



TRUST COMPANY APPLICATION INSTRUCTIONS AND APPROVAL PROCESS

These instructions have been compiled to assist you 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 the Biographical and Financial Report for each individual who will act as an organizer, board member, officer, key employee, or principal owner of the proposed trust company. Before the Application is deemed complete, the applicants are required to submit a complete and thorough Application and schedule an in-person meeting with the Director of the South Dakota Division of Banking (Division).

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 "South Dakota Division of Criminal Investigation" for \$43.25 for each individual receiving the background check. 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 trust companies and private trust companies, litigation reports may be provided as a third party report (preferred) 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.)

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

Application Instructions and Trust Company Requirements

- An original (Application forms with original signatures), one printed copy (white paper only), 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 electronic copy must be submitted on an electronic storage device consisting of two files: a confidential file and non-confidential file. Do not send multiple electronic storage devices and do not send electronic copy via email.
- 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. Management is encouraged to include errors and omissions coverage. [SDCL 51A-6A-19]
- If approved, a deposit must be pledged to the Division in an amount no less than \$100,000 prior to commencement of business operations. [SDCL 51A-6A-19.2]
- A nonrefundable application fee of \$5,000 payable to the Division shall accompany the Application. [SDCL 51A-6A-6]
- 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]
- With the exception of 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

The applicants are required to submit a draft Application for Division review. After review, the Division will notify the applicant of any required revisions/additions and schedule an in-person applicant meeting with the Director. The applicants will provide a revised and complete final version of the Application at the applicant meeting. An electronic fill-in version of the Application can be found at the Division’s website:

<http://dlr.sd.gov/banking/trusts/default.aspx>.

When the Application is deemed complete, the Division will publish a Notice of Application in the community most directly affected by the proposed trust company. A 30-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. If the Application is approved, the applicants must 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;
- Articles of Incorporation/Organization – The Division will review and the Director will sign and forward the Articles to the South Dakota Secretary of State for filing. Include a payment made payable to the “South Dakota Secretary of State” for the current filing fee;
- Proof of Capital pursuant to SDCL 51A-6A-10 and 51A-6A-19;
- Proof of Insurance as required by SDCL 51A-6A-19;
- Pledge Agreement and proof of pledge pursuant to SDCL 51A-6A-19.2;
- By-laws or Operating Agreement to be adopted at the first meeting of the trust company;
- Statement of Principles of Trust Management specific to the trust company to be adopted at the first meeting of the trust company;
- ACH Authorization Form;
- Oath of Directors (Corporations) or Oath of Managers (Limited Liability Companies);
- List of Owners;
- 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 ACH Authorization Form, Oath of Directors/Managers, List of Owners, and Officers and Employees Schedule can be found on the Division’s website.

The applicants are encouraged to thoroughly review SDCL Chapter 51A-6A, which pertains to the operation and creation of a South Dakota trust company and SDCL Title 55 which addresses trust law in South Dakota. These statutory provisions are available for online viewing at http://legis.sd.gov/Statutes/Codified_Laws/default.aspx.