

HAWAII STRATEGIC DEVELOPMENT CORPORATION

Adoption of Chapter 127  
Hawaii Administrative Rules

June 17, 1991

SUMMARY

Chapter 127, Hawaii Administrative Rules,  
entitled, "Hawaii Strategic Development Corporation",  
is adopted.

HAWAII ADMINISTRATIVE RULES

TITLE 15

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT  
& TOURISM

SUBTITLE 12

HAWAII STRATEGIC DEVELOPMENT CORPORATION

CHAPTER 127

HAWAII STRATEGIC DEVELOPMENT CORPORATION  
RULES OF PRACTICE AND PROCEDURE

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SUBCHAPTER 1

RULES OF GENERAL APPLICABILITY

§15-127-1 Purpose. This chapter is to provide rules governing implementation of the Hawaii Strategic Development Corporation authorized by chapter 211F, Hawaii Revised statutes.

(Eff: JUL 20 1991 ] (Auth: HRS §211F-2)  
(Imp: HRS §211F-2)

§15-127-2 Definitions. As used in this chapter, unless a different meaning clearly appears in the context:

"Board" means the board of directors of the Hawaii strategic development corporation;

"Corporation" means the Hawaii strategic development corporation.

"Direct investment" means a cash investment by the corporation in qualified securities of an enterprise;

"Economic development project" means an industrial, commercial, or agricultural enterprise organized for profit. Economic development projects shall not include tourism-related service businesses, retailing in Hawaii or the construction of housing;

"Enterprise" means a person with a place of business in Hawaii which is, or proposes to be, engaged in business for profit in Hawaii, provided that the endeavor shall not be devoted to the sale of goods at retail in Hawaii, construction of housing, or tourism-related service businesses;

"Ex officio member" means the state director of business, economic development and tourism or the designated representative;

"Financial participation" means investments made by the corporation in conjunction with private investors i.e. coinvesting;

"Meeting" means the convening of the board for which a quorum is required in order to transact business or to make a decision by vote;

"Local investment" means an investment in an enterprise;

"Minority-owned businesses" means businesses at

least fifty per cent owned and managed by socially or economically disadvantaged persons;

"Person" means a sole proprietorship, partnership, joint venture, corporation, or other business association of persons organized for profit;

"Professional investor" means any bank, bank holding company, savings institution, trust company, insurance company, investment company registered under the Federal Investment Company Act of 1940, financial services loan company, pension or profit-sharing trust or other financial institution or institutional buyer, licensee under the Federal Small Business Investment Act of 1958, or any person, partnership, or other entity of whose resources a substantial amount is dedicated to investing in equity or debt instruments and whose tangible net worth exceeds \$250,000;

"Qualified security" means any note, stock, treasury stock bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, preorganization certificate of subscription, transferable share, investment contract, certificate of deposit for a security, certificate of interest or participation in a patent, or in royalty or other payments under such a patent, or, in general, any interest or instrument commonly known as a "security" or any certificate for, receipt for, or option, warrant, or right to subscribe to or purchase any of the foregoing;

"Seed capital" means financing provided for the earliest stage of business development, including but not limited to developing a working prototype, preparing a business plan, performing an initial market analysis, or organizing a management team;

"Surety" refers to the acquisition of insurance, a guarantee, or letter of credit to guarantee all or part of loans, bonds, debentures, or leases for qualified economic development projects;

"Venture Capital" means financing in exchange for qualified securities;

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

- (1) Equity interests without a repurchase agreement for at least five years;

- (2) A right or option to purchase equity interests;
- (3) Any debenture or loan, whether or not convertible or having stock purchase rights, which are subordinated, together with security interests against the assets of the borrower, on the same terms as other financial institutions, and that is for a term of not less than three years with principal payments deferred during the first three years; and
- (4) Limited partnership interests.  
[Eff JUL 20 1991 ] (Auth: HRS §211F-2) (Imp: HRS §211F-2)

§15-127-3 Purpose of Corporation. The purpose of the corporation shall be to encourage economic development and diversification in Hawaii through innovative actions in cooperation with private enterprises. The corporation shall establish programs to stimulate private capital investment in Hawaii toward investments that promote the welfare of citizens in this State, economic growth, employment, and economic diversification. The corporation may use public funds to provide incentives to private investment activity, by coinvesting public funds with private financial organizations to increase the impact of the public investment while utilizing the investment acumen of the private sector, and by using public funds to reduce the risks of private investments. The corporation shall have the flexibility to provide various types of financial assistance. When providing financial assistance, the corporation shall make provision for the recovery of its expenditures, as far as possible.

[Eff JUL 20 1991 ] (Auth: HRS §211F-2)  
(Imp: HRS §211F-2)

§15-127-4 Meetings of the board. (a) The meetings of the board shall be open to the public as provided in section 92-3, except that when it is necessary for the board to receive information that is proprietary to a particular enterprise the disclosure of which might be harmful to the business

interests of the enterprise, the board may enter into an executive meeting that is closed to the public.

(b) The board shall be subject to the procedural requirements of section 92-4; provided that this authorization to hold closed meetings in accordance with subsection (a) shall be in addition to the exceptions listed in section 92-5, to enable the corporation to respect the proprietary requirements of enterprises with which it has business dealings.

[Eff JUL 20 1991 ] (Auth: HRS §211F-2)  
(Imp: HRS §211F-2)

§15-127-5 Quorum; designated representative.

(a) The power of the corporation shall be vested in the members of the board in office from time to time. A quorum shall consist of a majority of all the members the board is entitled to by statute, and the affirmative vote of at least that number of members shall be necessary to make any action of the board valid.

(b) A designated representative shall serve as a voting member when representing an ex officio member.

[Eff JUL 20 1991 ] (Auth: HRS §211F-2)  
(Imp: HRS §211F-2)

§15-127-6 Confidentiality of proprietary business information; disclosure. Notwithstanding chapter 92, 92F, or any other law to the contrary, any documents or data made or received by any member or employee of the corporation, to the extent that the material or data consist of trade secrets, commercial or financial information regarding the operation of any business conducted by an applicant for, or recipient of, any form of assistance that the corporation is empowered to render, or regarding the competitive position of that applicant in a particular field of endeavor, shall not be a public record; provided that if the corporation purchases a qualified security from an applicant, the commercial and financial information, excluding confidential business information, shall be deemed to become a public record of the corporation. If the information

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is made or received by any member or employee of the corporation after the purchase of the qualified security, it shall become a public record three years from the date the information was made or received. Any discussion or consideration of trade secrets or commercial or financial information, shall be held by the board, or any subcommittee of the board, in executive sessions closed to the public; provided that the purpose of any such executive session shall be set forth in the official minutes of the corporation and business which is not related to that purpose shall not be transacted, nor shall any vote be taken during the executive sessions.

[Eff JUL 20 1991 ] (Auth: HRS §211F-2) (Imp: HRS §211F-2)

§15-127-7 Conflict of interest; board members.

The corporation shall not invest in, purchase from, sell to, borrow from, loan to, contract with, or otherwise deal with any person or entity in which a board member has any financial interest.

[Ef JUL 20 1991 ] (Auth: HRS §211F-2)  
(Imp: HRS §211F-2)

§15-127-8 President; responsibilities.

The board shall appoint a president of the corporation who shall serve at the pleasure of the board and shall be exempt from chapters 76 and 77. The board shall set the salary and duties of the president. The president shall be directly responsible to the board, and shall serve at the pleasure of the board, and shall have responsibility for the execution of the board's policies and administration of corporate affairs. The board may delegate to its president, staff, or others those functions and powers that the board deems necessary or appropriate, including but not limited to the oversight and supervision of employees or contractors.

[Eff JUL 20 1991 ]  
(Auth: HRS §211F-2) (Imp: HRS §211F-2)

## SUBCHAPTER 2

## INVESTMENTS BY THE CORPORATION

§15-127-15 General Guidelines. (a) All actions taken by the corporation shall be necessary to achieve the purposes and objectives of this chapter. The corporation shall evaluate all programs after three years to determine their effectiveness.

(b) Financial participation shall be made on the condition that the recipient of the assistance shall utilize the money to assist economic development projects within the State that have potential for increasing the diversification of the economic base and employment.

(c) Investments by the corporation with persons shall be made on the basis of solicitation and a competitive technical review process, subject to the availability of funds allocated to the corporation for making investments. Any organization applying for an investment shall meet the following standards:

- (1) Have bylaws or policies that describe the manner in which business is conducted;
- (2) Be licensed and accredited, as applicable, in accordance with requirements of federal, state, and county governments;
- (3) Comply with applicable federal and state laws prohibiting discrimination against any person on the basis of race, color, national origin, religion, creed, sex, age, or physical handicap; and
- (4) Comply with other requirements as the board may prescribe.

(d) The corporation shall develop procedures to set priorities as to which types of businesses and industries are most likely to provide significant opportunities for economic development and diversification in the State, consistent with the purposes of this chapter. This evaluation shall take into account the guidelines provided by the state plan for economic development. Based on these findings, the corporation shall establish general targets by which the operations and investments of the corporation shall be guided.

[Eff JUL 20 1991 ] (Auth: HRS §211F-2) (Imp: HRS §211F-2)



§15-127-16 Types of Investment. (a) The corporation may make three types of investments:

- (1) Indirect investments; or
- (2) Direct investments; or
- (3) Sureties for capital access.

(b) Indirect investment by the corporation is the financial participation in eligible seed or venture capital organizations which make direct investments in enterprises.

(c) Direct investment by the corporation is financing provided for eligible enterprises.

(d) Sureties by the corporation may be made to provide businesses insurance, guarantees, or letters of credit through agreements with lending institutions and borrowers.

[Eff JUL 20 1991 ] (Auth: HRS §211F-2) (Imp: HRS §211F-2)

§15-127-17 Eligibility. (a) The corporation shall establish a seed capital program and may invest in:

- (1) A certified development company under Title V of the Small Business Investment Act of 1958, 15 U.S.C. 695 to 697, and the regulations adopted under those sections;
- (2) A small business investment company under Title III of the Small Business Investment Act of 1958, 15 U.S.C. 631 to 634, 636 to 649, and the regulations adopted under those sections;
- (3) A similar entity that may leverage its capital under a federal program;
- (4) A seed capital fund or partnership; or
- (5) Eligible enterprises.

(b) The corporation shall establish a venture capital program and may invest in:

- (1) A certified development company under Title V of the Small Business Investment Act of 1958, 15 U.S.C. 695 to 697, and the regulations adopted under those sections;
- (2) A small business investment company under Title III of the Small Business Investment Act of 1958, 15 U.S.C. 631 to 634, 636 to 649, and the regulations adopted under those sections;

- (3) A similar entity that may leverage its capital under a federal program;
  - (4) A venture capital fund or partnership; or
  - (5) Eligible enterprises.
- (c) The corporation may establish a capital access program to assist businesses in obtaining financing. The corporation may underwrite the following sureties on behalf of borrowers with lending institutions and the State of Hawaii:
- (1) Insurance, a guarantee, or a letter of credit from any source for all or a part of a loan, debenture, or lease of others, public or private, or a revenue bond issue of the State or other entity or authority authorized by law to issue revenue bonds; and
  - (2) Insurance, a guarantee, or a letter of credit for either a single loan, debenture, or lease or for any combination of loans, debentures, or leases, or a single revenue bond issue for all or a part of any combination of revenue bond issues.
- [Eff JUL 20 1991 ] (Auth: HRS §211F-2) (Imp: HRS §211F-2)

§15-127-18 Application procedures. (a) The corporation may solicit proposals for financing, advertise, accept referrals or unsolicited proposals as the board deems appropriate. The board may require submission of business plans in the case of enterprises or a statement of investment philosophy and performance record in the case of seed and venture financing organizations.

(b) The board shall approve or disapprove requests for assistance within ninety days of receiving a complete written application. Upon written request by an applicant, the board may reconsider its denial of an application for assistance or may waive the ninety-day deadline for approving or disapproving an application.

(c) Any person who submits any statement, report, application, or other document to the corporation which is known to the person to be false in any material respect shall be guilty of a class C felony.

(d) The corporation may condition any assistance of any type by placing restrictions on the recipients in regard to the recipient's assets or indebtedness or in any other manner deemed appropriate by the corporation. A recipient who accepts assistance from the corporation shall be deemed to agree to be bound by any conditions or restrictions imposed by the corporation.

[Eff JUL 20 1991 ] (Auth: HRS §211F-2) (Imp: HRS §211F-2)

§15-127-19 Preferences and priorities. (a) The corporation shall assure equal opportunity to minority-owned businesses.

(b) The corporation shall give priority to projects in which private investors have made significant financial commitments.

(c) The corporation shall give priority in procuring insurance, guarantees, and letters of credit to economic development projects that have the greatest potential for creating new jobs or retaining current jobs within the State. [Eff JUL 20 1991 ] (Auth: HRS §211F-2) (Imp: HRS §211F-2)

§15-127-20 Terms and restrictions. General investment limits and restrictions upon the corporation include the following:

- (1) The provision for a return on investment to the extent possible.
- (2) Investments by the corporation in private investment funds require that investments in Hawaii businesses by such funds shall equal at least the amount of the corporation's investment.
- (3) The corporation shall not make direct investments in individual businesses except upon a two-thirds vote of the board in each case considered.
- (4) The corporation shall not acquire a beneficial interest in an enterprise that would provide voting control.
- (5) The corporation shall not invest more than \$5,000,000 in any one enterprise.
- (6) Direct investments of the corporation shall

not exceed five per cent of the assets of the corporation, provided that by a two-thirds vote of the board the amount may be increased to a level not to exceed twenty-five per cent.

- (7) Investments may be used for any purpose consistent with the purposes and objectives of this chapter and on such terms and conditions as the corporation shall determine to be reasonable, appropriate, and consistent with the purposes and objectives of this chapter.

[Eff JUL 20 1991 ]  
 (Auth: HRS §211F-2) (Imp: HRS §211F-2)

SUBCHAPTER 3

SPECIAL CONSIDERATIONS

§15-127-30 Limits of liability. (a) The corporation shall not promise to answer for the debts of any other person.

(b) Chapters 661 and 662 or any other law to the contrary notwithstanding, nothing in this chapter shall create an obligation, debt, claim, cause of action, claim for relief, charge, or any other liability of any kind whatsoever in favor of any person or entity, without regard to whether that person or entity receives any benefits under this chapter, against the State or its officers and employees. The State and its officers and employees shall not be liable for the results of any investment; purchase of securities, loan, or other assistance provided pursuant to this chapter. Nothing in this chapter shall be construed as authorizing any claim against the corporation in excess of any note, loan, other specific indebtedness incurred by the corporation or in excess of any insurance policy acquired for the corporation or its employees. [Eff JUL 20 1991 ] (Auth: HRS §211F-2) (Imp: HRS §211F-2)

§15-127-31 Annual report and audit. The corporation shall submit a complete and detailed

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report of the corporation's activities to the legislature. The report shall be submitted not later than twenty days before the convening of the regular session of 1991 and every year thereafter. The books and records of the corporation shall be subject to annual financial and management audit by an independent auditor. [Eff JUL 20 1991 ] (Auth: HRS §211F-2) (Imp: HRS §211F-2)

§15-127-32 Default. The corporation shall make provisions and require contract terms which provide for the recovery of the costs of financings and a return on investments when appropriate as determined solely by the board. Action by the board, if any, in response to a default by a recipient shall be decided solely by the board. [Eff JUL 20 1991 ] (Auth: HRS §§211F-2) (Imp: HRS §211F-2)


§15-127-33 Chapter 42 provisions. Investments by the corporation shall not be subject to Chapter 42 provisions regarding financing for private organizations. (Eff JUL 20 1991 ] (Auth: HRS §211F-2) (Imp: HRS §211F-2)

§15-127-34 Severability. This chapter shall be liberally construed to effect its purposes. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable. [Eff JUL 20 1991 ] (Auth: HRS §§211F-2) (Imp: HRS §211F-2)

STATE OF HAWAII  
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT  
& TOURISM

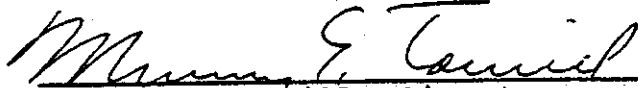
Chapter 127, State of Hawaii Department of Business, Economic Development & Tourism Administrative Rules, on the Summary Page dated June 17, 1991, was adopted on June 17, 1991, following a public hearing held on June 14, 1991, after public notice was given in the Sunday Star-Bulletin & Advertiser, Hawaii Tribune-Herald, West Hawaii Today, The Maui News, and The Garden Island on May 12, 1991.

These rules shall take effect ten days after filing with the Office of the Lieutenant Governor.



Murray E. Towill, Chairperson  
Hawaii Strategic Development  
Corporation Board of Directors

APPROVED: DATE: 6-26-91



Murray E. Towill, Director  
Department of Business,  
Economic Development & Tourism

APPROVED: DATE: 6-26-91



John Waihee, Governor  
State of Hawaii

JUL 10 1991

APPROVED AS TO FORM:

  
Deputy Attorney General

Filed

HAWAII STRATEGIC DEVELOPMENT CORPORATION

Adoption of Chapter 127  
Hawaii Administrative Rules

June 17, 1991

1. Chapter 127, Hawaii Administrative Rules,  
entitled, "Hawaii Strategic Development Corporation",  
is adopted to read as follows:

