

LC02092

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2003

A N A C T

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

Introduced By: Representatives Winfield, Moura, Lewiss, Gallison, and Reilly

Date Introduced: February 11, 2003

Referred To: House Corporations

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 7 of the General Laws entitled "Corporations, Associations, and
2 Partnerships" is hereby amended by adding thereto the following chapter:

3 CHAPTER 17

4 RHODE ISLAND CERTIFIED CAPITAL COMPANIES ACT

5 **7-17-1. Short title.** – This chapter shall be known as “The Rhode Island Certified Capital
6 Companies Act.”

7 **7-17-2. Legislative findings.** – Having found and declared: that there exists in our state a
8 scarcity of venture capital available for investment in small businesses headquartered in the state;
9 that the state has an opportunity to adopt a program to establish “certified capital companies”
10 which will provide for investment in pre-early stage, early stage and start-up enterprises in this
11 state (including the Slater Center Businesses as defined herein) by allowing an insurance
12 premium tax credit to those insurance companies doing business in Rhode Island which make
13 qualified investments in such certified capital companies; that such qualified investments made in
14 those certified capital companies have been shown to attract additional venture capital
15 investments in such small businesses; that the investment through such certified capital
16 companies has been proven to stimulate a substantial increase in venture capital investments in
17 the state and to create jobs and expand the diversity of this state’s economic base; and that the
18 state is competing for such investment at a disadvantage with those states which have instituted

1 programs to support such certified capital companies.

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

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

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

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

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

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

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

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

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

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

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

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

1 (7) “Early stage business” means a business or an enterprise that either, or in any
2 combination with another entity, is in development or has been operational for less than two (2)
3 years and is in need of capital for pre-startup, startup, survival expansion, new product
4 development, or similar business purpose.

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

8 (9) “Pre-early stage business” means a business or an enterprise that either, or in any
9 combination with another entity, is completing its initial product or serviced research and
10 development, creating a prototype, completing market research, hiring the initial management
11 team members, or formulating a strategy to achieve very high growth.

12 (10) “Qualified business” means a business that, at the time of a certified capital
13 company’s first investment in that business, is headquartered and has its principal business
14 operations located in the state, and is a small business concern as defined in 13 CFR 121.301(c)
15 of the small business size regulations of the United States Small Business Administration. A
16 business that is predominantly engaged in professional services provided by accountants, lawyers
17 or physicians shall not constitute a qualified business.

18 (11) “Qualified debt instrument” means a debt instrument issued to a certified investor by
19 a certified capital company, at par value or a premium, with an original maturity date of at least
20 five (5) years from date of issuance and a repayment schedule that is no faster than a level
21 principal amortization over five (5) years and that contains no interest, distribution or payment
22 features that are related to the profitability of the certified capital company or the performance of
23 the certified capital company’s investment portfolio until such time as the certified capital
24 company is permitted to make distributions other than qualified distributions under section 8 of
25 this chapter.

26 (12) “Qualified distribution” means any distribution or payment by a certified capital
27 company in connection with any of the following:

28 (i) Reasonable costs and expenses of forming, organizing and syndicating the certified
29 capital company, including the costs of financing and insuring the obligations of the certified
30 capital company;

31 (ii) Reasonable costs and expenses of managing and operating the certified capital
32 company, including, but not limited to, reasonable and necessary fees paid for professional
33 services related to the formation and operation of the certified capital company and an annual
34 management fee in an amount that does not exceed two and one-half percent (2.5%) of the

1 certified capital of the certified capital company; and

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

9 (13) “Qualified investment” means the investment of cash by a certified capital company
10 in a qualified business, the Samuel Slater Technology Fund, a Slater Center, or a Slater Center
11 Business for the purchase of any debt, debt participation, equity or hybrid security of any nature
12 and description whatsoever issued by that qualified business, including a debt instrument or
13 security which has the characteristics of debt but which provides for conversion into equity or
14 equity participation instruments such as options or warrants.

15 (14) “Samuel Slater Technology Fund” means the “Technology Commercialization
16 Fund” supported by annual state appropriation and administered by the Rhode Island Economic
17 Policy Council.

18 (15) “Slater Center” means one of the 501(c)(3) nonprofit organizations funded by the
19 Samuel Slater Technology Fund to commercialize technology in a specific field or fields.

20 (16) “Slater Center Business” means any qualified business that is acknowledged by a
21 Slater Center or the Samuel Slater Technology Fund as a Slater Center Business.

22 (17) “State” means the state of Rhode Island and Providence Plantations, and the various
23 departments and agencies thereof.

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

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

30 (20) “Tax credit allocation claim” means a claim for allocation of tax credits prepared
31 and executed by an insurance company on a form provided by the authority and filed by a
32 certified capital company with the authority. The form shall include an affidavit of the insurance
33 company pursuant to which an insurance company shall become legally bound and irrevocably
34 committed to make an investment of certified capital in a certified capital company in the amount

1 allocated, even if such amount is less than the amount of the claim, subject only to the receipt of
2 an allocation pursuant to section 6 of this chapter.

3 **7-17-4. Regulations and requirements for certified capital company.** – (a) The
4 authority shall promulgate rules and regulations for making an application to become a certified
5 capital company. The applicant shall pay a nonrefundable application fee of seven thousand five
6 hundred dollars (\$7,500) at the time of filing the application with the authority.

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

12 (c) The authority shall review the organizational documents of each applicant for
13 certification and the business history of the applicant and shall determine that the applicant’s
14 cash, marketable securities and other liquid assets are at least five hundred thousand dollars
15 (\$500,000). As part of its application, each applicant shall submit to the authority its balance
16 sheet, audited with an unqualified opinion of an independent certified public accountant, of a date
17 no more than thirty-five (35) days prior to the date of the application.

18 (d) The authority shall verify that at least two (2) principals of the certified capital
19 company or at least two (2) persons employed or engaged to manage the funds of the certified
20 capital company each have not less than four (4) years of experience ~~in the venture capital~~
21 ~~industry~~ making venture capital investments, which may include investments made in connection
22 with a state or federally sponsored venture capital program (the “Experienced Individuals”). As
23 part of its application, each applicant will provide to the authority affidavits, with detailed
24 resumes or equivalent biographic materials appended, from the experienced individuals stating
25 that their experience meets the requirement of this subsection (a)(3). In addition, the experienced
26 individuals will provide to the authority affidavits stating that they have not violated federal or
27 state securities or banking laws or been convicted of any crime involving fraud.

28 (e) The certified capital company shall certify that within sixty (60) days of the
29 investment of certified capital in the certified capital company, at least one (1) of the managing
30 principals or persons employed or engaged to manage the funds of the certified capital company
31 shall be primarily located in an office of the certified capital company which is based in the state.

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

34 “By authorizing the formation of a certified capital company, the State of Rhode Island

1 does not necessarily endorse the quality of management or the potential for earnings of such
2 company and is not liable for damages or losses to a certified investor in the company. Use of the
3 word ‘certified’ in an offering does not constitute a recommendation or endorsement of the
4 investment by the authority or the state. In the event applicable provisions of this law are violated,
5 the state may require forfeiture of unused tax credits and repayment of used tax credits.”

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

17 (h) No insurance company or any affiliate of an insurance company shall directly or
18 indirectly own, whether through rights, options, convertible interests or otherwise, fifteen percent
19 (15%) or more of the voting equity interests of a certified capital company or manage a certified
20 capital company or control the direction of investments for a certified capital company. This
21 provision shall not preclude a certified investor, insurance company or any other party from:

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

26 (ii) establishing controls to insure that the certified capital company satisfies the
27 requirements of section 7 of this chapter.

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

34 (j) Nothing in this subsection shall limit an insurance company’s ownership of nonvoting

1 equity interests in a certified capital company.

2 **7-17-5. Premium tax credits.** – (a) Any certified investor who makes an investment of
3 certified capital pursuant to an allocation of tax credits under section 6 of this chapter shall, in the
4 year of investment, earn a vested credit against state premium tax liability equal to one hundred
5 percent (100%) of the certified investor’s investment of certified capital. A certified investor shall
6 be entitled to take up to ten percent (10%) of the vested tax credit to reduce the certified
7 investor’s state premium tax liability for any taxable year of the certified investor beginning with
8 the annual payment for the tax year ending December 31, 2005, plus an amount of unused tax
9 credits which are carried forward pursuant to subsection (b) of this section beginning with the
10 estimated payments for the tax year ending December 31, 2005.

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

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

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

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

27 **7-17-6. Certified investor tax credit claims.** – (a) The aggregate amount of certified
28 capital for which tax credits shall be allowed for all certified investors under this chapter shall not
29 exceed the amount which would entitle all certified investors in certified capital companies to
30 take aggregate tax credits of ten million dollars (\$10,000,000) per year for ten (10) years. No
31 certified capital company, on an aggregate basis with its affiliates, may file tax credit allocation
32 claims in excess of the maximum amount of certified capital for which tax credits may be allowed
33 as provided in this subsection.

34 (b) Certified capital for which tax credits are allowed will be allocated to certified

1 investors in certified capital companies in the order that tax credit allocation claims are received
2 by the authority by such certified capital companies on behalf of their certified investors. All
3 filings made on the same day shall be treated as having been made contemporaneously.

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

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

19 (e) In the event a certified capital company does not receive investments of certified
20 capital equaling the amount of tax credits allocated to a certified investor for which it filed a tax
21 credit allocation claim within ten (10) business days of its receipt of notice of allocation, that
22 portion of the tax credits allocated to such certified investor in the certified capital company in
23 excess of the amount of certified capital invested in the certified capital company by such
24 certified investor will be forfeited, and the authority will reallocate that certified capital among
25 the other certified capital companies on a pro rata basis with respect to the tax credit allocation
26 claims filed on behalf of the certified investors of each such certified capital company.

27 (f) The maximum amount of tax credit allocation claims that may be filed on behalf of
28 any one (1) certified investor, on an aggregate basis with its affiliates, in one (1) or more certified
29 capital companies, shall not exceed the greater of:

30 (1) ten million dollars (\$10,000,000); or

31 (2) fifteen percent (15%) of the aggregate limitation as provided in subsection (a) of this
32 section.

33 **7-17-7. Qualified investment requirement.** -- (a) To continue to be certified, a certified
34 capital company must make qualified investments according to the following schedule:

1 (1) Within the period ending three (3) years after its allocation date, a certified capital
2 company must have made qualified investments cumulatively equal to thirty percent (30%) of its
3 certified capital. Ten percent (10%) of the qualified investments required to be made under this
4 subsection must have been made in either, or any combination of, the Samuel Slater Technology
5 Fund, a Slater Center or Slater Centers, or a Slater Center Business or Slater Center Businesses.

6 (2) Within the period ending five (5) years after its allocation date, a certified capital
7 company must have made qualified investments cumulatively equal to fifty percent (50%) of its
8 certified capital. Ten percent (10%) of the qualified investments required to be made under this
9 subsection must have been made in either, or any combination of, the Samuel Slater Technology
10 Fund, a Slater Center or Slater Centers, or a Slater Center Business or Slater Center Businesses.

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

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

23 (d) No qualified investment may be made if the aggregate investment by the certified
24 capital company in the qualified business following such investment would exceed fifteen percent
25 (15%) of the total certified capital of the certified capital company at the time of investment.

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

1 may nevertheless consider the business a qualified investment and approve the investment if the
2 authority determines that the proposed investment will further state economic development.

3 (f) All certified capital not currently invested in qualified investments by the certified
4 capital company must be invested in one (1) or more of the following:

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

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

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

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

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

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

22 (7) any other investments approved in advance and in writing by the authority.

23 (g) Each certified capital company shall report and/or provide, as appropriate, to the
24 authority with copies to the chairperson of the house finance committee and the chairperson of
25 the senate finance committee;

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

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

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

30 and

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

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

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

1 (ii) whether or not the certified capital company has invested more than fifteen percent
2 (15%) of its total certified capital in any one (1) qualified business; and

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

5 (3) Each certified capital company shall provide to the authority annual audited financial
6 statements, which shall include the opinion of an independent certified public accountant
7 regarding those financial statements, within ninety (90) days of the close of the fiscal year. The
8 audit or other review by the independent certified public accountant shall address the methods of
9 operation and conduct of the business of the certified capital company to determine if the certified
10 capital company is complying with the statutes and program rules and that the funds received by
11 the certified capital company have been invested as required within the time limits provided by
12 section 5(a) of this chapter.

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

17 (5) On a semi-annual basis, on or before January 31st and July 31st in each year, a listing
18 of each of the qualified businesses and each of the Slater Center businesses receiving a qualified
19 investment and a portfolio performance report relating to such entities.

20 (6) On an annual basis, on or before September 15 in each year, the audited financial
21 statements for each of the Economic Policy Council, Samuel Slater Technology Fund, the Slater
22 Center on both a consolidated and consolidating basis, and all of such reports to be prepared in
23 conformity with generally accepted accounting principles or government auditing standards as
24 appropriate.

25 (7) On an annual basis, on or before February 15th in each year, the unaudited financial
26 statements for each of the Economic Policy Council, Samuel Slater Technology Fund, the Slater
27 Center on both a consolidated and consolidating basis, and all of such reports to be prepared in
28 conformity with generally accepted accounting principles or government auditing standards as
29 appropriate.

30 **7-17-8. Qualified distributions.** -- (a) A certified capital company may make qualified
31 distributions at any time. In order to make a distribution other than a qualified distribution, a
32 certified capital company must have made qualified investments in an amount cumulatively equal
33 to at least one hundred percent (100%) of its certified capital of which not less than five percent
34 (5%) shall have been made in either, or any combination of, the Samuel Slater Technology Fund,

1 a Slater Center or Slater Centers, and/or a Slater Center Business or Slater Center Businesses and
2 not less than thirty percent (30%) shall have been many in either, or any combination of pre-early
3 stage and/or early stage business. An investment in a Slater Center business shall count toward
4 both the five percent (5%) and thirty percent (30%) requirement described above. A certified
5 capital company may, however, make payments of principal and interest on its indebtedness
6 without any restriction whatsoever, including payments of indebtedness of the certified capital
7 company on which certified investors earned tax credits.

8 (b) Distributions from a certified capital company to its certified investors and equity
9 holders, other than qualified distributions, in excess of the certified capital company's original
10 certified capital and any additional capital contributions to the certified capital company, may be
11 audited by a nationally recognized certified public accounting firm acceptable to the authority, at
12 the expense of the certified capital company, if the authority directs such audit be conducted. The
13 audit shall determine whether aggregate cumulative distributions from the certified capital
14 company to all certified investors and equity holders, other than qualified distributions, have
15 resulted in an annual internal rate of return exceeding fifteen percent (15%) on the sum of the
16 certified capital company's original certified capital and any additional capital contributions to the
17 certified capital company. If any distribution results in such annual internal rate of return
18 exceeding fifteen percent (15%), then the certified capital company shall pay to the Samuel Slater
19 Technology Fund ten percent (10%) of such excess.

20 **7-17-9. Recertification and decertification of certified capital company.** -- (a) The
21 authority shall conduct an annual review of each certified capital company to determine if the
22 certified capital company is abiding by the requirements of certification, to advise the certified
23 capital company as to the eligibility status of its qualified investments, and to ensure that no
24 investment has been made in violation of this chapter. Each certified capital company shall pay
25 the cost of the annual review, according to a reasonable fee schedule adopted by the authority.

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

33 (c) Any material violation of section 7-17-7 of this chapter shall be grounds for
34 decertification of the certified capital company. If the authority determines that a certified capital

1 company is not in compliance with the requirements of section 7-17-7 of this chapter, it shall, by
2 written notice, inform the officers of the certified capital company that the certified capital
3 company may be subject to decertification in one hundred twenty (120) days from the date of
4 mailing of the notice, unless the deficiencies are corrected and the certified capital company is
5 again in compliance with all requirements for certification.

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

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

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

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

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

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

1 (f) Once a certified capital company has invested an amount cumulatively equal to one
2 hundred percent (100%) of its certified capital in qualified investments, the certified capital
3 company shall no longer be subject to regulation by the authority.

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 **7-17-10. 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 7-17-9 of this chapter shall be the liability of the
15 taxpayer which actually claimed the tax credits.

16 **7-17-11. Rules and regulations.** -- The authority shall make and promulgate rules and
17 regulations necessary to carry out the provisions of this chapter within one hundred twenty (120)
18 days of the effective date of this chapter. Such rules and regulations shall provide that the
19 authority shall begin accepting applications for certification as a certified capital company not
20 later than thirty (30) days after the issuance of the authority's promulgated rules and regulations.
21 In addition, such rules and regulations shall further provide a date on which the authority will first
22 accept tax credit allocation claims on behalf of certified investors, which shall be no earlier than
23 one hundred twenty (120) days after the date on which the authority will first accept applications
24 for certification. All such rules and regulations shall be promulgated in conformity with the
25 Rhode Island Administrative Procedures Act, Chapter 42-35.

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

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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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