

RESTATED CERTIFICATE OF FORMATION INSTRUCTIONS FOR FILING

Pursuant to Section 3.063, Texas Business Organizations Code, as incorporated by Section 182.101 of the Texas Finance Code (TFC), upon issuance of the Certified Restated Certificate of Formation the original certificate of formation and all amendments are superseded and the restated certificate is deemed the certificate of formation of the state trust company. The restated certificate may take either of two (2) forms:

1. A **compilation** of all previous amendments; or
2. A **compilation** of all previous amendments **with further amendments** incorporated in the amended certificate of formation.

Restated certificates of formation are adopted by following the procedure to amend certificates of formation, except that no shareholder approval is required when no amendment is made.

Drafting Guidance

Although the Banking Commissioner has not promulgated forms for restated certificates, the following formats are suggested as guides. *Instructions are included in the formats within brackets “[]” and should be **removed** from the completed documents.*

Restatement WITHOUT Amendment

If the restated certificate of formation is a compilation of previous amendments without further amendments, the introductory paragraph shall contain the language used in the suggested form. The number of directors constituting the present board of directors and the names and addresses of the persons then serving as directors may be inserted in lieu of similar information concerning the initial board of directors. The name and address of each incorporator may be omitted.

Manner and date of adoption of the restated certificate of formation should be stated. Since no amendment is made, shareholder approval is not required; it is sufficient to show the date of adoption by the board of directors.

The entire text of the restated certificate of formation should be included in the document submitted for filing. It is permissible to attach an exhibit or addendum with the text of the certificate of formation as amended and supplemented.

Restated WITH Amendment

Restated certificates of formation that make further amendment must:

1. State that the instrument accurately copies the certificate of formation and all amendments in effect to date and as further amended by the restated certificate of formation and that the instrument contains no other change in any provision;

2. State that each amendment made by the restated certificate of formation has been effected in conformity with the provisions of the TFC and Texas Business Organizations Code;
3. Include the statements required in certificate of formation; and
4. Restate the text of the entire certificate of formation as amended and supplemented previously and as further amended by the restated certificate of formation.

The statements concerning amendment should include: 1) an identification by description or reference to the article number of the provisions being amended or deleted; 2) the number of shares outstanding and entitled to vote; 3) the number of shares voting for and against; 4) a statement pursuant to section 3.053(4), Texas Business Organizations Code, whether or not the transaction involves the exchange, conversion or cancellation of any outstanding stock of the state trust company; and, 5) a statement whether or not any change in the outstanding restricted capital of the state trust company will result from the proposed amendment.

It is not necessary to state the full text of the amended provisions separately from the entire text of the amended and restated certificate of formation. As with restated certificates of formation without amendment, the present board of directors may be substituted for the initial board, and the incorporators may be omitted.

[Restated WITHOUT Amendments]

RESTATED CERTIFICATE OF FORMATION

1. NAME AND AUTHORITY

*[INSERT the **Name** of the trust company here]*, pursuant to the provisions of Section 182.101 of the Texas Finance Code and Section 3.057 of the Texas Business Organizations Code, hereby adopts restated certificate of formation which accurately copy the certificate of formation and all amendments thereto that are in effect to date and such restated certificate of formation contain no change in any provision thereof.

2. ADOPTION OF RESTATED CERTIFICATE OF FORMATION

The restated certificate of formation was adopted by resolution of the board of directors of the Trust Company on the _____ day of _____, _____.

3. PRIOR CERTIFICATE OF FORMATION SUPERSEDED BY RESTATEMENT

[EITHER]

The certificate of formation and all amendments and supplements thereto are hereby superseded by the following restated certificate of formation which accurately copy the entire text thereof:

*[INSERT the **full text** of certificate of formation as restated.]*

[OR]

The certificate of formation and all amendments and supplements thereto are hereby superseded by the restated certificate of formation which accurately copies the entire text thereof as set forth as Exhibit A hereto.

4. EFFECTIVE DATE

[EITHER]

These restated certificates of formation shall become effective upon approval by the Banking Commissioner of Texas

[OR]

[The following wording may be used when the proposed restated certificate of formation effective date is delayed to a date or time after the document is submitted to the Banking Commissioner for approval.]

These restated certificates of formation shall become effective on _____ at _____ a.m. in accordance with the provision of Section 4.052 of the Texas Business Organizations Code. *[Time cannot be 12:00 A.M. or 12:00 P.M.]*

Dated _____ day of _____, _____.

(Name of Trust Company)

By: _____
(Authorized Officer)

[Restated WITH Amendments]

AMENDED AND RESTATED CERTIFICATE OF FORMATION

1. NAME AND AUTHORITY

*[INSERT the **Name** of the trust company here],* pursuant to the provisions of Section 182.101 of the Texas Finance Code and Section 4.07 of the Texas Business Organizations Code, hereby adopts restated certificate of formation which accurately copy the certificate of formation and all amendments thereto that are in effect to date and as further amended by such restated certificate of formation as hereinafter set forth and which contain no other change in any provision thereof.

2. ADOPTION OF AMENDED AND RESTATED CERTIFICATE OF FORMATION

The certificate of formation of the Trust Company are amended by the restated certificate of formation as follows:

[INSERT here the amendment or amendments in conformance with Section 182.002 of the Texas Finance Code and Section 3.053 of the Texas Business Organizations Code, or a listing of the provisions changed and a summary of the changes.]

3. PRIOR CERTIFICATE OF FORMATION SUPERSEDED BY AMENDMENT AND RESTATEMENT

Each such amendment made by the restated certificate of formation has been effected in conformity with the provisions of the Texas Finance Code and the Texas Business Organizations Code and such restated certificate of formation and each such amendment made by the restated certificate of formation were duly adopted by the shareholders of the Trust Company on the _____ day of _____, _____.

4. ADOPTION

[EITHER]

*[IF the Amendment and Restated Certificate of Formation was adopted by at least a **two-thirds vote at a shareholder's meeting**, INSERT the following statement here.]*

The number of shares outstanding was _____ the number of shares entitled to vote on the restated certificate of formation as so amended was _____; the number of shares voted for such restated certificate of formation as so amended was _____; and the number of shares voted against such restated certificate of formation as so amended was _____.

[OR]

*[IF the Restated Certificate of Formation as amended was adopted by **unanimous consent or less than unanimous consent if so authorized in the Trust Company's Certificate of Formation**, INSERT the following statement here.]*

The number of shares outstanding was _____; the number of shares entitled to vote on the restated certificate of formation as so amended was _____. All of the shareholders have signed a written consent to the adoption of such restated certificate of formation as so

amended, pursuant to Section 6.201 of the Texas Business Organizations Code and any written notice required by Section 6.201 has been given.

5. TEXT OF RESTATED CERTIFICATE OF FORMATION

[EITHER]

The certificate of formation and all amendments and supplements thereto are hereby superseded by the following restated certificate of formation which accurately copies the entire text thereof and as amended as set forth:

*[INSERT here the **full text** of the certificate of formation as restated.]*

[OR]

The certificate of formation and all amendments and supplements thereto are hereby superseded by the restated certificate of formation which accurately copy the entire text thereof and as amended as set forth as Exhibit A hereto.

6. EXCHANGE, RECLASSIFICATION OR CANCELLATION OF SHARES

*[Option a. If the amendment **does not provide** for an exchange, reclassification or cancellation of issued shares, INSERT the following statement here.]*

The amendment does not provide for an exchange, reclassification or cancellation of issued shares.

[OR]

*[Option b. If the amendment **provides** for an exchange, reclassification or cancellation of issued shares, and the manner in which the same is to be effected is not set forth in the amendment, INSERT the following statements here.]*

The manner in which any exchange, reclassification or cancellation of issued shares provided for in the amendment shall be effected, is as follows:

*[INSERT a concise statement of the **change to be effected** here.]*

7. CHANGE IN RESTRICTED CAPITAL

[The prior written approval of the banking commissioner is required pursuant to Section 182.103(a) of the TFC for changes in the restricted capital other than for those exceptions listed in Section 182.103(b) of the TFC.]

*[Option a. IF the amendment **DOES NOT effect a change in restricted capital**, INSERT the following statement here.]*

The amendment does not effect a change in restricted capital.

[OR]

*[Option b. IF the amendment **DOES effect a change in restricted capital**, INSERT the following statements here.]*

The manner in which such amendment effects a change in the amount of restricted capital, and the amount of restricted capital (including certified surplus) as changed by such amendment, are as follows:

*[INSERT a concise statement of the **change to be effected** here.]*

8. EFFECTIVE DATE.

[EITHER]

These amended and restated certificate of formation shall become effective upon approval by the Banking Commissioner of Texas, pursuant to Section 32.101 of the Texas Finance Code.

[OR]

[The following wording may be used when the proposed amendment and restatement of the certificate of formation effective date is delayed to a date or time after the document is submitted to the Banking Commissioner for approval.]

These amended and restated certificate of formation shall become effective on _____ at _____ A.M./P.M. in accordance with the provisions of section 4.052 of the Texas Business Organizations Code. *[Time cannot be 12:00 A.M. or 12:00 P.M.]*

[The document **must** be **dated** and **signed by an authorized officer** of the association.]

Dated _____ day of _____, _____.

(Name of Trust Company)

By: _____
(Authorized Officer)