

**RULES
OF
TENNESSEE DEPARTMENT OF FINANCIAL INSTITUTIONS**

**CHAPTER 0180-18
RULES PERTAINING TO BUSINESS AND INDUSTRIAL
DEVELOPMENT CORPORATIONS ("BIDCOS")**

TABLE OF CONTENTS

0180-18-.01	In General	0180-18-.04	Interpretation of "Prudent Business Manner"
0180-18-.02	Rules of Practice: Applications, Instructions, Forms, Reports, Fees, Records	0180-18-.05	Main and Branch Office Locations
0180-18-.03	Procedure for Approval of Mergers, Acquisitions, and Sale of Assets of BIDCOS	0180-18-.06	License Renewal Procedures
		0180-18-.07	Activities Incidental to the Conduct of a BIDCO
		0180-18-.08	Loans to Affiliated BIDCOS

0180-18-.01 IN GENERAL.

- (1) Scope. Chapter 0180-18 establishes rules relating to business and industrial development corporations ("BIDCOS") licensed pursuant to the provisions of Public Chapter 124, Acts of 1989 ("the Act").
- (2) Definitions. Unless otherwise defined herein, all terms used in this chapter which have been defined in the Act shall be construed to be defined as provided in the Act.

Authority: Public Chapter 124, Acts of 1989, §§6 and 3. **Administrative History:** Original rule filed December 27, 1989; effective March 28, 1990.

0180-18-.02 RULES OF PRACTICE: APPLICATIONS, INSTRUCTIONS, FORMS, REPORTS, FEES, RECORDS.

- (1) Scope. This rule establishes regulations relating to application procedures, forms, instructions, reports, fees and record retention.
- (2) Application Procedure.
 - (a) An applicant for a license to form and conduct a business as a BIDCO shall file with the commissioner a notice of intent to organize a BIDCO. The notice shall include the following information:
 1. The name, address, occupation, social security number and date of birth of each director, officer, and principal shareholder of the applicant;
 2. The name and address of an individual within the state to whom information regarding the application may be sent;
 3. The total capitalization of the applicant, including the number of shares of each class and the par value, if any, of the shares of each class;
 4. A statement of the method of financing and amount of the organizational expense fund;
 5. The community in which the principal office of the BIDCO will be located;
 6. A copy of the stock subscription agreement to be used by the incorporators in selling stock to the public; and

(Rule 0180-18-.02, continued)

7. The notice of intent shall be originally signed by each of the incorporators.
- (b) If the information in the notice of intent is in compliance with this chapter, the commissioner shall notify the applicant that an application to organize a BIDCO may be submitted. If the information is not in compliance with this chapter, the commissioner shall within twenty (20) days after receipt thereof return the notice to the applicant, calling attention to the defect or defects therein.
- (c) The application shall include at a minimum the following:
 1. A non-refundable investigation fee;
 2. Name and mailing address of applicant;
 3. Certificate of incorporation;
 4. Resolution by board of directors of applicant authorizing applicant to make application on behalf of corporation;
 5. Resumes of all officers and directors; including information concerning the experience of the management of the proposed BIDCO and how such experience relates to the execution of the business plan for the proposed BIDCO;
 6. Information required by Section 8(b), Public Chapter 124, Acts of 1989;
 7. Evidence that the applicant has, or has firm financing commitments from equity investors or debt sources for, cash or similar liquid assets sufficient to demonstrate that prior to the time such applicant is authorized to transact business as a BIDCO, such applicant will have liquid assets available to provide financing assistance to business firms in an amount adequate for such applicant to transact business as a BIDCO and in accordance with the business plan;
 8. Evidence that the BIDCO has, or will have a capital structure as the commissioner deems necessary for the transaction of business, but in no event, not less than one million dollars (\$1,000,000);
 9. Any market studies which have been conducted by the applicant or as requested by the commissioner;
 10. A compensation schedule for all officers and directors for a minimum period of three (3) years;
 11. Name, resume, reference sources, and compensation schedule for any person(s) employed in an advisory capacity for the proposed BIDCO, and description of their purpose(s) and involvement(s) in the affairs of the proposed BIDCO;
 12. Such other information which the applicant may provide to support the application; and
 13. Such other information which the commissioner may require or deem appropriate to the application.

(Rule 0180-18-.02, continued)

- (d) The commissioner shall, upon the filing of the information required by subsection (c) above, notify the applicant in writing that the application has been accepted as officially filed. The commissioner shall be the sole judge of the adequacy of the information filed and may decline to accept the application as officially filed until such time as the applicant supplies such additional information as the commissioner may require.
 - (e) When the applicant receives notice from the commissioner that the application has been accepted for filing, as required by subsection (d) above, the applicant shall cause to be published in a newspaper of general circulation once in the community/communities in which the BIDCO will be located, public notice of the application to form a BIDCO. The notice shall contain, at a minimum, the following information:
 - 1. The proposed name of the BIDCO;
 - 2. The subject matter of the application;
 - 3. The specific location of the proposed BIDCO;
 - 4. The following statement:

"Any person wishing to comment on this application may file comments with the Commissioner of Financial Institutions, 414 Union Street, Suite 1000, Nashville, TN 37219. Anyone desiring to protest this application may do so if such protest is filed in writing within fifteen (15) days of the date of this publication."
 - (f) Immediately after publication, the applicant shall furnish the commissioner with a certification from the publisher and a tear sheet or clipping evidencing such publication.
 - (g) Upon receipt of the proof of publication, the commissioner shall cause an investigation of the subject application to begin, relative to the factors enumerated in Section 8(c) of the Act.
 - (h) If, on the basis of the information submitted, the commissioner concludes that the application for the proposed BIDCO should be approved, the commissioner shall issue an Order indicating the decision to approve the applicant's application for a license.
 - (i) Upon receipt of the applicant's payment of the appropriate licensing fee(s), the commissioner shall issue a license permitting the applicant to form and conduct business as a BIDCO.
- (3) Fees.
- (a) Each application submitted for the formation of a BIDCO shall be accompanied by a non-refundable investigation fee as set forth in Chapter 0180-7-.08, payable to the Treasurer, State of Tennessee.
 - (b) Each application submitted for the merger or acquisition of a BIDCO shall be accompanied by a non-refundable investigation fee as set forth in Chapter 0180-7-.08, payable to the Treasurer, State of Tennessee.
 - (c) The licensing fee for a BIDCO shall be such fee as set forth in Chapter 0180-7-.08. Such fee shall be assessed per location at which the BIDCO will operate, payable to

(Rule 0180-18-.02, continued)

the Treasurer, State of Tennessee prior to the issuance of a license and upon annual renewal thereof.

- (d) For the purpose of defraying a portion of the cost of supervision and examination of a BIDCO, each licensee shall pay the actual personnel and travel expenses of examinations conducted by the commissioner. In addition, the licensee shall pay or reimburse the fees, costs, and expenses of any third parties retained by the commissioner to accomplish the purposes of the Act in accordance with Section 16 of the Act.
 - (e) The commissioner may require reimbursement of any other direct costs incurred in the application/regulation/supervision of a BIDCO.
- (4) Minimum Requirements for Books, Accounts, and Other Records. Each licensee under the Act shall:
- (a) Submit to the commissioner a complete copy of its corporate bylaws no later than thirty (30) days from the date of issuance of a license authorizing said corporation to conduct the business of and incidental to a BIDCO. Subsequent amendments to bylaws shall be submitted within thirty (30) days of the enactment date of the amendment.
 - (b) Post the license or copy of the license prominently in each licensed place of business of the licensee.
 - (c) Establish and maintain the following books and records on a current basis, either at the main office of the licensee or at alternate licensed offices, providing the information can be made available to the main office location within a seventy-two (72) hour period. There may be suitable variations to accommodate individual accounting systems, including automated and electronic record processing systems, provided the required data is kept on a current basis and is readily available to the examiners, when requested.
 - 1. A licensee shall maintain a record of all transactions involving receipt or disbursement of money by that office each day. The record shall identify each transaction; show account numbers and names of the business firms assisted; show amounts disbursed; show amounts received and the distribution of such amounts among principal, interest, and other charges.
 - 2. For each business firm to which financing assistance is provided, a licensee shall maintain a record containing all of the following information:
 - (i) Business firm's name and address;
 - (ii) Loan or account number;
 - (iii) Loan or investment date;
 - (iv) Loan or investment amount;
 - (v) Rate of charge and/or return on equity provisions;
 - (vi) Repayment terms;
 - (vii) Indication of management assistance provisions;

(Rule 0180-18-.02, continued)

- (viii) Description of collateral, if secured;
 - (ix) Indication of guarantors, if any;
 - (x) Description and amount of fees collected from the business firm;
 - (xi) Dates and amounts of all payments received and cash disbursements made;
 - (xii) Date to which interest charges are paid, and the unpaid principal balance due; and
 - (xiii) Any other services provided to the client by the BIDCO which are incidental to the conduct of the BIDCO and the fees derived from said services;
 - 3. For each business firm in subsection (2), the following additional information at a minimum shall be maintained:
 - (i) Applications, credit decision documentation, and all correspondence;
 - (ii) Evidence and documentation regarding restructured loans;
 - (iii) Financial assistance agreements including any participation agreements and plans to exit from the loan or investment on maturity;
 - (iv) Management assistance agreements including identification of type, frequency, and costs involved;
 - (v) Documentation of management assistance provided; and
 - (vi) Loan performance evaluations including an evaluation of cash flows and income projections;
 - 4. For each business firm to which financing assistance is denied, a licensee shall maintain a record containing all of the following information:
 - (i) Business firm's name and address; and
 - (ii) Applications, credit decision documentation and all correspondence.
 - (d) A licensee shall maintain consolidated reports showing its assets, liabilities, income and expenses. The reports shall be consolidated quarterly or at such specific intervals as the commissioner may otherwise request.
 - (e) All written correspondence between the Department of Financial Institutions and the licensee shall be retained by the licensee in a file designated as such and available for review at the main office location.
 - (f) All applicable procedural, interpretive, operational or other regulations issued pursuant to this chapter shall be maintained and available for review at the main office location.
- (5) Reports.

(Rule 0180-18-.02, continued)

- (a) In addition to the reports required by Section 15 of the Act, each licensee shall submit to the commissioner by March 31 of each year a report of the aggregate statistics on each of the following for the period ending December 31 of the preceding calendar year:
 - 1. The number and dollar amount of provisions of financing assistance made by the licensee to business firms;
 - 2. The number and dollar amount of provisions of financing assistance made by the licensee to business firms classified in the following broad categories of industry:
 - (i) Agriculture, forestry and fishing
 - (ii) Mining
 - (iii) Construction
 - (iv) Manufacturing
 - (v) Transportation, communications, electric, gas and sanitary services
 - (vi) Wholesale trade
 - (vii) Retail trade
 - (viii) Finance, insurance and real estate
 - (ix) Services
 - (x) Public administration; and
 - 3. The number and dollar amount of provisions of financing assistance made by licensee to minority-owned and to female-owned business firms. For the purpose of this regulation the term "minority-owned business" means a business which is solely owned, or at least fifty-one percent (51/%) of the assets or outstanding stock of which is owned, by an individual who personally manages and controls the daily operations of such business and who is impeded from normal entry into the economic mainstream because of past practices of discrimination based on race, religion, ethnic background, or sex. For the purpose of this regulation, the term "female-owned business" means a business which is solely owned, or at least fifty-one percent (51/%) of the assets or outstanding stock of which is owned by a female who personally manages and controls the daily operations of such business.

Authority: T.C.A. §45-8-207. **Administrative History:** Original rule filed December 27, 1989; effective March 28, 1990. Amendment filed December 30, 1993; effective March 31, 1993.

0180-18-.03 PROCEDURE FOR APPROVAL OF MERGERS, ACQUISITIONS, OR SALE OF ASSETS OF BIDCOS.

- (1) Scope. This rule establishes procedures for the form and content of requests under Section 14 of the Act for approval of mergers, acquisitions, or sale of assets of a BIDCO.

(Rule 0180-18-.03, continued)

- (2) A request pursuant to Section 14 of the Act shall be in writing, signed by the president or authorized representative of applicant, and shall include the following:
 - (a) A non-refundable investigation fee;
 - (b) Name of applicant. Pursuant to Section 14 of the Act, the approval for merger, acquisition, or sale of assets of a BIDCO with another corporation shall not be granted unless the licensee is the surviving corporation; or, if the licensee is the disappearing corporation, the surviving corporation is also a licensee;
 - (c) Name of surviving corporation;
 - (d) Name of disappearing corporation;
 - (e) Board resolution authorizing applicant to make application on behalf of the corporation;
 - (f) An explanation regarding the purpose(s) or reason(s) for the merger, acquisition, and sale of assets of a BIDCO;
 - (g) The specific terms of the merger, acquisition, or sale of assets of a BIDCO, including, but not necessarily limited to, management changes, stock or other asset sales and the respective prices, location/relocation, continuation of servicing of disappearing corporation (if BIDCO), clients, etc.;
 - (h) If the business plan is to be modified by the merger/sale of assets/acquisition, a detailed amended business plan shall be submitted. This plan shall set forth the services to be provided by the proposed BIDCO to business firms located within or outside the state of Tennessee;
 - (i) Financial statements for all new officers and directors;
 - (j) Resumes for all new officers and directors, including information concerning the experience of the management of the proposed BIDCO and how such experience relates to the execution of the business plan referred to in subparagraph (h) of this paragraph;
 - (k) Any amendments to the geographical business markets the BIDCO intends to service;
 - (l) Amendments to the detailed summary of how the management of the proposed BIDCO intends to implement a reasonable and prudent policy for conserving and investing the capital of the BIDCO;
 - (m) Amendments to types of business firms to be assisted by the BIDCO;
 - (n) Three (3) years of detailed financial projections or until such time as profitability is obtained;
 - (o) Evidence that the BIDCO has, or will have, a net worth of not less than \$1,000,000 or such greater amount as the commissioner may require, at the time it is licensed to transact business as a BIDCO;
 - (p) Any market studies which have been conducted by or on behalf of the applicant or as requested by the commissioner, if not previously submitted;

(Rule 0180-18-.03, continued)

- (q) If amended, new names, resumes, reference sources, and compensation schedules for any person(s) employed in an advisory capacity for the BIDCO, and a description of their purpose(s) and involvement(s) in the affairs of the BIDCO;
 - (r) Current financial statements for both the surviving and disappearing corporations (within the last quarter);
 - (s) Such other information the applicant may provide to support the request; and
 - (t) Such other information the commissioner may require or deem appropriate to the request.
- (3) Where the information required above is unchanged from application for formation on file with the commissioner, such information may be referenced.
 - (4) If, on the basis of the information submitted, the commissioner concludes that the request for a merger, acquisition, or sale of assets should be approved, the commissioner shall issue a written approval.
 - (5) If, on the basis of the information submitted, the commissioner concludes that the request for a merger, acquisition, or sale of assets should be disapproved, the commissioner shall provide the applicant with a written statement explaining the basis for the denial.

Authority: Public Chapter 124, Acts of 1989, §§6 and 14. **Administrative History:** Original rule filed December 27, 1989; effective March 28, 1990.

0180-18-.04 INTERPRETATION OF "PRUDENT BUSINESS MANNER."

- (1) A BIDCO will be deemed to be conducting business in a prudent business manner if the officers and directors, in the opinion of the commissioner, are found to discharge the duties of their respective positions in good faith, and with that diligence, care, judgement and skill which ordinary prudent persons would exercise under similar circumstances in like positions, consistent with the purposes of the Tennessee BIDCO Act.

Authority: Public Chapter 124, Acts of 1989, §§6 and 10. **Administrative History:** Original rule filed December 27, 1989; effective March 28, 1990.

0180-18-.05 MAIN AND BRANCH OFFICE LOCATIONS.

- (1) SCOPE. This rule establishes procedures for the opening of branch offices of a BIDCO, the relocation of an office, and the closing of an office.
- (2) Pursuant to Section 11 of the Act, each BIDCO shall maintain an office in the state. If more than one office is located within the state, one office shall be designated by the BIDCO as the location at which examinations by the commissioner are principally conducted.
- (3) Branch offices may be opened by the payment of the licensing fee and providing written notice to the commissioner of the BIDCO's intent to establish another location. This notice shall contain, at a minimum:
 - (a) The name and main office address of the BIDCO;
 - (b) The address of the proposed branch office;

(Rule 0180-18-.05, continued)

- (c) The functions to be performed at the branch;
 - (d) The proposed personnel/staffing at the branch;
 - (e) A statement acknowledging the books and records availability requirements set forth in rule 0180-18-.02(4); and
 - (f) Any other information the commissioner may require or the applicant may choose to provide.
- (4) If, on the basis of the information submitted, the commissioner concludes that the request for a branch office should be approved, the commissioner shall issue an order permitting the BIDCO to conduct the business of, and incidental to, the BIDCO at the additional address.
 - (5) No licensee shall maintain an office at any other location than those approved by the commissioner.
 - (6) Upon twenty (20) days written notice to the commissioner, and with the consent of the same, a licensee may relocate or close an office.

Authority: Public Chapter 124, Acts of 1989, Sections 6 and 11. **Administrative History:** Original rule filed December 27, 1989; effective March 28, 1990.

0180-18-.06 LICENSE RENEWAL PROCEDURES.

- (1) The license for every BIDCO shall expire on December 31 of each year and shall be subject to an annual renewal fee.
- (2) At least thirty (30) days prior to December 31 each year, the commissioner shall mail via regular U.S. mail to each licensee at its main office address a license renewal form.
- (3) The commissioner may invoke the remedies afforded by Section 20 of the Act when a licensee fails to renew its license by December 31. In the alternative the commissioner may issue an Order pursuant to the provisions of Section 18 of the Act requiring the licensee to renew its license or seek the surrender of its license.

Authority: Public Chapter 124, Acts of 1989, §§6 and 8. **Administrative History:** Original rule filed December 27, 1989; effective March 28, 1990.

0180-18-.07 ACTIVITIES INCIDENTAL TO THE CONDUCT OF A BIDCO.

- (1) Pursuant to the provisions of Section 10, subsection (b)(5) of the Act, the activities incidental to the conduct of a BIDCO may include, but not necessarily be limited to:
 - (a) Electronic data processing services;
 - (b) Investment advisory services;
 - (c) Accounting, bookkeeping, and internal auditing services;
 - (d) Personnel services;
 - (e) Marketing analysis services;
 - (f) Advertising services;

(Rule 0180-18-.07, continued)

- (g) Security services;
 - (h) Transportation of valuables services;
 - (i) Agent services for leasing of real property, business equipment, and business vehicles;
 - (j) Acting as a corporate agent;
 - (k) Employee benefit planning; and
 - (l) Pension fund management.
- (2) All above activities should be entered into in full consideration of any license, registration or other requirements of state or federal law or regulation thereof.
- (3) Requests for approval to conduct additional incidental activities shall be in writing to the commissioner and shall contain, at a minimum:
- (a) The name and main office address of the BIDCO;
 - (b) A resolution by the board of directors of the BIDCO authorizing the application for additional incidental activities;
 - (c) A complete description of the activity(s) in which the BIDCO wishes to engage;
 - (d) An explanation of why such activity(s) is necessary or convenient to carry on the business of, or that is reasonably related to the business of, providing financing assistance and management assistance to business firms;
 - (e) An explanation of what experience or expertise will be available to perform the functions of the activity(s);
 - (f) Such other information as the applicant may provide to support the request;
 - (g) Such other information as the commissioner may require.
- (4) If, on the basis of the information submitted, the commissioner concludes that the request should be approved, the commissioner shall issue written approval for such activity(s). Such approvals may be conditional.
- (5) If on the basis of the information submitted or obtained through the investigation process, the commissioner concludes that the request should be denied, the commissioner shall issue a written explanation of the reasons for the denial.

Authority: *Public Chapter 124, Acts of 1989, §§6 and 10. Administrative History:* *Original rule filed December 27, 1989; effective March 28, 1990.*

0180-18-.08 LOANS TO AFFILIATED BIDCOS.

- (1) Pursuant to Section 25 of the Act and with regard to BIDCOS in which a state-chartered bank has an interest or which are affiliated with a state-chartered bank:
- (a) Loans made to such BIDCOS should be made on substantially the same basis as any other loan and with the same limitations detailed under this section.

(Rule 0180-16-.08, continued)

- (b) A bank shall not in any manner extend credit, lease or sell property of any kind, or furnish any service, or fix or vary on the condition or requirement:
 - 1. That the BIDCO obtain some additional credit, property, or service from such bank other than a loan, discount, deposit, or trust service;
 - 2. That the BIDCO provide some additional credit, property, or service from a bank holding company of such bank, or from any other subsidiary of such bank holding company; and/or
 - 3. That the BIDCO not obtain some other credit, property, or service from a competitor of such bank, a bank holding company of such bank or any subsidiary of such bank holding company, other than a condition or requirement that such bank reasonably impose in a credit transaction to assure the soundness of the credit.
- (2) State bank investments in BIDCOS are subject to investment limitations set forth in T.C.A. § 45-2-607.

Authority: Public Chapter 124, Acts of 1989, §§6 and 25. **Administrative History:** Original rule filed December 27, 1989; effective March 28, 1990.