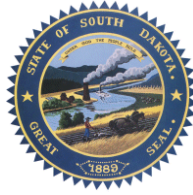


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Division of Banking

Trust Company Information Packet

Table of Contents **Page**

Application Process 1

Change in Management 2

South Dakota Situs 3

Trust Company Requirements 4

Supervisory Fees 4

Financial Institution Tax 4

Statement of Principles of Trust Management 4

Examination Procedures 6

Additional Guidance10

Application Process

Prior to obtaining a South Dakota trust company charter, the applicants are required to submit a complete and thorough Application with a \$5,000 non-refundable application fee and schedule an in-person meeting with the Director of the South Dakota Division of Banking (Division). An electronic fill-in version of the application can be found at the Division's website.

Pursuant to South Dakota Codified Laws (SDCL) 51A-6A-17, an independent criminal background investigation, independent credit report, and litigation report must be submitted for each incorporator, organizer, board member, manager, officer, and key employee 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 investigation for private trust company individuals require 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.

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 the in-person applicant meeting with the Director. The applicants will provide a revised and complete final version of the Application at the applicant meeting.

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 an additional 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 will be directed to submit to the Division the fully executed Articles of Incorporation/Organization (Articles). When received, the Division

forwards the Articles to the South Dakota Secretary of State (SD SOS) for filing. After filing, the Division will forward a copy of the filed Articles to the applicants along with a cover letter directing the applicants to submit the following information, which must be received prior to the issuance of the charter and certificate of authority:

- Trust company contact name, title, phone number, and email address;
- Fully executed by-laws or operating agreement to be adopted at the first board meeting of the trust company;
- Paid-in capital attestation pursuant to SDCL 51A-6A-10 and 51A-6A-19;
- Pledge agreement and proof of pledge pursuant to SDCL 51A-6A-19.2;
- Proof of insurance as required by SDCL 51A-6A-19;
- ACH Authorization Form to facilitate the annual supervision fee transmittal;
- Oath of Directors (corporations) or Oath of Managers (limited liability companies);
- List of Owners;
- Officers and Employees Schedule; and,
- Financial Crimes Enforcement Network information: trust company tax identification number and point of contact name, title, mailing address, email address, fax number, and phone number (public trust companies only).

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 51A-6A, which pertains to the operation and creation of a South Dakota trust company and Title 55 which addresses trust law in South Dakota.

Change in Management

Effective July 1, 2010, criminal background investigation, credit reports, and litigation reports are required for new hires and appointments of management personnel of existing South Dakota-chartered trust companies (SDCL 51A-6A-17). Management personnel are defined as incorporators, organizers, board members, managers, officers, and key employees. As with the application process, the background review requirement for management personnel is structured differently for public and private trust companies. Management personnel for public trust companies must undergo the fingerprint-based criminal background investigation in addition to a credit report and litigation report. Management personnel for private trust companies only require name-based criminal background investigations, 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 (preferred) or by way of a sworn affidavit if sufficiently detailed. All trust companies are required to immediately notify the Division of any material change to the background of any

individual that would otherwise be subject to this process. All costs associated with these processes are to be paid by the applicant.

A Biographical and Financial Report for management personnel must be completed and submitted with the required background information; an electronic fill-in form is available on the Division's website.

South Dakota Situs

SDCL 51A-6A-11.1 establishes the criteria needed to maintain South Dakota situs. Public trust companies must maintain office space for trust company business and for the storage of, and access to, trust company records pursuant to SDCL 51A-6A-30; 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; and perform trust administration in South Dakota.

For purposes of SDCL 51A-6A-11.1, trust administration is defined in ARSD 20:07:22:04 and means that at least three of the following are performed wholly or partly in South Dakota:

- Annual account reviews;
- Annual investment reviews;
- Trust accounting;
- Account correspondence;
- Completing trust account tax returns; or,
- Distributing account statements.

Trust administration may be satisfied by other means if the Director determines the nature and degree of risks presented by the trust company are low based on a review of the size, nature, and number of accounts under administration, 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.

Trust Company Requirements

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 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 for South Dakota trust powers of no less than \$100,000 must be pledged to the Division pursuant to SDCL 51A-6A-19.2.

Supervisory Fees

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.

Financial Institution Tax

South Dakota-chartered trust companies are defined as a financial institution pursuant SDCL 10-43-1(4). 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 months.

Statement of Principles of Trust Management

The board of every South Dakota-chartered trust company, both private and public, is required to adopt the Statement of Principles of Trust Management (Statement) at the first organizational meeting. The board should document a thorough review of the Statement annually to ensure ongoing compliance.

The following is an example of the Statement structure, the italicized sections provide additional detail and need not be included in the adopted resolution. The actual language adopted by the board should be revised to identify trust company-

specific oversight responsibilities, taking into consideration the size, complexity, and risk profile of the trust company. However, the board cannot exclude or minimize any Statement principles.

Trust companies that strictly specialize in the administration of custodial accounts are permitted to amend Statement principles to correspond with actual business practices. A document entitled “Statement of Principles of Trust Management – Custodial” can be accessed on the Division’s website.

Statement of Principles of Trust Management

The board, by proper resolution included in its minutes, should:

1. Designate an officer, qualified and competent, to be responsible for and administer the activities of the trust company. In addition, the board should define the officer’s duties.
2. Name a trust committee consisting of at least three directors/managers to be responsible for and supervise the activities of the trust company. The committee should include, where possible, one or more directors who are not active officers of the company.

Nothing herein is intended to prohibit the board from acting as the trust committee, or from appointing additional committees and officers to administer the operations of the trust company. When delegating duties to subcommittees and/or officers, the board and the trust committee continue to be responsible for the oversight of all trust activities. Sufficient reporting and monitoring procedures should be established to fulfill this responsibility.

The trust committee should:

- a. Meet at least quarterly, and more frequently if considered necessary and prudent to fulfill its supervisory responsibilities;
- b. Approve and document the opening of all new trust accounts; all purchases and sales of, and changes in, trust assets; and the closing of trust accounts;
- c. Provide for a comprehensive review of all new accounts for which the company has investment responsibility promptly following acceptance;
- d. Provide for a review of each trust account, including collective investment funds, at least once during each calendar year. The scope, frequency, and level of review (trust committee, subcommittee, or disinterested account officer) should be addressed in appropriate written policies which give consideration to the company’s

fiduciary responsibilities, type and size of account, and other relevant factors. Generally, discretionary account reviews should cover both administration of the account and suitability of the account's investments, while non-discretionary account reviews should only address account administration;

- e. Keep comprehensive minutes of meetings held and actions taken; and
- f. Make periodic reports to the board of its actions.

3. Provide comprehensive written policies which address all important areas of trust company activities.
4. Provide competent legal counsel to advise trust officers and the trust committee on legal matters pertaining to fiduciary activities.
5. Provide for adequate internal controls including appropriate controls over trust assets.
6. Provide for an adequate audit (by internal or external auditors or a combination thereof) of all fiduciary activities, annually. The findings of the audit, including actions taken as a result of the audit, should be recorded in its minutes.

If a trust company adopts a continuous audit process in lieu of performing an annual external audit, management must report a thorough internal review of trust company operations and administration to the board quarterly. The internal review should include, but is not limited to, documentation of trust company assets, liabilities, and equity position; trust company financial performance; assets held in trust accounts, both discretionary and non-discretionary; and any non-ordinary transactions. Additionally, internal controls and segregation of duties must be periodically assessed if the trust company adopts a continuous audit process in lieu of annual external audits. Internal audits may be performed, on an activity-by-activity basis, at intervals commensurate with the level of risk associated with that activity. Audit intervals must be supported and reassessed regularly to ensure appropriateness given the current risk and volume of the activity. For specific activity examples, refer to the Division's Internal Audit Guidance located on our website.

7. Receive reports from the trust committee and record actions taken in its minutes.
8. Review the examination reports of the trust company by supervisory agencies and record actions taken in its minutes.

Examination Procedures

SDCL 51A-6A-31 requires the Division to examine each trust company at least once every 36 months. SDCL 51A-6A-33 provides that each trust company is required to pay all salary and travel expenses associated with the examination process.

The examination generally includes a review of internal policies, practices, and procedures; board and committee meeting minutes; affiliate relationships; external and internal audits performed; compliance with applicable fiduciary laws, rules, and principles including South Dakota situs requirements; account administration and compliance with governing instruments; earnings performance including a capital adequacy assessment; asset management; and operations. If any asset management or operations functions are outsourced, the examination will focus on the documentation of the trust company's due diligence review of the provider(s). Transaction testing and the Bank Secrecy Act (BSA) compliance assessment are generally performed in conjunction with the account compliance review. The examination will also include an assessment of Regulation R compliance requirements.

For purposes of safety and soundness examinations, South Dakota-chartered trust companies are categorized into two classes:

Public Trust Company – A trust company that engages in trust company business with the general public by advertising, solicitation or other means, or a trust company that engages in trust company business but does not fall within the definition of a private trust company established by the commission through rules promulgated pursuant to chapter 1-26. The commission shall consider the size, number of clients served and the family and other relationships among the clients served, complexity, and related safety and soundness issues as it establishes in rule a definition for the term private trust company. SDCL 51A-6A-1(12A).

Private Trust Company – A private trust company is one that does not engage in trust company business with the general public or otherwise hold itself out as a trustee or fiduciary for hire by advertising, solicitation, or other means and instead operates for the benefit of a family or families, regardless of whether compensation is received or anticipated. Administrative Rules of South Dakota 20:07:22:03.

Public Trust Company Examination Procedures

Public trust companies receive a full-scope examination at least once every 24 months or sooner if deemed necessary by the Director. The Division utilizes a modified version of the Uniform Interagency Trust Rating System, which provides a numeric component rating for trust company management; operations, internal controls, and audits; earnings;

compliance; and asset management (commonly referred to as the MOECA review). The modified version includes a South Dakota situs assessment within the management review component and a capital adequacy assessment within the earnings review component. Each component is assigned a rating of 1 through 5 with 1 being the best possible rating. Based on the component ratings, a composite trust rating of 1 through 5 is assigned. Composite ratings are assigned based on the following definitions:

- A Trust Rating of “1” is assigned. Administration of fiduciary activities is sound in every respect. Generally, all components are rated “1” or “2.” Any weaknesses are minor and can be handled in a routine manner by management. The institution is in substantial compliance with fiduciary laws and regulations. Risk management practices are strong relative to the size, complexity, and risk profile of the institution's fiduciary activities. Fiduciary activities are conducted in accordance with sound fiduciary principles and give no cause for supervisory concern.
- A Trust Rating of “2” is assigned. Administration of fiduciary activities is fundamentally sound. Generally, no component rating should be more severe than “3.” Only moderate weaknesses are present and are well within management's capabilities and willingness to correct. Fiduciary activities are conducted in substantial compliance with laws and regulations. Overall risk management practices are satisfactory relative to the institution's size, complexity, and risk profile. There are no material supervisory concerns and, as a result, the supervisory response is informal and limited.
- A Trust Rating of “3” is assigned. Administration of fiduciary activities exhibits some degree of supervisory concern in one or more of the component areas. A combination of weaknesses exists that may range from moderate to severe; however, the magnitude of the deficiencies generally does not cause a component to be rated more severely than 4. Management may lack the ability or willingness to effectively address weaknesses within appropriate time frames. Additionally, fiduciary activities may reveal some significant noncompliance with laws and regulations. Risk management practices may be less than satisfactory relative to the institution's size, complexity, and risk profile. While problems of relative significance may exist, they are not of such importance as to pose a threat to the trust beneficiaries generally, or to the soundness of the institution. The institution's fiduciary activities require more than normal supervision and may include formal or informal enforcement actions.
- A Trust Rating of “4” is assigned. Fiduciary activities generally exhibit unsafe and unsound practices or conditions, resulting in unsatisfactory performance. The problems range from severe to critically deficient and may be centered around inexperienced or inattentive management, weak or dangerous operating practices, or an accumulation of unsatisfactory features of lesser importance. The weaknesses and problems are not being satisfactorily addressed or resolved by management. There may be significant noncompliance with laws and regulations. Risk management practices are generally

unacceptable relative to the size, complexity, and risk profile of fiduciary activities. These problems pose a threat to the account beneficiaries generally and, if left unchecked, could evolve into conditions that could cause significant losses to the institution and ultimately undermine the public confidence in the institution. Close supervisory attention is required, which means, in most cases, formal enforcement action is necessary to address the problems.

- A Trust Rating of “5” is assigned. Fiduciary activities are conducted in an extremely unsafe and unsound manner. Administration of fiduciary activities is critically deficient in numerous major respects, with problems resulting from incompetent or neglectful administration, flagrant and/or repeated disregard for laws and regulations, or a willful departure from sound fiduciary principles and practices. The volume and severity of problems are beyond management's ability or willingness to control or correct. Such conditions evidence a flagrant disregard for the interests of the beneficiaries and may pose a serious threat to the soundness of the institution. Continuous close supervisory attention is warranted and may include termination of the institution's fiduciary activities.

Private Trust Company Examination Procedures

Private trust companies receive a full-scope examination at least once every 36 months or sooner if deemed necessary by the Director, based on the volume and type of fiduciary activities. While private trust company examination review and assessment procedures are the same as public trust company examinations, a numerical component and composite rating is not provided. Instead, a composite rating of Strong, Satisfactory, Needs Improvement, or Unsatisfactory is assigned based on the following definitions:

- Strong – Trust companies so rated are sound in every respect. Any weaknesses are minor and can be handled in a routine manner by management. The institution is in substantial compliance with fiduciary laws and regulations.
- Satisfactory - Trust companies so rated are fundamentally sound. Any weaknesses are minor and can be handled in a routine manner by management.
- Needs Improvement – Trust companies so rated exhibit some degree of supervisory concern in one or more areas. Moderate weaknesses are present and are well within management's capabilities and willingness to correct.
- Unsatisfactory - Trust companies in this group exhibit practices and conditions that may be unsafe and unsound if not addressed. Management may lack the ability or willingness to effectively address weaknesses within appropriate time frames.

Supervisory Guidance

Supervisory guidance is generally derived from best business practices utilized by South Dakota-regulated financial institutions to mitigate business and fiduciary risks. The examination process is structured to assess each institution's risk management processes and to assist management in addressing any areas of identified weaknesses. Examination observations regularly reference supervisory guidance to provide management with examples of sound risk management practices and to assist with corresponding risk mitigation. While examinations do not cite violations of supervisory guidance, deviations from the guidance could heighten the institution's overall risk profile which may negatively impact regulatory assessments. Please note that the supervisory guidance is general in nature and designed to assist management with developing a comprehensive risk management program. Therefore, the guidance should be modified as needed to correspond with each institution's unique business model.

The following supervisory guidance is available on the Division's website

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

Account-Level Administrative Review
Guidance

Account-Level Investment Review
Guidance

Bank Secrecy Act Guidance

Customer Identification Guidance

Due Diligence Review Guidance

Foreign Trust Acceptance and Oversight
Guidance

Foreign Trust Taxation and Reporting
Guidance

Internal Audit Guidance

Interstate Trust Guidance

Investment Policy Guidance

Pooled Investment Guidance

Private Trust Company Mandates

Public Trust Company Mandates

Real Estate Oversight Guidance

Regulation R Guidance

Statement of Principles of Trust
Management

Statement of Principles of Trust
Management – Custodial

Written Policies and Procedures
Guidance