

DIVISION OF BANKING

TRUST COMPANY APPLICATION ATTACHMENTS

ATTACHMENT A - DEFINITIONS

Private Trust Company (ARSD 20:07:22:03)

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.

Public Trust Company (SDCL 51A-6A-1(12A))

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.

Trust Company Business (SDCL 51A-6A-1(14))

Engaging in, or representing or offering to engage in, the business of acting as a fiduciary for hire.

Fiduciary for Hire (SDCL 51A-6A-1(7))

Acting as an administrator, conservator, custodian, executor, guardian, personal representative, or trustee, for any person, trust, or estate for compensation or gain or in anticipation of compensation or gain.

South Dakota Situs Requirements (SDCL 51A-6A-11.1)

A public trust company shall:

- 1) Maintain office space in South Dakota for trust company business and for the storage of, and access to, trust company records required by § 51A-6A-30;
- 2) Hold no less than two quarterly governing board meetings with a quorum physically present in South Dakota each calendar year;
- 3) Employ, engage, or contract with at least one trust officer or key employee to provide services for the trust company in South Dakota related to the powers of the company in § 51A-6A-29 and to facilitate the examinations required by § 51A-6A-31; and
- 4) Perform trust administration in South Dakota.

Office Space (SDCL 51A-6A-11.2)

For purposes of § 51A-6A-11.1, office space in South Dakota for each public trust company shall:

- 1) Be in premises distinct and divided from the office space of any other entity;
- 2) Have the name, charter, and certificate of authority of the trust company prominently displayed;
- 3) Have access to premises in or adjacent to the office space sufficient to facilitate onsite examinations by the division;
- 4) To the extent the trust company maintains hard copies of any documents required to be maintained pursuant to § 51A-6A-30, have a secure fireproof file cabinet that contains all such hard copies; and

- 5) To the extent the trust company maintains any record electronically, have a 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.

Director Approval of Office Space (SDCL 51A-6A-11.3)

Upon application by a trust company, the director may approve office space that does not meet the requirements of § 51A-6A-11.2 if the director 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, the structure and business plan of the trust company approved by the division, and the number of employees or persons performing services for the trust company in South Dakota.

If the size, risk profile, or rate of growth of a trust company changes, or if a trust company's office space is insufficient to facilitate onsite examinations by the division, the director may impose additional office space requirements.

Trust Administration (ARSD 20:07:22:04)

For purposes of § 51A-6A-11.1, trust administration in South Dakota means that at least three of the following are performed wholly or partly in South Dakota for the accounts under the management, administration, or custody of the trust company:

- 1) Annual account reviews;
- 2) Annual investment reviews;
- 3) Trust accountings;
- 4) Account correspondence;
- 5) Completing trust account tax returns; or
- 6) Distributing account statements.

Notwithstanding the definition above, trust administration as set forth in § 51A-6A-11.1(4) may be satisfied by other means if the director 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.

If the size, risk profile, or rate of growth of a trust company changes, the director may, to the extent it is deemed necessary, require additional administration be performed in South Dakota to satisfy the requirement in § 51A-6A-11.1(4) as defined by this section.

Officer and Key Employee (SDCL 51A-6A-17)

The term officer does not include individuals who are not involved in the ongoing policy making or management of the trust company.

The term key employee does not include an employee whose primary responsibilities will be limited to clerical or support duties.

ATTACHMENT B – DUE DILIGENCE REVIEW GUIDANCE

Prior to designating a servicing agent for trust company/department activities, the serviced institution should document its efforts to exercise reasonable caution in selecting agents. Compatibility and performance should be considered in conjunction with the cost of the services to be provided. The scope of the due diligence may depend upon the type and significance of outsourcing activity. However, detailed below are some of the most common considerations in any due diligence review. The listing does not supersede provisions of law or regulation, nor does it preclude additional concerns that may occur in some situations:

- An assessment should be made of the servicing organization's ability to handle the volume and nature of trust accounts and assets to be serviced. Obtaining a list of servicer references and contact names is common practice.
- The financial strength and viability of the servicing organization should be considered. In this regard, the strength provided by a parent holding company or similar organization may also be considered. This would entail a review of financial statements and audit reports, and a search of pending or threatened financial or legal claims.
- If investment management is being outsourced, then a review of the servicer's investment performance (over a minimum of five to ten years, or several investment cycles) should be reviewed. In addition, management should review the SEC and FINRA online search tools for pertinent information with respect to investment adviser and broker-dealer service providers.
- Audit or supervisory evaluations of the servicing organization, if available. Depending upon the outsourced function, management may obtain AICPA Statement on Standards for Attestation Engagements (SSAE) 16 Reports if conducted, or other available reports.
- A review of certain policies, procedures, and controls of the servicing organization should be made. Knowledge of a service provider's business strategies, privacy policies, service philosophies, and quality control initiatives may be beneficial in choosing a firm whose standards correspond to department/company standards.
- Evidence supporting the maintenance of fidelity insurance coverage by the servicing organization should be obtained.

In addition to performing an initial review of the servicing agent, management has a responsibility to monitor and periodically update the above-referenced documentation on the condition and activities of the servicing organization, while ensuring that the provisions of the agreement are being met. In addition to updating the above review criteria, the institution's ongoing monitoring program should incorporate the following guidance:

- Results of subsequent independent audits of the service provider's operations.
- Verification of the adequacy of the service provider's contingency planning.

- Contingency plans developed for the potential of deteriorating performance or other problems encountered with the service provider.

While the above guidance is applicable to all service providers, it is important to note that affiliated service providers warrant heightened attention to mitigate any potential conflict of interest and self-dealing risks.

The review of the criteria above should be thoroughly documented and maintained for review by auditors and regulatory authorities.

ATTACHMENT C – STATEMENT OF PRINCIPLES OF TRUST MANAGEMENT

The organizers/managers must adopt the following Statement of Principles of Trust Management (Statement) at the first board meeting. The Statement oversight structure may be revised as appropriate based on the size, complexity, and risk profile of the proposed trust company. However, each principle must be identified and addressed.

Statement of Principles of Trust Management

Nothing herein is intended to prohibit the board of directors/managers 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 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.

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 company operations and administration to the board quarterly. The internal review should include, but is not limited to, documentation of company assets, liabilities, and equity position; 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 audit engagements. 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. Activity examples include account reconciliations, safekeeping/vault reconciliations, trading transactions, distribution timeliness and accuracy, account acceptance/closing procedures, adequate review of written policies and procedures, duty segregations, service provider due diligence reviews, account compliance reviews, information system assessments, fee assessments, tax return preparation, etc.

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.

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ATTACHMENT D

BIOGRAPHICAL AND FINANCIAL REPORT

Name of Proposed Trust Company:

Position (check all that apply):

Incorporator/Organizer

Director/Manager

Officer; Title:

Principal Owner

Other:

If identified as an officer or other key employee, please provide the address of the location where the individual will be physically located and providing services pursuant to employment with the trust company:

Address:

City:

State:

Zip:

Personal Information

Name:

Mailing Address:

City:

State:

Zip:

If a residence for less than five years, list addresses and dates occupied for past five years:

Date From	Date To	Address	State	Zip	Country

Date of Birth:

Place of Birth:

Social Security Number:

Phone Number:

Fax Number:

E-Mail Address:

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Employment Record

Present occupation or business activity (describe in detail giving name, address, and type of business):

List employment in reverse chronological order for the last five years:

Date From	Date To	Employer Name and Address	Title	Duties	Reason for Leaving

Have you ever been dismissed or asked to resign from any past employment, including a less than honorable discharge from military service?

Yes No If yes, explain fully:

Have you ever been required by a former employer to tender your resignation?

Yes No If yes, explain fully:

Have you ever voluntarily resigned from any past employment to avoid being terminated?

Yes No If yes, explain fully:

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Education and Professional Credentials:

List each diploma or degree from colleges, universities, or other post-secondary institutions:

School's Name	Location	From	To	Degree

List each professional license or similar certificate you now hold or have held (for example, Attorney, Physician, CPA, CTA, CTFA, etc.):

License	Issuing Authority	Issue Date	Status	Expiration

Past Business Activity

List all ownership interests and extent thereof now held by you or held by you within the past five years in the following:

Any state-chartered bank or trust company?

Yes No

If yes, describe in detail giving name, address, and type of business:

Any other financial institution?

Yes No

If yes, describe in detail giving name, address, and type of business:

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Have you ever been affiliated with any proposed domestic, foreign, state, or federal financial institution which did not become operative?

Yes No

If yes, explain extent of interest and nature of affiliation:

Legal and Related Matters

Have you ever been arrested for a felony crime or any crime involving fraud, dishonesty, or breach of trust? Yes No If yes, give a full history of the charge(s), and the year, place, and final disposition thereof:

Have you or a closely held business:

Filed a voluntary petition in bankruptcy?

Yes No

Been involved in a forced liquidation?

Yes No

Been involved in an equitable receivership?

Yes No

Defaulted on a loan or financial obligation of any sort, whether as obligor, cosigner, or guarantor?

Yes No

Forfeited property in full or partial satisfaction of any financial obligation?

Yes No

Do you have now or have you had any unsatisfied judgments or liens against you?

Yes No

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Have you or any company with which you are or were associated been involved in any lawsuit, formal or informal investigation, examination, or administrative proceeding that may result in, or resulted in, any penalty, agreement, undertaking, consent, judgment, or order imposed by or entered into with any of the following entities:

Any federal or state court?

Yes No

Any department, agency, or commission of the United States Government?

Yes No

Any state, municipal, or foreign governmental entity?

Yes No

Any self-regulatory organization (for example, FINRA, NASD, FASB, state bar)?

Yes No

If you answered yes to any of the foregoing, give full details thereof, including bankruptcy number, date, place, name of business, final disposition, and any other relevant facts:

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Other Information:

Are you now serving or have you ever served in the following capacities? If yes, give full details, including circumstances and dates services commenced and terminated. If involuntary resignation, so state and explain:

Trustee: Yes No

If yes, explain fully:

Guardian: Yes No

If yes, explain fully:

Executor: Yes No

If yes, explain fully:

Similar fiduciary capacity: Yes No

If yes, explain fully:

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Give the name and address of three individual character references:

Name	Address	Contact Number

Financial Information:

Attach a current, detailed, and comprehensive financial statement.

Certification:

I understand that the South Dakota Division of Banking may conduct extensive checks into my background, experience, and related matters in conjunction with my application. I certify that the information contained in the biographical report and attached financial statement and other attachments, has been carefully examined by me and is true, correct, and complete.

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Signature

Date