

Regulatory Statement

Incorporating a Trust Company and Obtaining a Business Authorization in British Columbia

Regulatory Statement Number	TR-18-002
Legislation:	<i>Financial Institutions Act, Business Corporations Act</i>
Related Forms:	Application for Incorporation (Form 4) Application for Business Authorization (Form 8)
Date:	October 1, 2018
Distribution:	All Interested Applicants

PURPOSE

This Regulatory Statement (“Statement”) outlines the application process through which an applicant may obtain consent from BC Financial Services Authority (“Authority”) to form a company under the *Business Corporations Act* (“BCA”) for the purpose of subsequent application for authorization to carry on trust business in British Columbia (“BC”).

This Statement is intended to provide a guideline for the base criteria for an application for incorporation and authorization of a trust company; however, this Statement should not be viewed as a definitive and exhaustive list of information requirements as each individual application will be reviewed and assessed and information will be requested as required based on the facts therein.

BACKGROUND INFORMATION

Subject to certain exemptions, no person can carry on trust business in BC unless authorized under the *Financial Institutions Act* (“FIA”). BCFSa is responsible for administering a number of provincial statutes, including the FIA. A BC trust company is a company incorporated under the BCA for the purpose of carrying on trust business. The Authority’s consent is required before the company may be incorporated with the BC Corporate Registry (“Registry”) under the BCA.

BCFSa staff assess application for consent to the incorporation and authorization of a trust company and propose recommendations to the Authority. It is recommended that applicants contact the Statutory Approvals department prior to submission of an application. The assessment of each application is dependent on the specific facts and circumstances, and BCFSa staff are committed to communicating with the application throughout the process of application and review.

Applicants are encouraged to review and to conduct a self-assessment against the guidelines which have been adopted from the Office of the Superintendent of Financial Institutions (“OSFI”). The application of the guidelines is anticipated to vary based on a trust company’s size, scope, and complexity of operations. A list of the current OSFI guidelines adopted by BCFSa may be found on BCFSa’s website on the [Trust Company Regulatory Guidelines](#) page.

Classification: **Public**

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LEGISLATION

Pursuant to [section 13](#) of the FIA, a person must not apply to the Registry to incorporate a company for the purpose of carrying on trust business unless it has first obtained consent to incorporation from the Authority. Trust business is defined in [section 1\(1\)](#) of the FIA.

A company incorporated under the BCA for the purpose of carrying on trust business may be granted a business authorization under [section 61](#) of the FIA. Pursuant to section 61(1) of the FIA, a trust company must apply for its authorization within one year of the date of its incorporation.

Under [section 14](#) of the FIA, during the interim period between incorporation and authorization, the company is only permitted to carry on those preliminary activities set out in its application for incorporation. Prior to authorization, the company is not permitted to carry on trust business, including offering trustee, executor, or administrator services in BC.

As per [section 12\(1\)](#) of the FIA, trust company must use a name that includes the word “trust” together with a designation such as “company,” “corporation,” or include the word “trustco.”

REQUIREMENTS

The FIA outlines a two-step process for the authorization of a new trust company:

1. The entity must apply for and receive consent to incorporate in the province; and
2. The entity must apply for and receive consent to conduct trust business in BC.

Step One: Consent to Incorporation

Applications for consent to incorporation must include the following:

- Non-refundable application fee payable to BCFSA¹;
- A completed [Application for Incorporation Form \(Form 4\)](#);
- The proposed memorandum of incorporation and articles;
- Notice of the company’s registered office and records office;
- Information about each shareholder of the company including names, addresses and number of voting shares held (direct or indirect);
- Current organization chart including percentages owned and identifying the company’s ultimate parent company and ownership and all entities in the corporate group;
- Completed [Personal Information Return](#) (“PIR”) for each of the proposed directors, senior officers, and persons who will directly or indirectly own or control 10 per cent or greater of the company’s voting shares;
- Proposed membership of the following committees:
 - Audit Committee;
 - Investment and Lending Committee; and
 - Conduct Review Committee.
- Draft copy of each committee’s terms of reference;
- Draft copies of the company’s corporate governance policies and practices;
- Draft copy of the company’s business continuity plan;
- Draft copy of any management agreements;
- Draft copy of any shareholder’s agreements;

¹ Please refer to Schedule 1 of the FIA [Financial Institutions Fees Regulation](#) (“FIFR”) for further information on fees. The applicable fee for consent for the incorporation of a trust company in BC is under section 13 of the FIA.

- Description of the company's risk appetite framework, including a detailed description of all risks to which the proposed trust company would be exposed and the manner in which risks will be monitored and managed. The following specific risks must be included at minimum:
 - Market risk;
 - Credit risk;
 - Operational risk;
 - Strategic risk; and
 - Regulatory compliance risk.
- Evidence that the shareholders will be capable of providing continuing financial support to the company (if a shareholder is a corporation, a copy of its audited financial statements for the last three years should be provided);
- Evidence that the proposed trust company will have sufficient capital to support its proposed business plan, including details on initial and future sources of capital;
- Business plan that includes the following information:
 - Rationale for establishing the trust company;
 - Analysis of target markets and opportunities that the company plans to pursue and competitors and threats and details on how the company will execute on its strategy;
 - Services that the proposed trust company intends to offer to the public;
 - Evidence that the proposed directors and senior officers possess the financial and managerial capacity to properly carry on the business of a trust company; and
 - Projected employee complement and organization chart showing reporting lines for senior positions and key responsibilities in the company, along with a description of the function the individuals will perform.
- Pro forma financial statements (balance sheet, income statement, cash flow) for the first three years of operations, including:
 - Forecasts of assets under administration;
 - Capital base and capital adequacy ratios calculated in accordance with the FIA Capital Requirements Regulation;
 - Discussion of the key assumptions and inputs to the financial projections; and
 - Analysis of potential adverse scenarios and the impact to the financial projections.

If the Authority consents to the incorporation, a letter will be issued to notify the applicant of the consent. Applicants may then apply to the BC Corporate Registry to incorporate the trust company.

Step Two: Application for Business Authorization

A trust company must apply for a business authorization from BCFSa within one year of the date of its incorporation and is not permitted to carry on trust business until such time as it has received authorization. Applicants may be subject to an initial on-site review as part of the process of application for business authorization.

An application for a Certificate of Business Authorization must include:

- Non-refundable application fee payable to BCFSa²;
- A completed [Application for Business Authorization Form \(Form 8\)](#);
- Finalized copies of all incorporating documents;
- Updated list of directors, senior officers, and shareholders (if there have been changes since the application for consent to incorporation, the new directors, officers, or shareholders must file PIRs);

² Please refer to Schedule 1 of the [FIA FIER](#) for further information on fees. The applicable fee to apply for a business authorization of a trust company in BC is under section 61(1) of the FIA.

- Copy of the minutes of all Board of Directors meetings, including the meetings of its committees, since the incorporation date;
- Audited financial statements, including a copy of the company's audited opening balance sheet;
- Interim financial statements ending the month preceding the application;
- Description of any material changes to the company's business plan, computer systems, outsourcing arrangements, or its risk appetite framework;
- Finalized copies of the following;
 - Management agreements;
 - Shareholder agreements;
 - Business continuity plan
 - Corporate governance policies and practices; and
 - Board committees' terms of reference.
- Any other information or documentation requested by BCFSA staff.

If the Authority is satisfied that all requirements of the FIA and its regulations have been met, it may issue the Certificate of Business Authorization.

INSTRUCTIONS

To make an enquiry or to request a meeting with BCFSA staff in respect of an application, please contact Statutory Approvals at statapprovals@bcfsa.ca or at (604) 398-5034.

All notices, information or documentation referenced in this Statement may be submitted via the [Integrated Regulatory Information System](#) ("IRIS"), a secure portal through which regulated entities may provide information to BCFSA. IRIS, as well as [instructions](#) on how to set up an account and submit an application through IRIS, may be accessed on BCFSA's website.

Application fees may be paid in IRIS by credit card (Visa or Mastercard). Payment by credit card through IRIS is an integrated part of a submission and will be remitted when the applicant submits the required application materials. Please contact statapprovals@bcfsa.ca for instructions on how to remit payment if you wish to pay an application fee by electronic fund transfer, wire, or cheque.

As the BC Financial Services Authority, we issue Regulatory Statements outlining how entities must operate, or the form and content required by the Regulator for mandatory regulatory filings identified in the Financial Institutions Act and Credit Union Incorporation Act, Regulations, and other pertinent legislation. While the comments in a particular part of a Regulatory Statements may relate to provisions of the law in force at the time they were made, these comments are not a substitute for the law. The reader should consider the comments in light of the relevant provisions of the law in force at the time, taking into account the effect of any relevant amendments to those provisions or relevant court decisions occurring after the date on which the comments were made. Subject to the above, instructions, definitions, and positions contained in a Regulatory Statements generally apply as of the date on which it was published, unless otherwise specified.