

STRIVING FOR PERFECTION ...

... DEDICATED TO EXCELLENCE



No, we are not trying to imply that we are Superman, but we are a Texas agency that fights for regulatory justice and will work “locally” with our regulated entities to ensure they have the same powers, rights and privileges as their federal counterparts.

Why Choose a Texas State Bank Charter?

Just as market competition provides customers a choice among banks, the nature of the dual-banking system allows bankers a choice between regulators. To insure viability of the dual-banking system the State of Texas has two separate parity provisions in state law. These provisions insure that Texas state-chartered banks are at least equal in powers, rights and privileges to their federal counterparts, and may be a better match up in some areas. The Department of Banking understands the financial industry and is dedicated to improving regulatory quality while meeting individual institutional needs. We strive to make the Texas State Bank Charter an appealing and successful choice.

If you are contemplating a Texas State Bank Charter, we hope you'll keep these many benefits in mind.

Regulatory Accessibility and Responsiveness

All applications, as well as most administrative actions, are decided by the Commissioner. It is generally much easier for Texas bankers to establish a face-to-face working relationship with the Commissioner and senior staff in Austin rather than with a federal regulator in Washington D. C. The Banking Department has four regional offices. All of the staff are accessible through telephone, email, or by appointment and regularly attend seminars and conferences sponsored by Texans for Texas bankers and their customers.

The Banking Department's mission is to ensure that Texas has a safe and sound financial services system. We believe that open lines of communication between agency representatives and regulated entities are vital to the success of our mission. In order to ensure accessibility and responsiveness to the needs of state banks, the Department adopted a Compact With Texans.

Parity

Article XVI, Section 16(c) of the Constitution of The State of Texas provides that Texas chartered state banks have the same rights and privileges that are or may be granted to national banks of the United States domiciled in this State.

Super Parity

In July of 1999, then Governor Bush signed a bill into law which formally opened Texas to interstate bank branching. The bill also makes a Texas bank charter one of the most attractive in the nation to conduct banking business.

Of particular interest is a "super parity" provision which provides a framework for a state bank chartered in Texas, upon application, to conduct any of the activities allowed by any other insured state or federal financial institution in the nation. Not only does this increase the value of existing state charters, but it also dramatically increases Texas' appeal as a central location from which to conduct nationwide banking activities. There is no "super parity" provision available to national banks. (Section 32.010 of the Texas Finance Code).

Expanded Powers

A Texas State Bank Charter allows expanded powers including the possibility of a higher legal lending limit. A state bank can sell insurance in a town with a population over 5,000, either directly or through an operating subsidiary. National banks can sell insurance in a town with a population over 5,000 only through a financial subsidiary. State banks are granted parity with national banks through the Texas Constitution and the Texas Finance Code. Parity is an advantage not available to national banks. States have traditionally led the way in new innovations for banks. Some examples include checking accounts, ATMs, and limited liability banks.

New Initiatives

The Department has been a leader in the development of new processes in bank supervision and regulation in order to provide for the most efficient use of resources and to keep costs low. In the past, the Department was one of the first bank regulatory agencies to disclose the entire CAMELS ratings, initiate an off-site monitoring system, expedite application filing procedures, and loan stress-testing. The Department's web site has all examination procedures and policies available for review and downloading. New initiatives include electronic payment of assessments, and asset pledge requirements for foreign bank agencies.

Modern Corporate Governance

Texas has some of the most modern corporate governance statutes thus providing increased flexibility. This flexibility is most evident in the organization requirements (Section 32.001 of the Texas Finance Code), merger authority (Section 32.301 of the Texas Finance Code), subsidiary authority (Section 34.103 of the Texas Finance Code), treasury stock (Title 7 of Texas Administrative Code §15.121) and reverse stock split (7 TAC §15.122) regulations.

Lower Costs

On average, the assessments charged to state banks are less than those charged to national banks of comparable size.



What Business Decisions Need to be Made?

Activities, Products and Services

Financial modernization and technology allow financial service companies to offer new products and services. If the de novo charter application contemplates other activities, products or services not previously authorized, the processing time and/or capital requirements may increase because of the Department's investigation of the perceived risk factors. It is incumbent upon the applicant to provide full information on risk monitoring and control measures that will be implemented.

Delivery Systems

Bank applications should contain a complete description of delivery systems to be utilized. These may be as straight forward as traditional brick and mortar facilities, to shared automated teller machines (ATMs), loan production offices (LPOs), automated loan machines (ALMs), or full Internet banking. The use of third-party service providers should also be identified.

Name

The only Texas statutory limit on names is contained in Section 32.002 of the Texas Finance Code, which empowers the Commissioner to deny a name if it is potentially misleading to the public. Banks must make the appropriate filings with the Texas Secretary of State if they wish to use a name other than their legal name. They are also expected to comply with the Interagency Policy Statement on Identification of Facilities.

Structure

State banks may conduct their activities directly through the bank or through one or more subsidiaries. Virtually all activities of a state bank may be conducted through a separate operating subsidiary. [See Legal Opinions for details.](#)

Holding Companies

A de novo state bank may commence operations with a holding company as its sole shareholder. Holding company information may be accessed through the Dallas Federal Reserve web site. An out-of-state holding company may not charter a de novo institution in Texas. Texas places no additional restrictions on bank holding companies that elect financial holding company status; however, a copy of the election must be furnished to the Commissioner, Section 202.001 et seq. of the Texas Finance Code.

Subchapter S Corporation Election

There are no special filing requirements with the Department should the bank wish to make a Subchapter S election; however, new banks are not allowed to declare cash dividends for the first three years of operation without the Commissioner's approval. The Commissioner may restrict cash dividends at any time should regulatory concerns warrant such action. Proponents should consult their legal and tax accounting professionals in order to make a fully informed decision.

Restriction on Interstate Mergers

Banks less than 5 years old may not be acquired by an out-of-state holding company nor may they be merged into an out-of-state bank that does not already have a presence within this state. See [§201.001](#), [§202.003](#), [§203.003](#), and [§203.005](#) of the Texas Finance Code.

How Should I Proceed?

Once all the business decisions have been considered and all the necessary pre-planning is complete, the time comes to set the plan in motion. Some of the specific requirements that must be satisfied to obtain a de novo Texas State Bank Charter are listed below.

Capital

One of the most challenging times a bank will experience is when it first opens. Initial operating costs outstrip revenue, management is still in the process of organizing its structure and finalizing numerous policies and procedures, and most importantly, the bank's Strategic Plan, management's vision of what the bank will be and the process of how to get there, is untested.

Against this backdrop of uncertainty, the actual amount of capital to be required can be determined only after a thorough review of the bank's Strategic Plan and its reasonableness in aiding bank management to timely and appropriately respond to the myriad of risk factors that could potentially affect the bank. At a minimum, this Department would expect the amount of capital at a new bank to be consistent with its risk profile and the competitiveness of the market(s) in which it operates.

Management

All state banks must have at least one organizer and a minimum of 5 and not more than 25 directors, Section 33.103 of the Texas Finance Code (TFC). The Board must meet monthly per TFC §33.105. Officer requirements are found in TFC §33.106.

All 10% shareholders, executive officers and directors must submit full financial and personal information, and go through a complete background check.



FDIC Insurance / Fed Membership

Generally, all state banks must be FDIC insured.

A state bank has the freedom to choose whether or not to apply for membership in the Federal Reserve. The Department has entered into an alternate examination program with both the FDIC and the Federal Reserve.

Open For Business

A state bank must open for business within 180 days from the date that approval of the charter is granted.

Home Office

A state bank must maintain a home office in Texas.

Application

A pre filing meeting is encouraged prior to application. The statutory factors that the applicant must satisfy in order to be granted a charter are detailed in Section 32.003 of the Texas Finance Code. The application forms may be accessed online.

The Department conducts an on-site investigation, which is conducted concurrently with the Federal Examiners. A meeting is held with all principals as a part of the investigation process.

Strategic Plan

An application must include a strategic plan acceptable to the Commissioner. Generally, the guidelines and format included in the Interagency Charter and Federal Deposit Insurance Application will be accepted in transactions involving a bank. The applicant may also want to review Supervisory Memorandum 1009.

What Costs are Involved?

An important factor in the decision making process is the evaluation of costs.

Direct Regulatory Costs

The direct regulatory costs involved in chartering a new bank include a \$15,000 application fee payable to the Department upon submission of the application and a \$10,000 investigation fee payable when the application is determined to be officially accepted for filing. All application fees are contained in 7 TAC 15.2. Assessment fees are found at 7 TAC 3.36-3.38.

Additional Costs

Although applicants are not required to be represented by attorneys, CPAs, economists or consultants, most applicants find that the services of these professionals help to ensure that the application meets all regulatory requirements. The costs incurred to employ these professionals vary widely depending upon the market and strategic plan of the proposed bank and the services performed. Generally Accepted Accounting Principals must be utilized in the treatment of all pre-opening expenses.



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