

Effective 5/12/2015

Part 3
Utah Capital Investment Corporation

63N-6-301 Utah Capital Investment Corporation -- Powers and purposes.

- (1)
 - (a) There is created an independent quasi-public nonprofit corporation known as the Utah Capital Investment Corporation.
 - (b) The corporation:
 - (i) may exercise all powers conferred on independent corporations under Section 63E-2-106;
 - (ii) is subject to the prohibited participation provisions of Section 63E-2-107; and
 - (iii) is subject to the other provisions of Title 63E, Chapter 2, Independent Corporations Act, except as otherwise provided in this part.
 - (c) The corporation shall file with the Division of Corporations and Commercial Code:
 - (i) articles of incorporation; and
 - (ii) any amendment to its articles of incorporation.
 - (d) In addition to the articles of incorporation, the corporation may adopt bylaws and operational policies that are consistent with this chapter.
 - (e) Except as otherwise provided in this part, this part does not exempt the corporation from the requirements under state law which apply to other corporations organized under Title 63E, Chapter 2, Independent Corporations Act.
- (2) The purposes of the corporation are to:
 - (a) organize the Utah fund of funds;
 - (b) select an investment fund allocation manager to make venture capital and private equity fund investments by the Utah fund of funds;
 - (c) negotiate the terms of a contract with the investment fund allocation manager;
 - (d) execute the contract with the selected investment fund manager on behalf of the Utah fund of funds;
 - (e) receive funds paid by designated investors for the issuance of certificates by the board for private investment in the Utah fund of funds;
 - (f) receive investment returns from the Utah fund of funds; and
 - (g) establish the redemption reserve to be used by the corporation to redeem certificates.
- (3) The corporation may not:
 - (a) exercise governmental functions;
 - (b) have members;
 - (c) pledge the credit or taxing power of the state or any political subdivision of the state; or
 - (d) make its debts payable out of any money except money of the corporation.
- (4) The obligations of the corporation are not obligations of the state or any political subdivision of the state within the meaning of any constitutional or statutory debt limitations, but are obligations of the corporation payable solely and only from the corporation's funds.
- (5) The corporation may:
 - (a) engage consultants and legal counsel;
 - (b) expend funds;
 - (c) invest funds;
 - (d) issue debt and equity, and borrow funds;
 - (e) enter into contracts;
 - (f) insure against loss;

- (g) hire employees; and
 - (h) perform any other act necessary to carry out its purposes.
- (6)
- (a) The corporation shall, in consultation with the board, publish on or before September 1 an annual report of the activities conducted by the Utah fund of funds and submit the report to the governor; the Business, Economic Development, and Labor Appropriations Subcommittee; the Business and Labor Interim Committee; and the Retirement and Independent Entities Interim Committee.
 - (b) The annual report shall:
 - (i) be designed to provide clear, accurate, and accessible information to the public, the governor, and the Legislature;
 - (ii) include a copy of the audit of the Utah fund of funds described in Section 63N-6-405;
 - (iii) include a detailed balance sheet, revenue and expenses statement, and cash flow statement;
 - (iv) include detailed information regarding new fund commitments made during the year, including the amount of money committed;
 - (v) include the net rate of return of the Utah fund of funds from the inception of the Utah fund of funds, after accounting for all expenses, including administrative and financing costs;
 - (vi) include detailed information regarding:
 - (A) realized gains from investments and any realized losses; and
 - (B) unrealized gains and any unrealized losses based on the net present value of ongoing investments;
 - (vii) include detailed information regarding all yearly expenditures, including:
 - (A) administrative, operating, and financing costs;
 - (B) aggregate compensation information for full- and part-time employees, including benefit and travel expenses; and
 - (C) expenses related to the allocation manager;
 - (viii) include detailed information regarding all funding sources for administrative, operations, and financing expenses, including expenses charged by or to the Utah fund of funds, including management and placement fees;
 - (ix) review the progress of the investment fund allocation manager in implementing its investment plan and provide a general description of the investment plan;
 - (x) for each individual fund that the Utah fund of funds is invested in that represents at least 5% of the net assets of the Utah fund of funds, include the name of the fund, the total value of the fund, the fair market value of the Utah fund of funds' investment in the fund, and the percentage of the total value of the fund held by the Utah fund of funds;
 - (xi) include the number of companies in Utah where an investment was made from a fund that the Utah fund of funds is invested in, and provide an aggregate count of new full-time employees in the state added by all companies where investments were made by funds that the Utah fund of funds is invested in;
 - (xii) include an aggregate total value for all funds the Utah fund of funds is invested in, and an aggregate total amount of money invested in the state by the funds the Utah fund of funds is invested in;
 - (xiii) describe any redemption or transfer of a certificate issued under this part;
 - (xiv) include actual and estimated potential appropriations the Legislature will be required to provide as a result of redeemed certificates or tax credits during the following five years;
 - (xv) include an evaluation of the state's progress in accomplishing the purposes stated in Section 63N-6-102; and

- (xvi) be directly accessible to the public via a link from the main page of the Utah fund of fund's website.
- (c) The annual report may not identify a specific designated investor who has redeemed or transferred a certificate.

Renumbered and Amended by Chapter 283, 2015 General Session
Amended by Chapter 420, 2015 General Session

63N-6-302 Incorporator -- Appointment committee.

- (1) To facilitate the organization of the corporation, the executive director or the executive director's designee shall serve as the incorporator as provided in Section 16-6a-201.
- (2) To assist in the organization of the corporation, the Utah Board of Business and Economic Development shall appoint three individuals to serve on an appointment committee.
- (3) The appointment committee shall:
 - (a) elect the initial board of directors of the corporation;
 - (b) exercise due care to assure that persons elected to the initial board of directors have the requisite financial experience necessary in order to carry out the duties of the corporation as established in this part, including in areas related to:
 - (i) venture capital investment;
 - (ii) investment management; and
 - (iii) supervision of investment managers and investment funds; and
 - (c) terminate its existence upon the election of the initial board of directors of the corporation.
- (4) The office shall assist the incorporator and the appointment committee in any manner determined necessary and appropriate by the incorporator and appointment committee in order to administer this section.

Renumbered and Amended by Chapter 283, 2015 General Session

63N-6-303 Board of directors.

- (1) The initial board of directors of the corporation shall consist of five members.
- (2) The persons elected to the initial board of directors by the appointment committee shall include persons who have an expertise, as considered appropriate by the appointment committee, in the areas of:
 - (a) the selection and supervision of investment managers;
 - (b) fiduciary management of investment funds; and
 - (c) other areas of expertise as considered appropriate by the appointment committee.
- (3) After the election of the initial board of directors, vacancies in the board of directors of the corporation shall be filled by election by the remaining directors of the corporation.
- (4)
 - (a) Board members shall serve four-year terms, except that of the five initial members:
 - (i) two shall serve four-year terms;
 - (ii) two shall serve three-year terms; and
 - (iii) one shall serve a two-year term.
 - (b) Board members shall serve until their successors are elected and qualified and may serve successive terms.
 - (c) A majority of the board members may remove a board member for cause.
 - (d)
 - (i) The board shall select a chair by majority vote.

- (ii) The chair's term is for one year, which may be extended annually by a majority vote of the members of the board of directors.
- (5) Three members of the board are a quorum for the transaction of business.
- (6) Members of the board of directors:
 - (a) are subject to any restrictions on conflicts of interest specified in the organizational documents of the corporation;
 - (b) shall annually disclose any venture capital and private equity interests to the corporation; and
 - (c) may not participate in a vote by the board of directors related to an investment by the Utah fund of funds, if the member has an interest in the investment.
- (7) Directors of the corporation:
 - (a) shall be compensated for direct expenses and mileage; and
 - (b) may not receive a director's fee or salary for service as directors.

Renumbered and Amended by Chapter 283, 2015 General Session
Amended by Chapter 420, 2015 General Session

63N-6-304 Investment manager.

- (1) After incorporation, the corporation shall conduct a national solicitation for investment plan proposals from qualified venture capital investment fund allocation managers for the raising and investing of capital by the Utah fund of funds in accordance with the requirements of this part.
- (2) Any proposed investment plan shall address the applicant's:
 - (a) level of:
 - (i) experience; and
 - (ii) quality of management;
 - (b) investment philosophy and process;
 - (c) probability of success in fund-raising;
 - (d) prior investment fund results; and
 - (e) plan for achieving the purposes of this part.
- (3) The selected venture capital investment fund allocation manager shall have substantial, successful experience in the design, implementation, and management of seed and venture capital investment programs and in capital formation.
- (4) The corporation shall only select a venture capital investment fund allocation manager:
 - (a) with demonstrated expertise in the management and fund allocation of investments in venture capital funds; and
 - (b) considered best qualified to:
 - (i) invest the capital of the Utah fund of funds; and
 - (ii) generate the amount of capital required by this part.

Renumbered and Amended by Chapter 283, 2015 General Session

63N-6-305 Management fee -- Additional financial assistance.

- (1) The corporation may charge a management fee on assets under management in the Utah fund of funds.
- (2) The fee shall:
 - (a) be in addition to any fee charged to the Utah fund of funds by the venture capital investment fund allocation manager selected by the corporation; and
 - (b) be charged only to pay for reasonable and necessary costs of the corporation.

- (3) The corporation may apply for and, when qualified, receive financial assistance from the Industrial Assistance Account under Chapter 3, Part 1, Industrial Assistance Account, and under rules made by the Board of Business and Economic Development in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to help establish the program authorized under this part.

Renumbered and Amended by Chapter 283, 2015 General Session

63N-6-306 Dissolution.

- (1) Upon the dissolution of the Utah fund of funds, the corporation shall be liquidated and dissolved.
- (2) Upon dissolution or privatization of the corporation, any assets owned by the corporation shall be distributed to one or more Utah nonprofit tax exempt organizations to be designated by the Legislature for the purposes listed in Section 63N-6-102 as provided in Title 63E, Chapter 1, Independent Entities Act.

Renumbered and Amended by Chapter 283, 2015 General Session