



### **Trust Company Mandates**

Prior to obtaining a South Dakota trust charter, an application must be submitted with a \$5,000 nonrefundable application fee. Prior to conducting trust business, the capitalization of the proposed trust company shall not be less than \$200,000, or a level deemed appropriate by the Director, pursuant to South Dakota Codified Laws (SDCL) 51A-6A-19; a fidelity bond and director's and officer's liability insurance policy coverage of at least \$1,000,000 each pursuant to SDCL 51A-6A-19; and a deposit must be pledged to the South Dakota Division of Banking (Division) in the amount of \$100,000 pursuant to SDCL 51A-6A-19.2. South Dakota chartered trust companies are subject to an annual fee, for supervision, at the rate of seven cents per \$10,000 of total trust assets; subject to a minimum annual fee of \$3,750 and a maximum fee of \$20,000 for private trust companies and a minimum annual fee of \$4,500 and maximum fee of \$30,000 for public trust companies.

Trust applicants are encouraged to thoroughly review SDCL Chapter 51A-6A, which pertains to the creation and operation of a South Dakota chartered trust company and Title 55 which addresses trust law in South Dakota. These chapters are available at <http://sdlegislature.gov/Statutes/default.aspx>.

### Situs Requirements

SDCL 51A-6A-11.1 establishes jurisdiction criteria needed to establish South Dakota situs. Public trust companies must maintain office space in South Dakota for company business and for the storage of, and access to, trust company records; hold no less than two quarterly governing board meetings with a quorum physically present in South Dakota annually; employ, engage, or contract with at least one trust officer or key employee to provide services for the company in South Dakota; and perform trust administration in South Dakota as defined in South Dakota Administrative Rule (ARSD) 20:07:22:04, which requires at least three of the following are performed wholly or partly in South Dakota:

- Annual account reviews;
- annual investment reviews;
- trust accountings;
- account correspondence;
- completing trust account tax returns; or,
- distributing account statements.

Notwithstanding the definition above, trust administration as defined in ARSD 20:07:22:04 may be satisfied by other means if the director determines the nature and degree of risks presented by the trust company are low based upon a review of the size, nature, and number of accounts administered by the trust company and the number of employees or persons performing services for the trust company in South Dakota.

SDCL 51A-6A-11.2 provides that office space for each public trust company shall:

- Be premises distinct and divided from the office space of any other entity;
- Have the name, charter, and certificate of authority of the trust company prominently displayed;
- Have access to premises in or adjacent to the office space sufficient to facilitate onsite examinations;
- Provide a secure fireproof file cabinet for any hard copy documents; and,

- To the extent the trust company maintains any records electronically, have secure computer terminal or other secure electronic device that provides access to such records, including account information, as necessary to facilitate an efficient and effective examination.

#### Financial Institution Tax

South Dakota chartered trust companies are defined as a financial institution pursuant SDCL 10-43-1(4). SDCL 10-43-4 imposes a net income based tax on South Dakota sitused financial institutions. However, SDCL 10-43-90 imposes a minimum financial institution tax on South Dakota chartered trust companies. The minimum financial institution tax applied to South Dakota chartered trust companies is tiered over the first five years of operations. The annual minimum tax is \$500 for fewer than 12 months of operations; \$2,000 for over 12 months but less than 24 months of operations; \$5,000 for over 24 months but less than 36 months of operations; \$10,000 for over 36 months but fewer than 48 months of operations; and \$25,000 annually after 48 month.