



LEGAL ALERT: NEWLY LICENSED ACTIVITIES OF REAL ESTATE BROKERAGE IN MONGOLIA

REAL ESTATE BROKERAGE ACTIVITIES AS NON-FINANCIAL BUSINESS AND PROFESSIONAL SERVICE PROVIDER SHALL BE CONSIDERED AS LICENSED ACTIVITY in accordance with framework of improving policies, strategies and regulations to combat money laundering and terrorist financing. Accordingly, Financial Regulatory Commission (the FRC) of Mongolia approved "Procedure for Licensing, Permitting, Authorization and Registration of a real estate brokerage company" (the Procedure) by the resolution No 120, dating 11, March 2020.

The license for conducting real estate brokerage activity shall be issued for a permanent period. The following activities shall be conducted within the license:

1. Brokerage of sale, purchase and transfer of real estate and the relevant claims;
2. Brokerage of leasing and renting of real estate and the relevant claims.

In addition to these activities, the company that has the license may conduct following activities upon registering at the FRC:

1. Real estate management service;
2. Sales of real estate upon purchasing and repairing;
3. Other services considered to be real estate brokerage activity by the FRC.

I. An applicant shall meet the following requirements to obtain a license for real estate brokerage activity:

1. The share capital must be at least 15,000,000 (fifteen million) MNT;
2. The share capital must be funded by monetary asset that is generated from lawful-source-of-income. The share capital must not be financed by credit;
3. To have at least one broker experienced as a real estate brokerage agent for at least 2 years and responsible for brokerage of sale, purchase and transfer of real estate and the relevant claims;
4. To have more than one agent that is responsible for brokerage of sale, purchase and transfer of real estate and the relevant claims;
5. The broker and the agent shall have obtained a certification that shows their participation in a training organized under a program approved by the FRC and taken the relevant examination (A certification of broker and agent that shows the participation in relevant to real estate brokerage training within 1, June 2020 shall be accepted);

6. Governing body, shareholder and broker of the company shall meet the following criteria of “Eligible person”:
 - i. To have appropriate education and work experience;
 - To have completed higher or secondary education;
 - To have completed a training approved by the FRC and obtained a certification.
 - ii. Not to have involved in crime;
 - No criminal charges or penalties in connection with crimes and violations of money laundering, terrorism financing, bribery, corruption or fraud under the Criminal Code;
 - Not a suspect of money laundering, terrorism financing or corruption under the Criminal Code at the stage of lawsuit and investigation.
 - iii. To have an ethical reputation;
 - Not have been imposed of disciplinary sanction of dismissal due to one’s wrongful actions and violation of industry code of ethics within the last one year;
 - Not to be a convict of complaint in connection with financial and non-financial services and activities;
 - Not to have violated the industry code of ethics within the last one year;
 - Not to have violated any laws, regulations, business ethics and codes in Mongolia or abroad, or not to have supported one to do so;
 - To be available to conform with any requirements under any regulations, or professional and ethical standards of Mongolia or abroad.
 - iv. To be free from conflict of interest;
 - Not to have contradicted with article 20, 21, and 22 of the Law on Regulation of Public and Private Interests in Public Service and Prevention of Conflict of Interest;
 - Not to have contradicted with a special law regulating activities related to financial services specified in article 3.1 of the Law on the Legal Status of the Financial Regulatory Commission.
 - v. Others provided by law.
7. To have appointed a person to supervise the compliance of the Law on Combating of Money Laundering and Terrorism Financing;
8. To have a workplace, facility, hardware, and software to conduct real estate brokerage activities;
9. To have adopted an internal procedure for real estate brokerage activities, ethic code of employees, and adopted internal control and risk management program stipulated in the Law on Combating of Money Laundering and Terrorism Financing;
10. To have adopted business plan.

For foreign invested real estate brokerage company, following shall be required in addition to the requirements above and the requirements stipulated in the Law of Mongolia on Investment:

1. Investor shall have obtained information, statement, and reference about his/her source of its monetary investment and activities from relevant State Authority or any Law Enforcement Agency, and Banking and Financial Institutions of the country of origin;
2. Investor shall have delivered information on the amount and origin of the monetary investment to Financial Information Unit of Mongolia.

II. The following documents shall be submitted to obtain a license for real estate brokerage activity

1. An official letter requesting for the license;
2. Original or notarized copy of decision of the Board of Directors (in the absence, resolution of Shareholders Meeting) on conducting real estate brokerage activity;
3. A notarized copy of Certificate of State Registration of the company / *for foreign invested entity, the following documents are required in addition to the notarized copy of certification issued by the State Central Administrative Body in charge of Foreign Investment matters:*
 - a. *Evidence showing that there are no overdue debts under the loan and guarantee agreement in the country of origin;*
 - b. *Evidence showing if there are any customs or tax debts in the country of origin;*
 - c. *Evidence of impunity in the country of origin;*
 - d. *Evidence of no involvement in Money Laundering and Terrorism Financing activities and crimes.*
4. Company Charter *in which the following is stipulated in addition to the requirements specified in article 16 of the Company Law of Mongolia:*
 - a. *Conditions for changes to the amount and structure of Share capital;*
 - b. *Procedure for convening Shareholders Meeting and making major and conflict of interest transactions, and authority of the governing bodies;*
 - c. *Rights and liabilities of the person to supervise the compliance of the Law on Combating Money Laundering and Terrorism Financing, Shareholders Meeting, and the Board of Directors;*
 - d. *Regulation on sales and transfer of shares, and mutual restriction;*
 - e. *Grounds for liquidation, and methods and principles of indemnification of damages caused to investors and clients due to wrongful actions of governing bodies, brokers and agents*
5. Evidence of its share capital that it is generated from lawful-source-of-income, and description of its origin;
6. Beneficial owner information if the shareholder is legal entity;
7. A bank statement and other guarantee confirming that the cash per share has been deposited in its bank account;
8. Internal monitoring and risk management program specified in the article 14.1 of the Law on Combating of Money Laundering and Terrorism Financing;
9. Last year's financial statement, or a beginning balance sheet in case of a newly established company;
10. A copy of the certificate of brokers and agents who participated in the training and passed the examination organized in accordance with the training program approved by the FRC, statement of the governing body and other personnel, and statement of the eligible person;

11. A notarized copy of real estate certificate or a rental lease agreement;
12. Internal regulation of business operation, employees' code of ethics;
13. Business plan;
14. Structure and introduction of Internal organization of a business;
15. List of technical equipment to be used in the operating activities;
16. Evidence of eligibility of governing body, shareholders and brokers as the "Eligible person".

License shall be issued within 30 business days with an extension of 14 business days if required.

The licensee must register the license at the State Registration Authority within 15 business days upon its issuance, and deliver to the FRC a copy of its certificate of State Registration and Charter.

III. Issuance of a license shall be denied on the following grounds:

- i. The requirements specified in Section I are not met;
- ii. Documents submitted for the license are not met the requirements, or the submitted documents were proved to be forged;
- iii. The deadline for submission of documents (6 months from the date of application) is expired;
- iv. Other conditions and requirements specified in laws are not met.

If a license is refused to be issued on the ground of forgery, an application for a license shall not be accepted again within a year.

IV. The license shall be suspended on the following grounds for up to 3 months until the licensee fulfills the requirements and instructions given by the FRC:

- i. The licensee violated this regulation and related legislations, and has not met the requirements specified in them;
- ii. A trial court issued an order that the licensee has caused damage to a client or harmed public interest;
- iii. The licensee has not been complied with liabilities undertaken by the FRC in accordance with related legislations;
- iv. The minimum amount of share capital of the licensee has not met the amount determined by the FRC;
- v. 'Eligible person' has not met with the criteria any more, or the FRC regulated the eligible person as not qualified;
- vi. The licensee has not started its operation within a year upon the issuance of the license or has ceased its operation;
- vii. The licensee has not paid regulatory service payment set by the FRC for more than 3 months;
- viii. The licensee has not submitted any required reports and information for 3 consecutive quarters;
- ix. Other grounds provided by laws and regulations.

The licensee shall be notified suspension and may submit an official letter to the FRC declaring that there are no grounds to suspend the license within 14 business days upon receiving the

notification. The license shall be suspended if the explanation is unfounded or the violation is not eliminated.

In case that the license is suspended, however, violations and omissions that were the basis for the suspension were eliminated thereafter and normal operation is initiated, the license shall be renewed upon the request of the licensee.

An official request of the licensee and the following documents shall be submitted to the FRC to renew the license:

- i. Report on the elimination of the violations or omissions and completion of the instructions, relevant evidence;
- ii. Other additional clarifications, documents required by the FRC.

V. The license shall be revoked on the following grounds:

- i. The licensee has submitted an application;
- ii. The licensee is liquidated;
- iii. The licensee is proved to have submitted forgery documents;
- iv. Conditions and requirements for the license have been violated 3 or more times;
- v. The licensee has not complied with instructions to eliminate its violations during the period of the suspension of the license;
- vi. The licensee has not submitted its reports and information in a timely manner repeatedly, made the inspection unavailable, and have not submitted the report for 4 consecutive quarters
- vii. Other grounds provided by law.

In case of revocation of the license by the FRC, the licensee shall be notified of it and may submit an explanation that the grounds for revoking the license are unfounded within 14 business days upon receiving the notification.

Source:

1. *Procedure for licensing, permitting, authorization and registration of a real estate brokerage company” (the Procedure) by the resolution No 120, dating 11, March 2020*
<http://www.frc.mn/resource/frc/Document/2020/03/16/mtxtjhzvs6lkjckz/120.pdf>
2. *Procedure for determination of “Eligible person” in conducting non-bank financial and non-financial business and professional activities with license.*
<https://www.legalinfo.mn/annex/details/10960?lawid=15268>

Note:

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