



Public Trust Company Mandates

Trust company applicants and management are encouraged to thoroughly review South Dakota Codified Laws (SDCL) Chapter 51A-6A, which pertains to the creation and operation of a South Dakota chartered trust company and Title 55 which addresses South Dakota trust laws. 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 of banking, pursuant to 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 must be secured; and a deposit for South Dakota trust powers of no less than \$100,000, or a level deemed appropriate by the director of banking, must be pledged to the South Dakota Division of Banking (Division) pursuant to SDCL 51A-6A-19.2.

Supervision Fee

Pursuant to Administrative Rules of South Dakota (ARSD) 20:07:22:01, 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 under management reported as of December 31st each year; subject to a minimum fee of \$4,500 and maximum fee of \$30,000. Trust company assets under management for calculating the annual supervisory fee include managed, non-managed, and custodial assets under management.

Examination Fee

Pursuant to SDCL 51A-6A-33, South Dakota-chartered trust companies are subject to an examination fee, providing that each trust company is required to pay all salary and travel expenses associated with the examination process. SDCL 51A-6A-31 requires the Division to examine each trust company at least once every 36 months; however, public trust companies are generally examined at least once every 24 months or sooner depending on the trust company's complexity and overall risk profile. Public trust company examination fees generally range from \$12,000 to \$25,000 depending on the trust company's overall complexity and risk profile. However, the examination fee for public trust companies with complex business models and heightened risk profiles will range higher.

Financial Institution Tax

Pursuant to SDCL 10-43-4, South Dakota financial institutions are subject to a net income-based tax. South Dakota chartered trust companies are defined as a financial institution pursuant SDCL 10-43-1(4). While the tax is net income-based, SDCL 10-43-90 imposes a minimum financial institution tax specific to 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 months of operations. The minimum financial institution tax is not pro-rated in the event of a trust charter dissolution.

Annual Report

Pursuant to SDCL 51A-6A-34, all South Dakota-chartered trust companies are required to submit an annual report in a form prescribed by the director bank. Pursuant to ARSD 20:07:22:02, the annual report must be submitted to the Division within 30 days following December 31st each year. The director of banking provides notice to every South Dakota-chartered trust company prior to December 30th each year depicting the annual report information that must be submitted no later than the following January 30th.

Fiduciary and Related Services Report

Every South Dakota-chartered public trust company is required to complete and submit a Fiduciary and Related Services Report (Report) as of the close of business each calendar quarter, i.e., the report date. The Report must be filed no later than the 1st day of the second month following the quarter-end date. The Report is segregated into six sections entitled Company Information, Fiduciary and Related Assets, Fiduciary and Related Services Income, Memoranda, Balance Sheet, and Income Statement. The Report should be completed on a fully-consolidated basis, i.e., including any subsidiary of the reporting institution. The information reported is confidential and not available to the public. Instructions for completing a web-based fill-in form are available on the Division's website.

Situs Requirements

Management should assess the type and degree of trust company operations and account administration performed outside of South Dakota and if needed take steps to ensure that the administration of each account supports its stated jurisdiction. Limited activity performed at the trust company's South Dakota location could jeopardize the situs of the accounts under management. Management should be able to successfully defend against any account-level jurisdictional challenges that may have a detrimental impact on the corresponding beneficiaries. As a corporate citizen, each trust company should strive to maintain an adequate South Dakota presence. Refer to the Division's Interstate Trust Guidance on our website for additional guidance on this subject.

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 trust 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 trust company in South Dakota; and perform trust administration in South Dakota as defined in ARSD 20:07:22:04, which requires at least three of the following to be 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 these definitions, trust administration as defined in ARSD 20:07:22:04 may be satisfied by other means if the director of banking 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.