SOUTH DAKOTA DEPARTMENT OF LABOR AND REGULATION

DIVISION OF BANKING

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TRUST COMPANY APPLICATION INSTRUCTIONS

The South Dakota Division of Banking (Division) compiled these instructions to assist in the preparation of the documents required to form a South Dakota nondepository trust company pursuant to South Dakota Codified Laws (SDCL) Chapter 51A-6A. The Trust Company Application Form (Application) must be filed with a Biographical and Financial Report (Attachment D) for each individual who will act as an organizer, board member, officer, key employee, or principal owner of the proposed trust company.

Pursuant to SDCL 51A-6A-17, an independent criminal background investigation, independent credit report, and litigation report must be submitted for each incorporator, organizer, board member, officer, key employee, and principle owner of the proposed trust company. Persons convicted of certain crimes are ineligible participants. Criminal background investigations for public trust company individuals will be performed via fingerprints on cards provided by the Division. Two fingerprint cards, one for the Federal Bureau of Investigation and one for the South Dakota Division of Criminal Investigation, must be submitted along with a check made payable to the "SD DCI" for $43.25 for each individual submitting the fingerprint cards. Criminal background investigations for private trust company individuals require only a name-based criminal background investigation performed by an independent third party, in addition to a credit report and litigation report. For both public and private trust companies, litigation reports may be provided as a third-party report or by way of a sworn affidavit if sufficiently detailed. In addition to the above background investigation requirements, foreign applicants must provide the report of a worldwide independent background investigation by an appropriate organization (e.g., Thomas Reuters World-Check, Lexis Nexis InstantID International, etc.)

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, 10 percent or more of the outstanding shares or ownership units of a proposed trust company.

Terms for corporations and limited liability companies are interchangeable.

Draft Application

Applicants are required to submit a PDF copy of a draft Application with supporting documentation for Division review prior to a final submission. If the draft review determines the proposed business model and ownership is suitable, the Division will notify the applicants of any required revisions/additions and schedule an in-person applicant meeting with the director of banking (Director). At this time, the applicants will be directed to provide a revised and complete final version of the Application at the applicant meeting. All proposed directors are required to attend the in-person applicant meeting. An electronic fill-in version of the Application can be found at the Division's website.

Final Application Instructions and Trust Company Requirements

The applicants are required to submit one PDF copy of the fully executed Application and supporting documents to the Division. The PDF copy must be submitted on a secure electronic storage device or via a secure electronic transmittal system consisting of two files: a confidential file and non-confidential file. Each file should adequately bookmark Application sections and exhibits.

- A nonrefundable application fee of $5,000 payable to the "SD DOB" shall accompany the Application. [SDCL 51A-6A-6]
- The name of the proposed trust company must be different from the name of any other bank or trust company having its principal office in South Dakota. [SDCL 51A-6-5]
- If approved, the capitalization of the proposed trust company shall not be less than $200,000 or a level deemed appropriate by the Director, which must be paid in and deposited prior to the commencement of business operations as provided by statute. [SDCL 51A-6A-19]
- Pursuant to ARSD 20:07:22:01, a South Dakota-chartered trust company is subject to an annual supervisory fee computed at the rate of seven cents per $10,000 of total trust assets under management, administration, or custody as reported as of the end of December. The minimum annual fee is $3,750 and the maximum annual fee is $20,000 for private trust companies, while the minimum annual fee is $4,500 and the maximum annual fee is $30,000 for public trust companies. In addition, trust companies shall pay the actual cost for each on-site examination and the additional supervision costs for any trust company operating under an enforcement action.
- If approved, a fidelity bond and Director's and Officer's (D&O) insurance policy of at least $1,000,000 each must be purchased prior to the commencement of business operations. The applicants are encouraged to include errors and omission coverage within, or in addition to, the D&O policy. [SDCL 51A-6A-19]
- If approved, a deposit must be pledged to the Division in an amount no less than $100,000 or a level deemed appropriate by the Director prior to commencement of trust business operations. [SDCL 51A-6A-19.2]
- The Application requires a copy of the proposed trust company's articles of incorporation/organization, 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 confidential treatment for certain materials submitted with the Application not customarily accorded such treatment, a written request with justification should be submitted with the Application. Such requests will be addressed on a case-by-case basis in the context of statutory authority and requirements. [SDCL 51A-6A-4]
- Except for signatures, responses should be typewritten and must be provided for all questions and information the Application requires. The words "not applicable" or "none" should be used, if appropriate. The Attestation Section of the Application 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 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 the Application that occur subsequent to filing, but prior to conclusion of the Application processing period.
- File the Application, attachments, and application fee with the Division at:

  South Dakota Division of Banking
  1601 N. Harrison Avenue, Suite 1
  Pierre, South Dakota 57501

Application Approval Process

When the Application is deemed complete, the Division will publish a "Notice of Application" in the community most directly impacted by the proposed trust company. A 15-day comment period will commence on the publication date and at the close of the comment period, the Director is provided 15 days to issue a decision on the Application. The Director will issue a Director's Decision and Order (Order) to the applicants confirming charter approval or denial. An applicant aggrieved by the Director's action on the Application, may, within 15 days after the notice has been mailed, file with the Division a written request for a hearing before the South Dakota Banking Commission (Commission). Any person who has filed a written objection to the Application may, within 15 days after the notice has been mailed, file a motion with the Commission in accordance with § 1-26-17.1 to become a party to the Application proceeding and request a hearing before the Commission.

The Order will direct the applicants to submit to the Division the original copy of the fully executed Articles of Incorporation/Organization (Articles), along with a check made payable to the South Dakota Secretary of State (SD SOS) to cover the filing fee. The Division will forward the Articles to the SD SOS for filing. After filing, the Division will forward a copy of the filed Articles to the applicants. A cover letter will accompany the Articles directing the organizers to submit the following information to the Division before the charter and certificate of authority are issued:

- Trust company contact name, email address, phone number, and title;
- Fully executed bylaws/operating agreement;
- Proof of capital pursuant to SDCL 51A-6A-10 and 51A-6A-19;
- Proof of insurance pursuant to SDCL 51A-6A-19;
- Pledge Agreement and proof of pledge pursuant to SDCL 51A-6A-19.2;
- ACH Authorization Form;
- Oath of Board Members;
- List of Owners Schedule;
- Officers and Employees Schedule; and,
- For Public Trust Companies Only – FinCEN contact name, contact phone number, contact email address, trust company fax number, and the trust company taxpayer identification number.

An electronic copy of the Pledge Agreement, ACH Authorization Form, Oath of Board Members, List of Owners Schedule, and Officers and Employees Schedule can be found on the Division's website.

After all the documents are received and approved, the Division will issue the proposed trust company with a charter and certificate of authority. At that time, the proposed trust company can exercise trust powers and conduct other trust business related to a South Dakota chartered trust company. The applicants are encouraged to thoroughly review SDCL Chapter 51A-6A, which pertains to the creation and operation of a South Dakota trust company and SDCL Title 55 which addresses South Dakota trust law. These statutory provisions are available for online viewing at the South Dakota Legislative Research Council website.