

Application to Form a Tennessee Business and Industrial Development Company (“BIDCO”)

1) **Legal provisions.** The provisions governing the formation and operation of a BIDCO are outlined in Tennessee Code Annotated Sections 45-8-201 through 45-8-226 (Link to Statutory Provisions: [Tennessee Code Unannotated – Free Public Access | Main Page \(lexis.com\)](#)) and Chapter 0180-18 of the Rules of the Department of Financial Institutions (Link to Rules: [RULES \(tnsosfiles.com\)](#)). Please review the statutory provisions outlined above and the provisions of the Rules.

2) **Initial Meeting.** Initial meetings are held between the staff of the TDFI, along with the potential applicant and their counsel, prior to proceeding with the filing of a Notice of Intent required by Rule 0180-18-.02(2)(a). Therefore, should applicants decide to move forward with a Notice of Intent and an application, we strongly suggest a preliminary meeting, via MS Teams with the applicant, organizers and its proposed board of directors, along with legal counsel for the applicant. Please contact the Department by email or telephone to schedule the preliminary meeting:

Debra Grissom, Chief Administrator for Applications, Debra.Grissom@tn.gov 615/741-5018

Or

William Cook, Program Administrator for Applications, William.Cook@tn.gov 615/934-1891

3) **Notice of Intent.** After the initial meeting, the Notice of Intent may be filed. If the information in the Notice of Intent complies with the requirements of Chapter 0180-18-.02(2), the Commissioner of TDFI (the “Commissioner”) shall notify the applicant that an application to organize a BIDCO may be submitted. If the information is not in compliance, the Commissioner shall, within 20 days after receipt of the Notice of Intent, return the notice to the applicant, calling attention to the defect(s) therein.

4) **General Application Requirements.** The application requirements are outlined in Rule 0180-18-.02(2)(c). Please respond to the requirements of each provision of the Rule when submitting the application. The application shall be submitted in letter format to the TDFI along with a non-refundable investigation fee of \$20,000.

5) **Interagency Biographical and Financial Reports.** The TDFI requires that each officer, director and/or organizer submit an Interagency Biographical and Financial Report that can be found at this link: [6200/06, Interagency Biographical and Financial Report \(fdic.gov\)](#) (“IBFR”). Although tailored to banks, TDFI uses the IBFR for the BIDCO application process relative to organizers, executive officers directors, and anyone who owns control of the BIDCO. The TDFI also uses this information in performing background checks. The TDFI may also request copies of credit reports and tax returns, if needed, to process any BIDCO application. Although the form references and instructs individuals to share the form with federal agencies, the information must not be submitted to any other agency outside of the TDFI upon completion.

6) **Public Notice.** Once an application is received, reviewed and assuming the application is considered accepted for filing, the applicant is required to issue a public notice (form of notice to be provided by the Department) and to provide proof of public notice to the TDFI. After public notice is provided, TDFI field personnel will initiate an in-depth investigation of the applicant, and the applicant's parent company (if the company has a controlling ownership interest in the BIDCO). Please refer to **Attachment A** regarding items that will be covered in the investigation.

7) **Small Business Administration ("SBA").** If originating SBA loans is proposed as vital to an applicant's business plan, proposed applicants should be able to demonstrate that they have the expertise to operate the BIDCO in a prudent manner and that the applicant has experience to engage in the production of SBA loans. In addition, the applicant must provide the TDFI with documentation from the SBA, supporting the applicant's assertion that a BIDCO license is required for, and will act to ensure, certification of the applicant as an SBA 7(a) lender. Moreover, the applicant must demonstrate that SBA approval of the BIDCO as an approved lender is likely. Finally, applicants should confirm with the SBA the timeframe for review of SBA applications for certification and communicate that timeframe to TDFI.

8) **Business Purpose.** One of the purposes of the Tennessee BIDCO Act is to encourage the formation of BIDCOs to help meet the financing assistance and management assistance needs of growth-oriented small and medium-sized businesses in the state of Tennessee. Therefore, BIDCO applicants must demonstrate (as part of their business plan) that the BIDCO will make available financial and management assistance to small and medium-sized businesses to locate, remain and expand in the state of Tennessee. In addition, after a BIDCO receives its license, it must, at all times, maintain its main office in the State of Tennessee.

9) **Order of Approval.** In the event a Tennessee BIDCO License is granted, an Order of Approval is issued by the Commissioner. Those provisions may include, but are not limited to, the items included on **Attachment B**.

10) **Ongoing Regulation/Full Scope Examinations and Visitations.** Once licensed, the BIDCO can expect the following relative to ongoing regulation by the TDFI:

a) Management of the BIDCO will generally be notified in advance of an upcoming examination and provided a list of requested information. This information should be submitted by the requested date. Members of management and the board must be available to meet with examiners virtually or in person during the examination. A report of examination will be issued following the examination and findings and recommendations in the report must be addressed by management within required time frames.

b) There will be a six month visitation after opening and possible visitations in between full-scope examinations, depending on the BIDCO's overall condition.

11) **Ongoing Compliance.** The BIDCO will be expected to maintain full compliance with the Tennessee BIDCO Act and Chapter 0180-18 of the Rules of the Department of Financial Institutions and to:

- a) Hold timely board meetings and maintain accurate board minutes for the benefit of the BIDCO and for review by examiners when requested
- b) Maintain adequate risk mitigation practices

- c) Maintain adequate Board approved policies and procedures to include:
 - 1. Loan
 - 2. Investment
 - 3. Liquidity
 - 4. Capital
 - 5. Audit
 - 6. Bank Secrecy Act/ Anti-Money laundering Policy
- d) Maintain a Capital/Assets ratio of at least 10%

This correspondence is intended to provide certain information regarding the Notice of Intent, application, formation and licensing of a BIDCO, as well as to provide a general summary of expectations of any BIDCO and/or BIDCO applicant. In addition, please be reminded that the Notice of Intent and/or application for the BIDCO should not be submitted until such time as the TDFI and the applicant have held a preliminary meeting, including any legal counsel for the applicant.

Should you have questions, please feel free to contact Debra Grissom, Chief Administrator for Applications, at 615/741-5018 or William Cook, Program Administrator for Applications, at 615/934-1891.

Attachment A - Investigation

- a) Description of the Transaction, Overview and Financial History and Condition
- b) The Proposed Business Plan and how citizens of Tennessee will be served
- c) Policies
- d) Projected Balance Sheet
- e) Adequacy of Capital Structure (please note that the capital must be held in escrow)
- f) Future Earnings Prospects
- g) Affiliate Companies
- h) Committees
- j) General Character of Management
- k) Convenience and Needs of the Community to be Served
- l) Any other pertinent information that is deemed necessary to process the application may be included during the investigation.

Attachment B - Potential Order of Approval

- a) The BIDCO has firm financing commitments from equity investors or debt sources for cash or similar liquid assets sufficient to demonstrate that prior to the time the BIDCO is authorized to transact business, it shall have liquid assets available to provide financing assistance to business firms and adequately transact business as a BIDCO.
- b) The BIDCO shall have the necessary amount deemed appropriate by the Commissioner in paid in capital before conducting business and will maintain a minimum of 10% in capital to total assets during operations (capital is the capital stock plus accumulated earnings).
- c) Each director, officer and controlling person of the BIDCO is of good character and sound financial standing.
- d) The BIDCO, if licensed, will comply with the BIDCO Act.
- e) The BIDCO has reasonable prospects of being a viable, ongoing BIDCO and of satisfying the basic objectives of its business plan.
- f) The BIDCO will furnish annual outside audits which meet the requirements of T.C.A. Section 45-8-215; and
- g) The BIDCO will adopt an appropriate accounting method conforming to GAAP.
- h) The BIDCO will open within six (6) months from the date of the Order of Approval.
- i) Any other provision the Commissioner deems necessary to include in the Order of Approval.