



State of Washington

DEPARTMENT OF FINANCIAL INSTITUTIONS
DIVISION OF BANKS

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TRUST INSTITUTIONS MODERNIZATION ACT SUMMARY

The purpose of this document is to provide additional information related to the Trust Institutions Modernization Act (“TIMA”).¹ Below is a description of the changes in the law, as well as the approach the Department of Financial Institutions (“DFI”) is taking to implement the new law.

Background:

Enactment of TIMA. In 2014, the Legislature enacted TIMA, which took effect January 5, 2015. This was the first milestone in a multi-phase financial institutions law modernization sponsored by DFI. Based on this change in the law, Washington State-chartered commercial banks are now governed by Title 30A RCW (Washington Commercial Bank Act), and trust companies and trust departments of banks are now governed under the new Title 30B RCW (Washington Trust Institutions Act).² Moreover, TIMA grants the DFI Director broad administrative authority to carry out and enforce the provisions of the new law.³

Exemption from TIMA. Certain persons and entities are exempt from trust chartering requirements and regulation under TIMA. See RCW 30B.04.040.

Trust Charter Requirement – Generally. Under TIMA, non-exempt persons and entities that are engaging in “trust business” must obtain a Certificate of Authority (trust charter) from DFI’s Division of Banks (“Division”). “Trust business” is generally defined as a fiduciary for hire and is technically defined as a non-exempt person or entity that holds itself out to the public as performing trust company activities. An exhaustive list of trust company activities may be found at RCW 30B.08.070.

¹ SB 6135 (2014 c 37).

² Title 30B RCW in its entirety is available for review at <http://app.leg.wa.gov/rcw/default.aspx?Cite=30B>.

³ See RCW 30B.04.020(2). For purposes of this document, “Director” means the Director of the Division of Banks in his or her delegated authority granted from the Director of the Department of Financial Institutions under RCW 43.320.050.

Regulation of Trust Companies under TIMA. After a Certificate of Authority is granted, non-exempt persons or entities⁴ are legally authorized to engage in “trust business” in the State of Washington and are subject to supervision and regulation by the Division. Ongoing supervision includes quarterly reporting to the Division and regular examinations, generally every 18 months. Fees are charged semi-annually based on assets under management, and the Division charges hourly fees for any ongoing examination or supervision activities. The Division’s fee schedule may be found in Chapter 208-544 WAC. Capital requirements are determined by the Director based on the company’s overall business plan or existing operations.

Enforcement of Non-Exempt Unauthorized Activity. Non-exempt persons and entities whom the Division determines are engaged in “trust business” but are unwilling to obtain a Certificate of Authority from the Division may be subject to enforcement action(s) by the Division by and through the Washington State Attorney General.

Out-of-State Trust Companies. Trust companies doing business in Washington State that are chartered, and at least nominally regulated by another state, and have not previously obtained approval from DFI, must register with the Division. Trust companies that have previously obtained the approval from DFI will be required to supply evidence of such approval. See Chapters 30B.38 and 30B.72 RCW of TIMA. Registration by out-of-state trust companies does not subject them to periodic examination by DFI unless their out-of-state chartering authority exercises a cooperative examination agreement (if any) with DFI. However, out-of-state trust companies are subject to certain enforcement measures at the request of DFI and by and through the Washington State Attorney General for conduct that harms or is likely to harm the public. Refer to the *Out-of-State Trust Company Information and Application* on the DFI Trust webpage located at <http://www.dfi.wa.gov/trusts>.

Implementation:

Plan of Action. The Division is currently working on the following: (1) Communicating with potentially affected persons and entities (“affected parties”) under the new law; (2) Identifying non-exempt persons and entities engaging in unauthorized trust activity; and (3) Bringing unauthorized trust activity under the supervision of the Division.

Outreach – Grace Period. The Division is currently reaching out to potentially affected parties and will work with these persons or entities to determine whether they are subject to the new law.⁵ In order to appropriately communicate with all affected parties, the Division is enacted a six-month *enforcement grace period* (from January 5, 2015, through July 6, 2015). The grace period has now officially ended.

⁴ A non-exempt person or entity may voluntarily seek a trust charter and regulation as a trust company by DFI.

⁵ DFI is compiling a list of “affected parties,” which is neither exhaustive nor complete. Inadvertent omission from this list should not be construed as excluding such “affected parties” from regulation or enforcement.

Prospective Rulemaking. The Division will begin the rulemaking process to further define certain elements of Title 30B RCW. Public comment as well as public meetings will be held to assist the Division in this rulemaking endeavor. The rulemaking schedule and information will be made public as it becomes available. For ongoing notifications of the rulemaking process, please contact the Division or subscribe to the Banks listserv at <https://public.govdelivery.com/accounts/WADFI/subscriber/new?preferences=true>.

Affected Parties. Currently, the Division is offering two options to affected parties:

1. **Determination Interview.** Individuals and entities seeking a Determination Letter indicating whether they are, or are not, engaged in “trust business,” may do so through the Determination Interview process. See ***Determination Interview Instructions enclosed.***
2. **Trust Company Application.** Individuals and entities seeking a Certificate of Authority are encouraged to submit a Trust Company Application. See ***Application Instructions enclosed.***

For more information on exemptions to the law and what it means to be regulated by DFI, refer to the ***Frequently Asked Questions enclosed.***

For more information, please refer to the DFI Trust webpage located at <http://www.dfi.wa.gov/trusts> or contact Ali Higgs, Chief of Regulatory Affairs for the Division of Banks, at (206) 639-6054 or ali.higgs@dfi.wa.gov.

I. DETERMINATION INTERVIEW INSTRUCTIONS

The Division will set up an interview with affected parties to determine if a person or entity falls under DFI's jurisdiction. Preliminary estimates indicate that an in-person interview will take 1-2 hours, and a review of books and records will take approximately 2-3 hours. The Division may charge the statutory fee of \$83 per hour for any time spent on the interview and subsequent Determination Letter.⁶

Below is a list of the information that is typically obtained during a Determination Interview, please note this is not an exhaustive list:

1. Number of accounts administered.
2. Types of accounts administered.
3. Dollar amount of Assets Under Management (AUM).
4. Investment processes and procedures, or investment advisor research and monitoring.
5. Cash management and balancing processes and procedures.
6. Management background and number of employees.
7. Governance structure and organization chart.
8. Board minutes and committee minutes (if any).
9. Financial statements including the company's balance sheet and income statement.
10. Client list and current market value of holdings.
11. Marketing, advertising, or promotional materials.
12. Fee schedules.
13. Written policies and procedures.
14. Insurance policies and coverage levels.

To schedule a Determination Interview, please contact:

Ali Higgs
Chief of Regulatory Affairs – Division of Banks
Department of Financial Institutions
PO Box 41200
Olympia, WA 98504
Phone: 206-639-6054
Direct email: ali.higgs@dfi.wa.gov

-or-

Department of Financial Institutions - Division of Banks
General phone number: 360-902-8704
General email: banks@dfi.wa.gov

⁶ See WAC 208-544-045(m).

After a Determination Interview is completed, the Division will issue a Determination Letter, indicating whether the company is (or is not) engaging in trust business, and thus must submit (or is not required to submit) an application for a Certificate of Authority to act as a state-chartered trust company.

II. APPLICATION INSTRUCTIONS

The process for establishing a trust company occurs in five basic steps:

1. Submitting an *Application for Trust Powers*;
2. Scheduling and conducting a pre-filing meeting;
3. Submitting the required application fee and filing the *Official Application*;
4. Processing the *Official Application* and conducting an investigation; and,
5. Making a final determination to issue a *Certificate of Authority*.

There are no minimum capital requirements to form a Washington State-chartered trust company. Capital requirements are determined by the Director based on a review of the business plan, scope of the proposed trust company operations, current or proposed insurance and bonding levels, and loss history (if any).

The Division charges hourly fees for processing applications and conducting attendant investigations. The charter investigation fees are calculated using the number of hours multiplied by the current rate, which is \$83 per hour.⁷

1. **SUBMITTING THE APPLICATION FOR TRUST POWERS**

Individuals interested in forming a trust company should complete the *Application for Trust Powers* (form provided) and submit it to the Division by one of the following methods:

Secure Email:
banks@dfi.wa.gov

Fax:
(360) 704-6904

US Mail:
PO Box 41200
Olympia WA 98504-1200

2. **PRE-FILING MEETING**

After the *Application for Trust Powers* is received, a representative from the Division will contact the applicant to gather additional information and schedule a pre-filing meeting with the applicant to answer any further questions. Refer to WAC 208-528-020 for more information. Please note that the initial *Application for Trust Powers* will become part of the *Official Application*, but may be amended at a later date.

⁷ WAC 208-544 et seq.

3. FILING THE OFFICIAL APPLICATION

After a pre-filing meeting is held, the *Official Application* should be submitted to the Division. Once the *Official Application* is received by the Division, it will be reviewed and processed. At a minimum, the *Official Application* should contain the following:

- *Notice of Intention to Organize* (form provided).
- A \$4,000 filing fee for processing the application and deposit for investigation costs.⁸
- A revised *Application for Trust Powers* (if applicable) and evidence of the adoption of the *Statement of Trust Company Principles* (form provided).
- Proposed *Articles of Incorporation* and *Bylaws* (if applicable), bearing the original signatures of the proposed organizers and Board of Directors.⁹
- Completed and signed *Biographical and Financial Reports* for any proposed directors, executive officers, or principal shareholders (interagency form provided).¹⁰
- A comprehensive *Business Plan* describing, at a minimum, the elements set forth in Section 4, below. Additional *Business Plan* considerations and requirements may be found at RCW 30B.08.030 and WAC 208-528-030.

The applicant will be notified if additional information is required to complete the review of the application. After it is determined that sufficient information has been filed with the Division to adequately review the proposed transaction, then the application will be officially accepted for review.¹¹

4. PROCESSING THE OFFICIAL APPLICATION

Part of the application review includes a field investigation of the applicant, incorporators, or existing company or financial institution. The investigation will address the following topics and areas of concern:

- Financial condition and history;
- Adequacy of the capital structure;
- Future earnings prospects;
- General character of management;

⁸ See WAC 208-528-040, WAC 208-544-030 & 045(1)(a).

⁹ WAC 208-528-030(6).

¹⁰ RCW 30B.08.030, WAC 208-528-030(4). Please note that Division utilizes a federal interagency form to more efficiently conduct and process background checks.

¹¹ WAC 208-528-050.

- Convenience and needs of the community to be served; and,
- Consistency of corporate powers.

The investigation will include in-person interviews with each of the proposed officers and directors of the proposed trust company.

5. FINAL DETERMINATION

Following the review of the application and completion of the investigation, the Director will decide whether to grant approval to organize a Washington State-chartered trust company. If an approval is granted, the Division will issue a *Certificate of Authority* authorizing the trust company to accept trusts and engage in trust business. A *Certificate of Authority* to establish a Washington trust company will not be issued until all steps required to organize a trust company are completed. The Division will file the finalized *Articles of Incorporation* with the Office of the Secretary of State on behalf of the newly formed institution. The organizers have six months from the date that *Certificate of Authority* is issued to commence business.

ADDITIONAL INFORMATION

The Division examines trust companies at least every 18 months on a schedule that is based on the company's overall condition as well as the dollar amount of assets under management. Furthermore, the Division utilizes the Uniform Interagency Trust Rating System, also known as the MOECA ratings (Management, Operations, Earnings, Compliance, and Asset Management) to assess the overall trust company and produce a report of examination. These ratings are described in greater detail in the links below:

- <https://www.fdic.gov/regulations/examinations/trustmanual/index.html>
- <http://www.occ.gov/topics/capital-markets/asset-management/index-asset-management.html>

For additional information relating to the laws pertaining to the chartering and regulation of a Washington State-chartered trust company, please refer to the following:

- Title 11 RCW — Probate and Trust Law
- Title 30B RCW — Washington Trust Institutions Act
- Chapter 208-512 WAC – Banks and Trust Companies
- Chapter 208-528 WAC – New State Banks and Trust Companies
- Chapter 208-536 WAC – Administration of Trust Companies
- Chapter 208-544 WAC – Schedule of Costs

III. FREQUENTLY ASKED QUESTIONS

1. *Am I exempt from TIMA?*

In order to determine if a person or entity is exempt from TIMA, elements of Title 11 and Title 30B must be reviewed. A person or entity that is operating under the provisions of RCW 11.36.021, *but* does not qualify for one of the exemptions under RCW 30B.04.040, may need to register with the Division. A Determination Interview may need to be scheduled in order to determine whether you or your company is exempt.

Definition of Trustee under Title 11 RCW

Trust laws applicable to all persons and entities in Washington State are housed under Title 11. Under RCW 11.36.021, the following persons and entities may legally serve as a trustee:

- Persons over the age of eighteen years;
- Nonprofit corporations registered under Title 24 RCW;
- Attorneys that are organized as a professional service corporation, professional limited liability company, or limited liability partnerships;
- Higher education institutions and foundations as defined by RCW 28B.10.016 and RCW 28B.50.030; and
- Any other entity authorized under the laws of the state of Washington to serve as a trustee.

Also, under RCW 11.36.021, the following persons are *prohibited* from serving as a trustee in Washington: Minors, convicted felons, and unauthorized corporations organized under Title 23B RCW.

Exemptions under the New Title 30B RCW

Under RCW 30B.04.040, the following persons or entities are exempt from registering with the Division of Banks as a trust company:

- Individuals or sole proprietors or general partnerships or joint ventures composed of individuals not deemed to be operating a trust business.
- National banks, federally chartered trust companies, federal savings banks, and federal savings and loan associations.
- An agent of a trust institution that is authorized by law (i.e., an investment advisor or property manager.)
- Court appointed trustees, guardians, conservators, or receivers. (Because the court is monitoring these relationships, the Division of Banks does not need to have overlapping jurisdiction).
- An attorney, law firm, or limited license legal technician authorized by law.

- Escrow agents performing escrow activities.
- Trustees for deeds of trust engaged in performing their responsibilities under the Washington Deed of Trust Act, Chapter 61.24 RCW.
- Real estate brokers and sales associates engaged in their authorized activities under Chapter 18.85 and 18.86 RCW.
- Acting in the capacity of licensed and registered broker-dealer, investment advisor, or registered representative engaging in a securities transaction or providing an investment advisory service, provided the activity is regulated by the department or the United States Securities and Exchange Commission.
- Insurance company activities that are regulated by the Office of Insurance Commissioner.
- Voting trusts.
- Higher education and foundation trustee activity.
- Private trusts or private trust companies, as defined in RCW 30B.64.
- Other persons or entities, which the Director of the Division may, by future rule, exempt.

2. What are the Division's capital requirements?

There are no minimum capital requirements under TIMA. Please be aware that capital requirements are determined by assessing several factors including the business model, the scope of the trust company operations, the current or proposed insurance and bonding levels, and loss history (if any). Refer to RCW 30B.08.050 for more information.

3. What does it mean to be regulated?

Generally, the Division examines new trust companies once a year for the first two years and every 18 months thereafter. At the end of the examination, a report is issued, where confidential ratings are assigned to the company using the Uniform Interagency Trust Rating System. The Division requires the company to submit a quarterly "call report" to the Division, which is essentially a balance sheet and income statement.

4. How much does it cost to be regulated?

The Division charges an hourly rate for examinations and any application time spent. The current hourly rate is \$83 per hour. The Division also charges a semi-annual fee based on assets under management. A list of our fees can be found at WAC 208-544 et seq.

Cost estimates for a new trust company with approximately \$250 million under management would be as follows:

	Estimated Hours	Dollar Amount
Investigation	72	\$6,000
Year 1	80	\$6,400
Year 2	80	\$6,400
+18 Months (thereafter)	80	\$6,400
Semiannual assessment	2x a year due January 30 and July 31 st	\$125

5. What if I determine that I am running a trust business, but I do not want to register with the Division?

It is incumbent on the person or entity to make a showing that they are not engaged in “trust business” or that they meet a statutory exemption. If the Division determines that a person or company is engaged in unauthorized “trust business,” is deemed non-exempt, and is unwilling to register with the Division, the Director by and through the Washington State Attorney General may commence an enforcement action against the person or company.
