3. Definitions.** – The following words and terms, unless the context clearly
6 indicates a different meaning, shall have the following meanings:

7 (1) “Authority” means the Rhode Island Economic Development Corporation or its
8 designee;

9 (2) “Infrastructure development capital” means an investment of cash by an investor in an
10 infrastructure development company which fully funds the purchase price of an equity interest in
11 the infrastructure development company or a qualified debt instrument issued by the
12 infrastructure development company or any combination thereof;

13 (3) “Infrastructure development company” means a partnership, limited partnership,
14 corporation, trust or limited liability company, whether organized on a profit or not for profit-
15 basis, that has as its primary business activity the investment of cash in qualified infrastructure
16 projects and that is certified by the authority as meeting the criteria set forth in this chapter.

17 (4) “Investor” means any insurance company that invests certified capital pursuant to an
18 allocation of tax credits under section 7-18-6 of this chapter;

19 (5) “Person” means any individual person or entity, including a corporation, general or
20 limited partnership, sole proprietorship, trust, limited liability company or limited liability
21 partnership;

22 (6) “Qualified infrastructure investment” means the investment of cash by an
23 infrastructure development company in a qualified infrastructure project for the purchase of any
24 debt, debt participation, equity or hybrid security of any nature and description whatsoever issued
25 by that qualified infrastructure project, including a debt instrument or security which has the
26 characteristics of debt but which provides for conversion into equity or equity participation
27 instruments such as options or warrants. Such debt instruments and securities may be secured by
28 liens against the property, guaranties from financial institutions or government entities, pledges
29 for future financing to repay the debt instruments and securities, or any other assets that the
30 qualified infrastructure project may pledge;

31 (7) “Qualified infrastructure project” means a project determined by the authority to be
32 essential to further economic development in the state and for which a commitment of qualified
33 infrastructure capital is necessary to bring the project to completion. Such project shall be located

1 in the state. Qualified infrastructure projects shall include real estate acquisition and development
2 such as construction and outfitting of office space, laboratory space, or an equivalent facility;

3 (8) “State premium tax liability” means any liability incurred by an insurance company
4 under the provisions of sections 44-17-1 et seq., or, if any tax imposed by sections 44-17-1 et
5 seq., is repealed or reduced by the state, any other tax imposed on an insurance company by the
6 state.

7 (9) “Tax credit” means the credit against state premium tax liability which is earned by a
8 certified investor in connection with an investment of certified capital in a certified capital
9 company pursuant to this chapter.

10 **7-18-4. Regulations and requirements for infrastructure development company. --**

11 (a) The authority shall promulgate rules and regulations for making an application to become an
12 infrastructure development company.

13 (b) The authority may select one (1) or more infrastructure development companies to
14 make qualified infrastructure investments in qualified infrastructure projects from infrastructure
15 development capital. Pursuant to a request for proposal by the authority, the procedures of which
16 shall comport with state law, notice of the infrastructure development project shall be provided to
17 the house of representatives fiscal advisor and the senate fiscal advisor. Prior to the selection of
18 an infrastructure development company, the infrastructure development project must be approved
19 by the chairperson of the house of representatives finance committee and the chairperson of the
20 senate finance committee. Each chairperson shall report his or her approval or denial to the
21 authority within thirty (30) days of notification of the infrastructure development project.

22 **7-18-5. Tax credits. - - (a) Any investor who makes an investment of infrastructure**

23 development capital pursuant to an allocation of tax credits under section 7-18-6 of this chapter
24 shall, in the year of investment, earn a vested credit against state tax liability equal to one hundred
25 percent (100%) of the investor’s investment of infrastructure development capital. An investor
26 shall be entitled to take up to ten percent (10%) of the vested tax credit to reduce the investor’s
27 state tax liability for any taxable year of the investor beginning with the annual payment for the
28 tax year ending December 31, 2005, plus an amount of unused tax credits which are carried
29 forward pursuant to subsection (b) of this section beginning with the estimated payments for the
30 tax year ending December 31, 2005.

31 (b) The tax credit that may be applied against state tax liability in any one (1) year may
32 not exceed the state tax liability of the investor for such taxable year. All unused tax credits
33 against state tax liability may be carried forward indefinitely and used in any subsequent year
34 until the tax credits are utilized in full.

1 **7-18-6. Investor tax credit claims.** - - (a) The aggregate amount of infrastructure
2 development capital for which tax credits shall be allowed for all investors under this chapter
3 shall not exceed twenty-five million dollars (\$25,000,000) which is the amount which would
4 entitle all investors in infrastructure development companies to take aggregate tax credits of two
5 million five hundred thousand dollars (\$2,500,000) per year for ten (10) years. No infrastructure
6 development company, on an aggregate basis with its affiliates, may file tax credit allocation
7 claims in excess of the maximum amount of infrastructure development capital for which tax
8 credits may be allowed as provided in this subsection.

9 **(b) Infrastructure development capital for which tax credits are allowed will be allocated**
10 to investors in infrastructure development companies in amounts equal to the amount requested in
11 the tax credit allocation claims received by the authority from such infrastructure development
12 companies on behalf of their investors.

13 **(c) Within ten (10) business days after the authority receives a tax credit allocation claim**
14 filed by an infrastructure development company on behalf of one (1) or more of its certified
15 investors, the authority shall notify the infrastructure development company of the amount of tax
16 credits allocated to each of the investors in such infrastructure development company.

17 **(d) The maximum amount of tax credit allocation claims that may be filed on behalf of**
18 any one (1) investor, on an aggregate basis with its affiliates, in one (1) one more infrastructure
19 development companies, shall not exceed ten million dollars (\$10,000,000).

20 **7-18-7. Qualified infrastructure investment requirements.** - - (a) In order to remain a
21 qualified infrastructure development company, the infrastructure development company meets the
22 requirements for making qualified infrastructure investments in qualified infrastructure projects
23 as determined by the authority in rules and regulations promulgated pursuant to this act. Any
24 funds received from a qualified infrastructure investment may be invested in another qualified
25 infrastructure investment.

26 **(b) The procedure for making qualified infrastructure investments will be determined by**
27 the authority by rule and regulation. The authority will select qualified infrastructure projects.
28 The authority will propose one or more qualified infrastructure projects to the qualified
29 infrastructure development company or companies. Such proposal or proposals will set out the
30 purpose of the qualified infrastructure project, why the authority selected it, the amount to be
31 invested, the proposed terms and conditions of the investment, the amounts, if any, to be funded
32 by sources other than an infrastructure development company, and the terms and conditions of
33 those investments. The authority may negotiate with the infrastructure development company or
34 companies to set the best terms and conditions for the investment. The authority may withdraw a

1 qualified investment project from consideration at any time.

2 (c) Decertification of an infrastructure development company may cause the recapture of
3 tax credits previously claimed and the forfeiture of future tax credits to be claimed by investors
4 with respect to such infrastructure development company under rules and regulations to be
5 promulgated by the authority.

6 **7-18-8. Reporting requirements.** – An infrastructure development company shall report,
7 as appropriate, to the authority:

8 (1) As soon as practicable after the receipt of infrastructure development:

9 (i) the name of each investor from which the infrastructure development capital was
10 received;

11 (ii) the amount of each investor's investment of infrastructure development capital and
12 tax credits; and

13 (iii) the date on which the infrastructure development capital was received.

14 (2) On an annual basis, on or before January 31:

15 (i) the amount of the infrastructure development company's infrastructure development
16 capital at the end of the immediately preceding year;

17 (ii) a description of all qualified infrastructure investments that the infrastructure
18 development company made during the previous calendar year.

19 (4) On or before January 31 of each year, each infrastructure development company shall
20 pay an annual, nonrefundable certification fee of five thousand dollars (\$5,000) to the authority.

21 **7-18-9. Qualified distributions.** – (a) An infrastructure development company may
22 make qualified distributions at any time. In order to make a distribution other than a qualified
23 distribution, an infrastructure development company must have made qualified infrastructure
24 investments in an amount cumulatively equal to at least one hundred percent (100%) of its
25 infrastructure development capital. An infrastructure development company may, however, make
26 payments of principal and interest on its indebtedness without any restriction whatsoever,
27 including payments of principal and interest on the indebtedness of the infrastructure
28 development company on which investors earned tax credits.

29 **7-18-10. Transferability of tax credits.** – The tax credit earned pursuant to this chapter
30 may be transferred or sold to any other person with state premium tax liability. The authority
31 shall, in conjunction with the tax administrator of the Rhode Island division of taxation,,
32 promulgate regulations to facilitate the transfer or sale of the tax credits. Any such transfer of
33 sale shall not affect the time schedule for taking the tax credit as provided in this chapter. Any
34 tax credits recaptured pursuant to section 718-7 of this chapter shall be the liability of the

1 taxpayer which actually claimed the tax credits.

2 **7-18-11. Rules and regulations.** – The authority shall, in conjunction with the tax
3 administrator of the Rhode Island division of taxation, make and promulgate rules and regulations
4 necessary to carry out the provisions of this chapter. Such rules and regulations shall provide that
5 the authority shall begin accepting applications for certification as an infrastructure development
6 company not later than thirty (30) days after the issuance of the authority's promulgated rules and
7 regulations. All such rules and regulations shall be promulgated in conformity with the Rhode
8 Island Administrative Procedures Act, chapter 35 of title 42.

9 SECTION 2. This act shall take effect upon passage.

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LC02125/SUB A/2
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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO CORPORATIONS, ASSOCIATIONS, AND PARTNERSHIPS -- RHODE
ISLAND CERTIFIED CAPITAL COMPANIES ACT

1 This act would create the Rhode Island Certified Capital Companies Act by increasing
2 the amount of venture capital for certain small businesses operating in the state by allowing a
3 premium tax liability credit to an insurance company making a qualified investment through a
4 certified capital company in such qualified businesses.

5 This act would take effect upon passage.

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A N A C T

RELATING TO CORPORATIONS, ASSOCIATIONS, AND PARTNERSHIPS -- RHODE ISLAND
CERTIFIED CAPITAL COMPANIES ACT

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LC02125/SUB A/2
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Presented by