

This English translation of the “Regulation on establishing private investment fund and registering founding documents” has been prepared, reflecting up to the Resolution No 254 of the Financial Regulatory Commission dated as of June 25, 2014. This translation is awaiting Financial Regulatory Commission’s reviews, and is subject to change accordingly. This is an unofficial translation. Only the original Mongolian texts of regulation have legal effect, and the translations are to be used solely as reference material to aid in the understanding of Mongolian laws and regulations.

RESOLUTION OF THE FINANCIAL REGULATORY COMMISSION

2014.06.25

No 254

Ulaanbaatar

Approving the Regulation

According to Article 6.1.2 of Law on the Legal Status of Financial Regulatory Commission, Article 38.10, 63.1.2 of Securities Market Law, and Article 14.5 of Investment Fund Law, Financial Regulatory Commission hereby RESOLVES:

1. To approve the regulation on “Establishing Private Investment Fund and Registering founding documents” as set in the Appendix.
2. To follow this regulation starting from July 1st of 2014.
3. To endorse the Working Group /Kh.Bum-Erdene/ to monitor the implementation of approved regulation and notify publicly.

CHAIRMAN

D. BAYARSAIKHAN

**ESTABLISHMENT PROCEDURES OF PRIVATE INVESTMENT FUND,
REGULATION FOR REGISTERING THE FOUNDING DOCUMENTS**

One. General Provision

1.1. The purpose of this regulation is to regulate relations concerning the establishment of private investment fund and registration of founding documents to the Financial Regulatory Commission /hereinafter “Commission”/.

1.2. Establishment activities of private investment fund shall be executed only by the legal entity licensed to undertake investment management activities /hereinafter “founder investment management company”/.

1.3. Based on the registration with the Commission, regulated entities specified in Securities Market Law such as investment management company registered in foreign jurisdiction, custodian, other legal entities and specialists may undertake activities in relevant to the establishment of private investment fund. Such relations regarding the registration with Commission shall be regulated by the separate procedures.

1.4. Relations regarding the foreign mutual and private investment fund that is undertaking investment fund activities in Mongolia shall be regulated by the independent procedures.

1.5. Establishment activities of private investment fund shall be executed in the following orders according to article 14.4 of Investment Fund Law:

1.5.1. Register founding documents of private investment fund to the Commission;

1.5.2. Convene meeting regarding the establishment of private investment fund, make decision on establishment, approve the charter of the fund and assign authorized officials based on the registration of founding documents of private investment fund with the Commission;

1.5.3. Register private investment fund to the state registration of legal entities;

1.5.4. Asset entrusted management services agreement regarding providing investment management services;

1.5.5. Establish asset custody agreement with respect of custody of private investment fund assets;

1.5.6. Fund activity shall be commenced when the necessary amount of fund as specified in founding documents of private investment fund and charter is raised and it is notified to the Commission accordingly.

1.6. Private investment fund shall be considered as established only if it is registered in state registration of legal entities as specified in the article 14.12 of Investment Fund Law.

1.7. As stated in the article 14.15 of Investment Fund Law, activities related to establishment of investment fund shall be undertaken by the founding investment management company which represents the private investment fund, or its authorised staff until such private

investment fund is registered to the state registration of legal entities whereas activities after the state registration are undertaken by the authorised official of the same fund.

1.8. During the establishing process of private investment fund, it is prohibited to make public offer or advertisement of units of investment fund, raise funds by making offer to the public to purchase units of private investment fund, and to make incomplete, false, misleading information and promises that may violate the investors' interests.

Two. Registering founding documents of Private Investment Fund

2.1. Founding investment management company may organize activities related to establishment of private investment fund in either of following forms:

2.1.1. to establish solely;

2.1.2. to establish in cooperation with other investment management companies which are authorised to establish investment fund based on the agreement.

2.2. Founding investment management company may establish more than one investment fund and in that case, it shall ensure to meet certain conditions and requirements set by the Commission.

2.3. Founding investment management company shall perform following preparatory works prior to establishing activities of private investment fund:

2.3.1. to develop the resolution and decision of establishment of the private investment fund to be founded, its charter and drafts of regulations set;

2.3.2. to choose proper name of legal entity of such private investment fund, to confirm the name;

2.3.3. to ensure preparatory works get done regarding the development of draft agreement of asset entrusted management, asset custody, agreement to sell units of investment fund to the public and to arrange relevant negotiations, meetings to finalize those draft agreements;

2.3.4. to conduct necessary research to determine investment activities and policy of investment fund to be founded, conduct relevant calculation based on the result of research, and to draft investment policy documents;

2.3.5. to provide relevant evidencing documents and conclusions on whether the investment fund meets the requirements set by the applicable rules and regulations, and to ensure that compliance with those rules is accomplished after investment fund is founded.

2.4. It shall be prohibited to convene meeting for establishment of private investment fund prior to register the founding documents of private investment fund with the Commission.

2.5. Following information shall be included in the request for registration of founding documents of private investment fund with the Commission:

2.5.1. information regarding the decision of founding investment management company about the execution of establishment activities of private investment fund;

2.5.2. form of private investment fund to be founded and plan for establishment activities of the fund;

2.5.3. asset size of private investment fund to be founded, details of investors who agreed to invest in the fund, investment amount by each investors;

2.5.4. size of investment to be made by the founding investment management company to private investment fund, information on funding sources, financial capacity of making the investment and its investment type;

2.5.5. total budget of founding activities, total cost, financial capacity to finance the estimated cost, information on adequacy of assets, and calculation of repayment of costs incurred during the establishment process;

2.5.6. information on whether the officials, legal entities, specialists those who involved in the development of founding documents and research and provided legal and other services were authorised entities to render such services; detailed information on their performed works;

2.5.7. any other information as Commission deemed necessary.

2.6. Following documents shall be attached to the request specified in 2.5 of this regulation:

2.6.1. payment receipt of State fees regarding the review of application of registering founding documents of private investment fund;

2.6.2. copy of the licence of founding investment management company to undertake investment management activities, detailed information of other investment funds and legal entities that received investment management services;

2.6.3. draft founding documents, establishment agreement, decision, and draft charter;

2.6.4. draft of regulations set for private investment fund – draft regulation on asset entrusted management, risk management, monitoring activities and liquidating procedures;

2.6.5. draft investment policy documents of private investment fund to be founded (including investment and credit-related distribution of power);

2.6.6. draft asset entrusted management agreement to be concluded with investment management company;

2.6.7. draft asset custody service agreement to be concluded with the custodian;

2.6.8. if more than one investment management company is co-founding the investment fund, a notarised copy of agreement established between them in accordance with article 14.2 of Investment Fund Law;

2.6.9. notarized copy of charter of founding investment management company;

2.6.10. if the investment management company which concludes asset custody agreement with private investment fund is a legal entity other than the founding investment management company, a notarised copy of charter of the investment management company which concludes the agreement is required;

2.6.11. business plan, draft investment policy and research report on business plan development of investment fund;

2.6.12. reference from the bank regarding receiving the custody services;

2.6.13. detailed description on skills, experience and fit and proper requirements of members of board of directors of founding investment management company and its staff and officials who conducts the establishment activities;

2.6.14. at least two officers and specialists shall undertake establishing activities of investment fund from investment management company, description on skills and experience regarding fit and proper requirements of such specialists;

2.6.15. if private investment fund to be founded has board of directors, numbers of members of board of directors, detailed description on skills, experience and fit and proper requirements of them;

2.6.16. other information set by the Commission.

2.7. Draft of documents specified in 2.6 of this regulation shall be the final version that is all set to be signed for a contract or to be approved.

2.8. Commission is authorised to obtain any other information, documents deemed necessary from the applicant and shall has full access to the activities in the course of review of request specified in 2.5-2.6 of this regulation.

2.9. Commission shall make decision whether to register founding documents of private investment fund within fifteen days after receipt of the request of registration of documents and this period shall be reflected in the request and computed from date of receipt of complete documents with attachments.

2.10. Commission shall notify the requester in writing regarding the decision made specified in 2.9 of this regulation.

2.11. Commission shall make the decision whether to register the founding documents or refuse to register by its meeting and shall notify the applicant in writing about the decision.

2.12. If Commission refuses to register the founding documents of private investment fund as specified in 2.11 of this regulation, founding investment management company shall terminate the establishment activities.

2.13. In case of the investment management company requested in writing, Commission may provide explanation on refusal to register the founding documents of investment fund accordingly.

2.14. If the Commission deemed as necessary it may require the founding investment management company the information necessary to be informed to the relevant investors in the course of review of documents specified in 2.5 and 2.6 of this regulation.

2.15. If the Commission registers the founding documents of private investment fund, this shall not be regarded as a guarantee as of content of the documents, its establishment as an investment fund, execution of investment management company, its employees and management and the Commission shall not be responsible for any risk, losses and damage caused to them.

2.16. Any citizen or legal entity shall make their investment decision independently and be responsible for their own consequences arising from any decision made regardless of whether Commission registers the founding documents of private investment fund.

Three. Establishment of the private investment fund, commencement of operation

3.1. Investment management company that executes establishment activities of the private investment fund shall convene meeting to establish the private investment fund within 45 days after registering founding documents with the Commission and shall register the same investment fund to the state registration of legal entities.

3.2. In case of the founding investment management company did not submit the request for registration of private investment fund to the state registration of legal entities within the period specified in 3.1 of this regulation, this shall serve as a ground to revoke the registration of founding documents with the Commission.

3.3. Convening the meeting to found private investment fund shall be organized in accordance with regulations specified in Company's Law.

3.4. If, besides the decision of establishing the private investment fund, decisions such as approving the charter and appointing board of directors are made from the meeting, those members of board of directors shall be selected accordingly and decisions regarding concluding agreements of draft agreements specified in 5,6 of this regulation shall be made.

3.5. At the meeting for founding the private investment fund, founder investment management company and other investors shall determine amount of investment to be made to the investment fund and selling price of units respectively. Units of the fund shall be transferred to the investment management company's and other investors' ownership when the payment was deposited at the designated account of private investment fund at the particular custodian.

3.6. Payment for units of the private investment fund shall be deposited at the separate account from both investment fund's account and investment management company's account, and any right to dispose payment for units deposited at account of investment fund shall not be created for neither such investment fund nor the investment management company until the investment fund is registered with the state registration of legal entities.

3.7. It shall be prohibited to sell units of investment fund on credit or transferring to others for free of charge; units shall be sold on terms of transferring them after payment is made.

3.8. Selling price per unit of the investment fund as for those units to be sold to the founding investment management company specified in 3.5 of this regulation shall not be less than selling price of units of such private investment fund which are to be sold to other investors.

3.9. Based on the decision made to establish the private investment fund and approval of fund's charter, private investment fund shall be registered accordingly to the state registration of legal entities and in that case, request for such registration shall be made by the founding investment management company or person who appointed by the meeting for establishing that private investment fund.

3.10. Name of the private investment fund shall consist of its proper name specified in the article 15.1 of Investment Fund Law and detailed marks as “private investment fund” or abbreviation “the Private IF”.

3.11. The proper name of the private investment fund shall meet the following requirements:

3.11.1. to concur with business activities of the investment fund;

3.11.2. to not to contradict with the content of information specified in the investment policy and charter of the fund;

3.11.3. to not give any unreasonable, false and misleading information and understanding to the citizens, legal entities that hold units or to be held units the information such as investing to the private investment fund is not risky to unit holders, or it brings too high or unrealistic returns to the investors etc;

3.11.4. to not duplicate with the name of other investment fund of Mongolia and foreign as well;

3.11.5. to not contradict with generally accepted moral standards.

3.12. After registering the private investment fund to the state registration of legal entities, management of private investment fund shall inform the Commission, and based on the delivery of report on establishment activities of the fund to the Commission, the operation of such private investment fund shall be commenced.

3.13. the report specified in 3.12 of this regulation shall include followings:

3.13.1. notarised copy of private investment fund’s certification of state registration of legal entities;

3.13.2. notarised copy of approved documents of those registered as a draft documents with the Commission as specified in 2.5, 2.6 of this regulation;

3.13.3. detailed information on amendments and changes made to the documents that registered as a draft documents with the Commission as specified in 2.5, 2.6 of this regulation and description on background of the relevant changes;

3.13.4. whether authorised officials and specialists related to private investment fund as specified in 2.5 and 2.6 of this regulation has been changed, detailed description on their skills, experience, description on whether they meet the fit and proper requirements;

3.13.5. list of citizens, legal entities involved in the establishment activities of private investment fund, information about research works, report and conclusions made by them.

3.14. selling units of the private investment fund in following ways of fund raising shall not be deemed as fundraising for the purpose of establishment of the private investment fund:

3.14.1. raised fund by saving-credit or current account terms but not by investment purpose;

3.14.2. raised fund as depositing at the account which is designated to be disposed by investors other than investment fund;

3.14.3. raised fund by issuing securities other than units such as bonds, promissary notes, and options;

3.14.4. raised fund other than by selling units.

3.15. Following requirements shall be met in order to undertake private investment fund activities:

3.15.1. function its operation within the law, follow Securities Market Law, Investment Fund Law, rules and regulations adopted by the Commission, other competent government organizations, and officials;

3.15.2. authorised officials shall meet the fit and proper entity requirements;

3.15.3. function its operation within the limits specified in investment policy documents, charter and establishment agreements;

3.15.4. respect the rights and interests of investors and provide priority.

Four. Private investment fund's charter, investment policy documents

4.1. In accordance with article 16.1 of Investment Fund Law, article 16 of Company Law private investment fund's charter shall include the following:

4.1.1. private investment fund's full, abbreviated, proper name and abbreviation marks to define its type;

4.1.2. quantity of units offered and issued by private investment fund, types of units, nominal price, rights and obligations of unit holders per unit, amount of contributed capital;

4.1.3. trading procedures of any type of units, restrictions to be applied to issue certain type of units;

4.1.4. if there is a board of directors, numbers of members of board;

4.1.5. unitholders' meeting which is a supreme authority of investment fund, if there is board of directors, its power defined by the laws, regulations relating to their implementation, and restrictions of rights;

4.1.6. internal supervision organization, operating procedures of private investment fund;

4.1.7. business operation of private investment fund, the fund shall be only for the purpose of investment activities; information related to investment objectives including diversification of investment risks, type of assets to be invested, investment, credit, and securities lending restrictions, detailed information related to those or if there is no such restrictions, the reason and justifications;

4.1.8. type and form of the investment fund;

4.1.9. name of the investment management company, resident address;

4.1.10. name of the legal entity which provides custody service, state registration of legal entity, and resident address;

4.1.11. operation term of private investment fund;

4.1.12. amount of total assets to be deposited at the private investment fund;

4.1.13. income of private investment fund, its allocation procedures;

4.1.14. liquidation procedures when the operation terms of private investment fund expires and allocation of assets to the investors are completed;

4.1.15. type and amount of costs of private investment fund and disposable procedures;

4.1.16. unit holder of private investment fund shall not be liable for any debt, borrowing from others by its own assets;

4.1.17. Unitholders shall not be responsible for any payment obligations after they paid its payment for units;

4.1.18. rights and obligations of authorised officials of investment management company that manages the private investment fund;

4.1.19. reason and grounds for suspension of operation of the private investment fund or liquidation in this case, issues of investors' rights and methods to evaluate the investment fund property;

4.1.20. procedures to make amendments to the charter of investment fund;

4.1.21. regulations on measures to be taken in the event of insolvency, or losses of private investment fund and operation procedures;

4.1.22. information submitted to the unitholders, financial and operations report, procedures on delivering the reports to unit holders, and other regulations on protecting investors' right and interests;

4.1.23. others.

4.2. It is prohibited to include provisions such as exempting chairman and members of board of directors, fund manager of private investment fund and unitholders from their legal responsibilities specified in the charter of investment fund and if such provisions are included, they shall be ineffective.

4.3. Provision referred to article 17.1 of Investment Fund Law shall necessarily be included in the investment policy documents of private investment fund.

Five. Establishing the asset entrusted management agreement

5.1. In pursuant to the article 47 of Investment Fund Law, terms of assets entrusted management agreement shall be the same to the operations term stated in the charter of investment fund.

5.2. Assets entrusted management agreement shall meet the requirements and criterias specified in article 6 of regulation on "licensing of undertaking investment management activities and operations procedure" adopted by the appendix of resolution of Commission with ref no 8 of 2014.

5.3. In asset entrusted management agreement, obligations specified in article 47.2 of Investment Fund Law shall be included and it is prohibited to include content of provisions to reduce or exempt the roles and responsibilities specified under the law.

5.4. In accordance with article 46.8 of Investment Fund Law, it is prohibited to include content of provision that the founding investment management company shall not be liable for losses caused by any violation of agreement with private investment fund; if such provisions are included, those shall be ineffective.

Six. Establishing the asset custody agreement

6.1. Terms of agreement of assets custody which is to be concluded with custodian regarding the custody services of assets of private investment fund shall be the same with term of operation of the fund specified in the charter of investment fund.

6.2. Assets custody agreement shall meet the requirements and criterias specified in article 5 of “Regulation on licensing and operation of Custodian” adopted by the resolution no 37 of 2014 of Commission.

6.3. Provision stated in article 50 of Investment Fund Law must be included in the Asset custody agreement.

6.4. In accordance with article 50.2 of Investment Fund Law, in the assets custody agreement it is prohibited to reflect the content of provision to reduce or exempt the obligations and responsibilities of investment management company, custodian specified under the law, charter of the fund and if such provisions are included, those shall be ineffective.

Seven. Monitoring

7.1. The Commission has authority to give requirements, obligations to the citizens and legal entities that involved in the establishment activities of the private investment fund and to ensure their compliance; if they violate laws and legislations, it is authorised to revoke the registration.

7.2. The Commission shall undertake activities such as assigning obligations and giving requirements in accordance with article 56 of Investment Fund Law.

7.3. It is prohibited that the founding investment management company of private investment fund, its authorised officials, staff and citizens, legal entities, their employees that involved in establishment activities are to prevent in any form the activities executed by the Commission.

7.4. Management of the private investment fund or investment management company that provides asset custody services may suspend the operation of investment fund on their initiative in the following circumstances and shall take measures to protect the interests of unit holders, and to notify the Commission:

7.4.1. if authorised officials of private investment fund, investment management company or of custodian are no longer fit and proper entities;

7.4.2. circumstances to liquidate the private investment fund is arised;

7.4.3. circumstances that is necessary to convene the unit holders’ meeting is arised.

7.5. After the registration of founding documents with the Commission, if following issues has arised such as the establishment activities are suspended, terminated or it is requested to extend the implementation period of establishment activities wihtin the period specified in the law and this regulation, founding investment management company of the private investment fund shall notify the Commission regarding these matter wihtin five working days.

7.6. Founding investment management company is required to submit relevant information to investors in each of the circumstances described in 7.5 of this regulation; in notificattion to the Commission, it is required to mention the reason and grounds to suspend, terminate, and delay the establishment activities respectively.

7.7. Prohibiting regulations stated in article 44.5 of Investment Fund Law, article 38.6, 38.7, 38.8 and 40.4 of Securities Market Law and other regulations approved by the Commission shall apply equally to the founding investment management company of the private investment fund, its authorised officials and employees.

7.8. Investment management company is responsible by its own equity for any losses and intentional or negligent damages caused to others or damages due to failure of its compliance of investment policy of investment fund in the course of conducting establishment activities.

7.9. This regulation is retroactive and shall be followed from the date specified in the resolution adopted by the Commission.

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