



Instructions for filing Application to Charter a Nondepository Trust Company

These instructions have been compiled to assist you in the preparation of the required documents necessary to form a South Dakota Nondepository Trust Company pursuant to South Dakota Codified Law (SDCL) Title 51A, et. seq. (Applicant). The application must be filed with the Biographical and Financial Report for each individual who will serve as a director, officer, or principal owner* of the proposed trust company. In addition, results of criminal background investigations, credit reports, and litigation reports must be submitted as part of the application for each incorporator, organizer, board member, manager, officer, and key employee, as applicable. For private trust company applications, criminal background investigations are to be performed by an independent third party. Criminal background investigations for public trust company applicants will be conducted based upon fingerprints submitted on cards provided by the South Dakota Division of Banking (Division). Litigation reports may be provided as a third party report (preferred) or by way of a sworn affidavit if sufficiently detailed. Terms for corporations and limited liability companies are interchangeable.

** A principal owner is defined as any “person who owns or has the ability or power to vote, directly, acting through one or more other persons, or otherwise indirectly, ten percent (10%) or more of the outstanding shares or ownership units of a company.”*

- An original (application forms with original signatures), one printed copy, and an electronic copy of the application must be completed in detail and provided to the Division. Any portion(s) of the application designated as confidential shall be marked as confidential and bound in a separate volume and saved as a separate document for submission.
- The name of the proposed trust company must be listed, and must be such as to distinguish it from all other corporations doing business in the State.
- The capitalization of the proposed trust company shall not be less than \$200,000.00 paid in, invested, and deposited prior to the commencement of business operations as provided by statute. The common stock, preferred stock, or ownership units of any trust company shall be divided into shares of five dollars each, or a multiple of five dollars. [SDCL 51A-6A-19]
- A fidelity bond and Director’s and Officer’s (D&O) insurance policy of at least \$1,000,000.00 each must be purchased prior to the commencement of business operations. Management is encouraged to include an errors and omissions clause within the D&O insurance policy. [SDCL 51A-6A-19]
- A deposit must be pledged to the Division in the amount of \$100,000.00 prior to commencement of business operations. [SDCL 51A-6A-19.1]
- A nonrefundable application fee of \$5,000.00 payable to the Division shall accompany the application. [SDCL 51A-6A-6]
- The application calls for a copy of the proposed trust company’s articles of incorporation, business plan, feasibility study if available, the offering circular or offering letter if capital is

to be raised by public offering or private placement offering, and various other attachments. The Applicant may also elect to furnish additional attachments in response to or as additional support for certain questions. All attachments should be clearly labeled and referenced to the applicable question of the application, and should be presented in the sequence in which the questions they support appear in the application.

- If the Applicant desires specific confidential treatment for any materials submitted with the application not customarily accorded such treatment, a written request with justification should be submitted with the applications. Such requests will be addressed on a case-by-case basis in the context of statutory authority and requirements.
- With the exception of signatures, responses should be typewritten, and must be provided for all questions and information the form requires. The words “not applicable” or “none” should be used, if appropriate. The “Attestation” shall include original signatures and dates.
- The Director may request additional information or clarification of any responses in the application. Any such requests shall be answered within 30 days; absent valid extenuating circumstances, failure to do so may be construed by the Director to be abandonment of the application.
- The proposed application will be reviewed by the Director. The Director is not responsible for delay due to failure to submit a complete application.
- The Applicant is required to report any material changes in facts or circumstances reported on this form that occur subsequent to filing but prior to conclusion of the application processing period.
- An in-person meeting at the Division’s offices with the Applicant shall be held before an application will be deemed complete.
- After an application is deemed complete by the Director, a decision must be made no later than 45 days from the date of publication of the notice of application.
- File the application and all attachments with the fee with the Division at:

Division of Banking
217 ½ West Missouri Avenue
Pierre, South Dakota 57501-4590
banking@state.sd.us

- Contact the Division at 605-773-3421 with any questions regarding completing the application or the hearing process.