

Regulatory Statement

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

Regulatory Statement Number	23-024
Legislation:	<i>Financial Institutions Act, Business Corporations Act</i>
Date:	December 19, 2023
Distribution:	All Interested Applicants

PURPOSE

This Regulatory Statement provides the requirements of an application for consent from BCFSA pursuant to section 13 of the *Financial Institutions Act* (“FIA”) to form a trust company under the *Business Corporations Act* (“BCA”).

This Statement also establishes the form and content of a subsequent application to the Superintendent of Financial Institutions (“Superintendent”), for authorization to carry on trust business in British Columbia (“B.C.”) under section 61(1) of the FIA.

This Statement replaces Information Bulletin TR-18-002 “Incorporating a Trust Company and Obtaining a Business Authorization in British Columbia.”

BACKGROUND INFORMATION

A B.C. trust company includes a company incorporated under the BCA for the purpose of carrying on trust business. BCFSA’s consent is required before an applicant may submit an application to the B.C. Registrar of Companies (“the B.C. Registrar”) to incorporate a trust company under the BCA.

Under section 61(1) of the FIA, a trust company must apply for a business authorization within one year after the date of its incorporation. Under section 70 of the FIA, a corporation is generally not permitted (with some exceptions) to carry on trust business in B.C. unless it has received a business authorization to do so from the Superintendent. Under section 14 of the FIA, during this 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 being issued a business authorization, the company is not permitted to carry on trust business, including offering trustee, executor, or administrator services in B.C.

REQUIREMENTS

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

1. The applicant must apply for BCFSA’s consent to the incorporation of a trust company in B.C.; and if consent to the incorporation is granted,
2. Within one year after the company is incorporated, it must apply to the Superintendent for a business authorization to conduct trust business in B.C.

Classification: **Public**

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Step One: Consent to the Incorporation of a Trust Company

Applications to obtain consent to the incorporation of a trust company for the purpose of carrying on trust business must include the following:

Administrative and Ownership

- non-refundable application fee¹;
- completed [Application for Incorporation Form](#);
- name reservation form from the B.C. Registrar indicating conditional approval of the proposed name pending BCFSa's consent;
 - under section 12(1) of the FIA, a trust company must use a name that includes the word "trust" together with a designation such as "company" or "corporation," or "trustco,"
 - under section 23(1) of the BCA as a BCA company, a trust company must have the word "Limited," "Limitée," "Incorporated," "Incorporée," or "Corporation" or the abbreviation "Ltd," "Ltée," "Inc.," or "Corp." as part of and at the end of its name;
- proposed Notice of Articles and proposed Articles that comply with the BCA, FIA, and their relevant regulations;
- proposed organization chart, including ownership structure, that identifies the company's ultimate parent company and all entities in the corporate group;
- draft copy of any shareholder agreements;
- list of all proposed directors and senior officers; and
- 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.

Business Strategy

- business plan that includes the following information:
 - rationale for proposed establishment of a trust company,
 - analysis of target markets with identification of opportunities that the company plans to pursue, its competitors, potential threats, and details on how the company will execute on its strategy,
 - detailed description of trust services that the proposed trust company intends to offer to the public,
 - evidence that the proposed directors and senior officers possess expertise and experience in trust business as well as 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;

¹ Please refer to Schedule 1 of the FIA's [Financial Institutions Fees Regulation](#) ("FIFR") for further information on fees. Payment of an application fee for consent to the incorporation of a trust company in B.C. is required under section 13 of the FIA.

- draft copy of any management agreements; and
- estimated date of submission of an application for a Certificate of Business Authorization.

Financial Forecast and Capital Management

- pro forma financial statements (balance sheet, income statement, and 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's [Capital Requirements Regulation](#),
 - discussion of the key assumptions and inputs to the financial projections, and
 - analysis of potential adverse scenarios and impact on financial projections;
- evidence that the shareholders will be capable of providing continued financial support to the company (if a shareholder is a corporation, copies of its audited financial statements for the last three years are required);
- 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; and
- draft copy of the investment policy.

Governance and Risk Management

- proposed membership of the Board and the following Board committees: Audit Committee, Investment and Loan Committee, Conduct Review Committee, and/or any other statutory Board committee(s) required under the FIA;
- draft copy of each committee's terms of reference;
- draft copies of the company's corporate governance policies and practices;
- description of the proposed information technology ("IT") environment including a proposed IT policy and risk assessment of IT operations;
- draft copy of the company's business continuity plan; and
- 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 how these risks will be monitored and managed. At a minimum, the following specific risks must be considered: market risk, credit risk, liquidity risk, operational risk, strategic risk, and regulatory compliance risk.

Step Two: Application for Business Authorization

A trust company must apply to the Superintendent for a business authorization within one year after the date of its incorporation. It is not permitted to carry on trust business until it is issued a Certificate of Business Authorization.

An application for a Certificate of Business Authorization must include:

- non-refundable application fee payable to BCFSA²;
- completed [Application for Business Authorization](#) Form;
- finalized copies of all incorporating documents;

² Please refer to Schedule 1 of the FIFR for further information on fees.

- description of any material changes to the company's business plan;
- updated list of directors and Board committee members, 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). Please note that section 50(4) of the FIA applies to the acquisition of substantial interest in a trust company;
- 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;
- updated pro forma financial statements for the three-year forecast horizon (if there are material changes to the pro forma submitted in support of the incorporation application);
- description of any material changes to the company's business plan, computer systems, outsourcing arrangements, or its risk appetite framework;
- copy of the Capital Management Plan and, if separate, the Capital Contingency Plan;
- finalized copies of the following:
 - management agreements and shareholder agreements,
 - business continuity plan,
 - investment policy, and
 - corporate governance policies and practices; and Board committees' terms of reference;
- any other information or documentation requested by BCFSA staff.

This Statement sets out the base criteria for applications for incorporating a trust company and for a business authorization in B.C. Information requirements outlined above should not be viewed as a definitive and exhaustive list, as each application will be reviewed and assessed on an individual basis and further information may be requested under sections 13(2), 13(4) or 61(9) of the FIA.

Applicants may be subject to an initial on-site review as part of the process of application for business authorization. If the Superintendent is satisfied that all requirements of the FIA and its regulations have been met, a Certificate of Business Authorization may be issued.

ADDITIONAL INFORMATION

BCFSA staff assess applications for consent to the incorporation and authorization of a trust company and propose recommendations to the Superintendent. It is strongly recommended that prospective applicants meet with BCFSA staff prior to applying for consent to incorporate a B.C. trust company. The assessment of each application is dependent on the specific facts and circumstances, and BCFSA staff are committed to communicating with the applicant throughout the review process of the application.

As BCFSA has adopted some guidelines from the Office of the Superintendent of Financial Institutions ("OSFI"), applicants are encouraged to review and conduct a self-assessment against those guidelines. The application of the guidelines may 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.

If BCFSA consents to the incorporation, the applicant may then apply to the B.C. Registrar to incorporate the trust company. Information regarding this process can be found on the B.C. Registrar website.

Consent to Acquire Substantial Interest

Under section 50 of the FIA, a person and connected parties acquiring, directly or indirectly, 10 per cent or more of all votes of a trust company must not do so unless first receiving the Superintendent's consent. This applies to the incorporators/initial subscribers as well as subsequent investors. A fee is prescribed under the *Financial Institutions Fee Regulation* for each consent to acquire substantial interest. Applicants are encouraged to reach out to BCFSA prior to submitting an incorporation application to enquire about the details of this consent requirement, such as which shareholder(s) requires consent and identification of any connected parties. The consent fee for acquiring substantial interest is payable by the person seeking the consent and will be arranged separately from but form part of the incorporation application.

Anti-Money Laundering and Terrorist Financing Review ("AML review")

Applications for consent to incorporating financial institutions, including a trust company, are subject to an AML review. BCFSA staff will discuss with the applicant what information is required for the purpose of the AML review. Further information may be found in Advisory 23-005: "Applications to Form Credit Unions, Insurance Companies, or Trust Companies and Reviews Regarding Detection and Deterrence of Money Laundering and Terrorist Financing."

INSTRUCTIONS

For questions or to request a meeting with BCFSA staff in respect of an application, please contact the Approvals Branch at statapprovals@bcfsa.ca or at (604) 398-5034.

Submit all notices, information or documentation referenced in this Statement 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 integrated into the application process. Please contact statapprovals@bcfsa.ca for instructions on how to pay by electronic fund transfer, wire, or cheque.

LEGISLATION

FIA sections 1(1) "trust business" and "trust company," 12(1), 12(3), 13, 14, 61, 70,
Capital Requirements Regulation
Financial Institutions Fees Regulation, schedule 1
Transfer of Powers and Duties (Financial Institutions) Regulation, section 1(a)

Copies of the legislation are available from www.bclaws.gov.bc.ca.

RELATED FORMS

[Application for Incorporation Form](#) (Form 4)

[Application for Business Authorization](#) (Form 8)

[Personal Information Return](#)

Regulatory Statements establish the form and content of a regulatory submission; prescribe the manner of meeting or enforcing a requirement existing in an enactment; and/or provide the regulator's view of the laws that BC Financial Services Authority administers. Regulatory Statements are made pursuant to a requirement or power contained in provincial legislation. Compliance with a Regulatory Statement is therefore mandatory. Regulatory Statements may refer to law, practice, or background existing at the time of publication. If relying on the legal information contained in a Regulatory Statement, confirm that any references to the law, including enabling legislation, are up to date and obtain independent legal advice, when needed. Regulatory statements are effective on the date of their publication, unless stated otherwise.