

Chapter 30B.38 RCW
OUT-OF-STATE TRUST INSTITUTIONS

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RCW 30B.38.005 Trust business at a trust office. (1) An out-of-state trust institution that meets the requirements of this chapter is not required to maintain a physical trust office in Washington state.

(2) An out-of-state trust institution that does not operate a trust office in Washington state and that meets the requirements of this chapter may establish and maintain a new trust office in Washington state.

(3) As used in this chapter, "doing business in Washington state," with reference to an out-of-state trust institution, means purposely availing oneself of regularly transacting trust business with the public in Washington state, or otherwise seeking to regularly transact trust business with the public in Washington state by means of solicitation, which the director may so determine if all or part of the administration of any trust or other agreement to conduct trust business is administered or sought to be administered in Washington state, or if a trust or other trust business agreement, with the assent of the out-of-state trust institution, specifies Washington state as the situs of the trust or situs of the tangible or intangible property covered by the trust business agreement. [2019 c 389 § 47; 2014 c 37 § 366.]

RCW 30B.38.010 Preexisting approved out-of-state trust institutions. Notwithstanding any other provision of this title, an out-of-state trust institution that complies with RCW 30B.38.020(1) and 30B.72.010 is exempt from the requirements of RCW 30B.38.030 and 30B.38.040. [2014 c 37 § 367.]

RCW 30B.38.020 Trust business of out-of-state trust institution—Prerequisite of reciprocity—Authority of director. (1) Except as authorized by federal law, by another law of Washington state, or by a written finding of the director waiving some or all of the requirements of this section in the interest of facilitating financial interstate commerce, an out-of-state trust institution shall not be

permitted to engage in a trust business in Washington state unless the director has approved an out-of-state trust institution's written application to do business in Washington state in accordance with this section.

(2) In order for the director to approve an out-of-state trust institution's written application to do business in Washington state, the director must determine in writing that all of the following conditions have been met, or otherwise in his or her discretion waive or modify one or more of such conditions in writing:

(a) That the out-of-state trust institution is authorized to do business in its home state, is in good standing with its home state regulator, is not subject to a supervisory directive, corrective action order, conservatorship, or the equivalent, from its home state regulator, and has not had its authority to do business in its home state, any other state, or a foreign jurisdiction suspended or revoked;

(b) That a state trust company with the same activities as the out-of-state trust institution would be able to do business in the home state of the out-of-state trust institution on the same or more favorable terms as in Washington state, when considering such home state's laws and its supervision, examination, or other safety and soundness oversight of a state trust company seeking to do business in such home state;

(c) That the out-of-state trust institution has secured or will secure as of the effective date of the department's certificate of authority a fidelity bond or equivalent insurance coverage for directors, officers, managers, or employees satisfactory to the director; and

(d) That as long as the out-of-state trust institution maintains a trust office or otherwise conducts trust business in Washington state, it will comply with all laws of Washington state that are applicable to an out-of-state trust institution doing business in Washington state.

(3) The director shall deny an application filed under this section or suspend or revoke the approval of an application, if the director finds that the standards of organization, supervision, examination, or other safety and soundness oversight of the out-of-state trust institution do not conform to the standards for a state trust company under this title. In considering the standards of organization, supervision, examination, or other safety and soundness oversight of the out-of-state trust institution, the director may also consider the laws of the state in which the applicant is organized.

(4) In implementing this section, the director may cooperate with trust institution regulators in other states and may share with such regulators the information received in the administration of this chapter.

(5) The director may enter into supervisory agreements with out-of-state trust institutions or their regulators to prescribe the applicable laws and rules governing the powers and authorities of out-of-state trust institutions seeking to or doing business in Washington state. Such agreements may address, but are not limited to, corporate governance and operational matters. Such agreements may resolve any conflict of laws and further specify the manner in which examination, supervision, and application processes must be coordinated between the home state regulator and host state regulator.

(6) The out-of-state trust institution may exercise additional powers and authorities that are authorized under the laws of its home

state if the director determines in writing that the exercise of the additional powers and authorities in Washington state will not threaten the safety and soundness of trust institutions in Washington state and serves the convenience and needs of Washington state consumers. [2019 c 389 § 48; 2014 c 37 § 368.]

RCW 30B.38.030 Requirement of notice. An out-of-state trust institution desiring to engage in trust business in Washington state shall provide, or cause its home state regulator to provide, written notice to the director of its intent to engage in trust business in Washington state, accompanied by a written application containing:

(1) Satisfactory evidence of a certificate of authority to engage in trust business in its home state, or equivalent, from its home state regulator;

(2) A copy of the resolution adopted by the board of directors of such out-of-state trust institution authorizing the out-of-state trust institution to engage in trust business in Washington state;

(3) Evidence of compliance with the requirements of the director set forth in RCW 30B.38.020 or a request for waiver of certain requirements of RCW 30B.38.020 satisfactory to the director; and

(4) A filing fee, if any, as prescribed by the director under authority of RCW 30A.04.070. [2019 c 389 § 49; 2014 c 37 § 369.]

RCW 30B.38.040 Notice of approval or denial by director. (1) The director must, within sixty days after receiving a complete written application under RCW 30B.38.030, including any waiver request, notify the home state regulator and the out-of-state trust institution of the director's approval or denial of the written application or waiver request, including any other conditions for approval that the director may require.

(2) The sixty-day period of review may be extended by the director on a determination that the written notice raises issues that require additional information or additional time for analysis. If the period of review is extended, the out-of-state trust institution may engage in trust business in Washington state only on prior written approval by the director. [2019 c 389 § 50; 2014 c 37 § 370.]

RCW 30B.38.050 Additional trust offices. An out-of-state trust institution that maintains a trust office in this state under this chapter may establish or acquire additional trust offices in this state to the same extent that a state trust company may establish or acquire additional offices in this state. [2014 c 37 § 371.]

RCW 30B.38.060 Examinations of out-of-state trust institutions—Periodic reports—Cooperative agreements—Assessment of fees. (1) To the extent consistent with subsections (3), (4), and (5) of this section, the director may make such examinations and investigations of an out-of-state trust institution engaged in trust business in this state as the director may deem necessary to determine whether the out-of-state trust institution is being operated and maintained in a safe and sound manner in a manner affecting this state. Unless otherwise prescribed by rule, the provisions of Title 30A RCW

applicable to examination or investigation of banks shall apply to such examinations or investigations of out-of-state trust institutions.

(2) The director may require periodic reports regarding any out-of-state trust institution engaged in trust business in this state. The required reports shall be provided by such out-of-state trust institution or by the home state regulator. Any reporting requirements prescribed by the director under this subsection shall be (a) consistent with the reporting requirements applicable to state trust companies and (b) appropriate for the purpose of enabling the director to carry out his or her responsibilities under this chapter.

(3) The director may enter into cooperative, coordinating, and information-sharing agreements with any other trust institution supervisory agency with respect to the periodic examination or other supervision of an out-of-state trust institution engaging in trust business in this state, and the director may accept the report of examination and report of investigation of such agency in lieu of conducting his or her own examination or investigation.

(4) The director may enter into contracts with any trust institution supervisory agency that has concurrent jurisdiction over an out-of-state trust institution engaged in trust business in this state to engage the services of such agency's examiners at a reasonable rate of compensation, or to provide the services of the director's examiners to such agency at a reasonable rate of compensation. Any such contract shall be deemed a sole source contract to the extent permitted under Washington state law.

(5) The director may enter into joint examinations or joint enforcement actions with other trust institutions supervisory agencies having concurrent jurisdiction over any out-of-state trust institution engaged in trust business in this state or by a state trust company doing business in any host state.

(6) Notwithstanding any other provision of this section, the director may at any time take enforcement action independently if the director deems such actions to be necessary or appropriate to carry out his or her responsibilities under this title or to ensure compliance with the laws of this state. However, in the case of an out-of-state trust institution, the director shall recognize the exclusive authority of the home state regulator over corporate governance matters and the primary responsibility of the home state regulator with respect to safety and soundness matters.

(7) An out-of-state trust institution that engages in trust business in this state and which is subject to examination by the director under any cooperative agreement between the director and the home state of the out-of-state trust institution, may be subject to supervisory, examination, and other fees, under authority of such cooperative agreement, RCW 30A.04.070, and as may be specified by rule. [2014 c 37 § 372.]

RCW 30B.38.070 Enforcement. (1) Consistent with chapter 30B.10 RCW, the director may determine an out-of-state trust institution engaging in trust business in Washington state, or its affiliate, is in violation of any provision of this title or is operating in an unsafe and unsound manner.

(2) The director shall have the authority to take all such enforcement actions against an out-of-state trust institution or its affiliate as he or she is empowered to take under chapter 30B.10 RCW,

including but not limited to issuing an order temporarily or permanently prohibiting the out-of-state trust institution or its affiliate from engaging in trust business in Washington state.

(3) The director may make a written finding that an out-of-state trust institution engaging in or proposing to engage in a trust business in Washington state does not meet the requirements for engaging in trust business in Washington state pursuant to this chapter or RCW 30B.72.010, which finding shall be effective on the date of issuance or such other date as the director shall determine.

(4) In cases involving extraordinary circumstances requiring immediate action, the director may issue pursuant to RCW 30B.10.180 an emergency order without advance notice or opportunity for hearing, subject to the right of the out-of-state trust institution or, as applicable, its affiliate, to petition for judicial review in the same manner as a state trust company under this title.

(5) The director will give notice to the home state regulator of each enforcement action taken against an out-of-state trust institution or its affiliate and, to the extent practicable, will consult and cooperate with the home state regulator in pursuing and resolving such enforcement action. [2019 c 389 § 51; 2014 c 37 § 373.]

RCW 30B.38.080 Notice of subsequent merger, closing, etc. Each out-of-state trust institution that maintains an office in Washington state or otherwise conducts trust business in Washington state pursuant to this chapter, or the home state regulator of such trust institution, shall give at least thirty days' prior written notice, or in the case of an emergency transaction, such shorter notice as is consistent with applicable state or federal law, to the director of:

(1) Any merger, consolidation, or other transaction that would cause a change of control with respect to such out-of-state trust institution or any bank holding company that controls such trust institution, as determined by the definition of "control" set forth in RCW 30B.53.005;

(2) Any transfer of all or substantially all of the trust accounts or trust assets of the out-of-state trust institution to another person; or

(3) The closing or disposition of any office in Washington state. [2019 c 389 § 52; 2014 c 37 § 374.]

RCW 30B.38.090 Functionally unregulated out-of-state trust institutions. Notwithstanding any other provision of this chapter, an out-of-state trust institution engaging in trust business in Washington state, which is not an exempt person under RCW 30B.04.040 and which by reason of the laws of its home state is not, in the opinion of the director, subject to supervision, examination, or other safety and soundness oversight by a home state regulator, shall be subject to all the requirements of a state trust company under this title. [2019 c 389 § 54; 2014 c 37 § 375.]

RCW 30B.38.100 State trust company operating in another state—Approval of director. (1) Upon written approval of the director, a state trust company may conduct the business of a trust company in a

host state, subject to the authority, requirements, and restrictions of the host state, or as otherwise directed by a cooperative agreement between the department and the host state.

(2) The director may enter into a cooperative agreement with the host state regulator of the host state in which a state trust company is permitted to and conducts the business of a trust company and may permit the host state regulator to periodically examine the affairs of the state trust company in the host state.

(3) The director may rely upon the examination of the host state regulator in lieu of the department itself conducting an examination of the state trust company's conduct in the host state. [2019 c 389 § 53.]