

1
2 An act relating to international banking;
3 amending s. 655.059, F.S.; providing for access
4 to books and records of international banking
5 corporations under certain circumstances;
6 amending s. 663.01, F.S.; revising a
7 definition; amending s. 663.07, F.S.;
8 clarifying exclusion of certain deposits,
9 borrowings, and credit of international banking
10 facilities from total assets and liabilities;
11 clarifying certain cash and security deposit
12 requirements for international bank agencies or
13 international branches; creating ss.
14 663.16-663.181, F.S.; providing for liquidation
15 of international bank agencies and branches;
16 providing definitions; providing for possession
17 of a business and property by the Department of
18 Banking and Finance; providing for inventory of
19 assets; providing for wages; providing for
20 deposit of certain assets; providing for
21 appointment of agents and judges; providing for
22 repudiation of contracts; providing for
23 liability on repudiation or termination of
24 contracts; providing for retention of certain
25 security interests under qualified financial
26 contracts; providing for effects on leases
27 under repudiated contracts; providing for
28 effect of possession of an international
29 banking corporation by the department;
30 providing for damages; requiring notice of
31 taking possession; providing criteria;

1 providing for disposition of certain property;
2 providing for claims; providing procedures;
3 exempting the department from paying certain
4 fees; providing for challenging possession of
5 an international banking corporation by the
6 department; repealing s. 663.02(2), F.S.,
7 relating to applicability of certain state
8 banking laws to certain financial institutions;
9 providing an effective date.

10

11 Be It Enacted by the Legislature of the State of Florida:

12

13 Section 1. Subsection (1) of section 655.059, Florida
14 Statutes, is amended to read:15 655.059 Access to books and records; confidentiality;
16 penalty for disclosure.--17 (1) The books and records of a financial institution
18 are confidential and shall be made available for inspection
19 and examination only:20 (a) To the department or its duly authorized
21 representative;22 (b) To any person duly authorized to act for the
23 financial institution;24 (c) To any federal or state instrumentality or agency
25 authorized to inspect or examine the books and records of an
26 insured financial institution;27 (d) With respect to an international banking
28 corporation, to the home-country supervisor of the
29 corporation, provided:

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1 1. The supervisor provides advance notice to the
2 department that the supervisor intends to examine the Florida
3 office of the corporation.

4 2. The supervisor confirms to the department that the
5 purpose of the examination is to ensure the safety and
6 soundness of the corporation.

7 3. The books and records pertaining to customer
8 deposit, investment, and custodial accounts are not disclosed
9 to the supervisor.

10 4. At any time during the conduct of the examination,
11 the department reserves the right to have an examiner present
12 or to participate jointly in the examination.

13
14 For purposes of this paragraph, "home-country supervisor"
15 means the governmental entity in the corporation's home
16 country with responsibility for the supervision and regulation
17 of the corporation.

18 ~~(e)(d)~~ As compelled by a court of competent
19 jurisdiction;

20 ~~(f)(e)~~ As compelled by legislative subpoena as
21 provided by law, in which case the provisions of s. 655.057
22 apply;

23 ~~(g)(f)~~ Pursuant to a subpoena, to any federal or state
24 law enforcement or prosecutorial instrumentality authorized to
25 investigate suspected criminal activity;

26 ~~(h)(g)~~ As authorized by the board of directors of the
27 financial institution; or

28 ~~(i)(h)~~ As provided in subsection (2).

29 Section 2. Subsection (8) of section 663.01, Florida
30 Statutes, is amended to read:

31 663.01 Definitions.--As used in this part, the term:

1 (8) "International representative office" means an
2 office of ~~a representative of~~ an international banking
3 corporation organized and licensed under the laws of a foreign
4 country that is established or maintained in this state for
5 the purpose of engaging in the activities described in s.
6 663.062, or any person whose primary business is to engage in
7 such activities, on behalf of such international banking
8 corporation, from an office located in this state.

9 Section 3. Subsections (5) and (8) of section 663.07,
10 Florida Statutes, are amended to read:

11 663.07 Asset maintenance or capital equivalency.--

12 (5) The term "assets" as used in this section excludes
13 accrued income and amounts due from other offices or branches
14 of, and wholly owned, except for a nominal number of
15 directors' shares, subsidiaries of the international banking
16 corporation in question. The term "liabilities" as used in
17 this section excludes accrued expenses and amounts due and
18 other liabilities to branches, offices, agencies, and wholly
19 owned, except for a nominal number of directors' shares,
20 subsidiaries of the international banking corporation in
21 question, and such other liabilities as the department may
22 specify by rule. International banking facility deposits,
23 borrowings, and extensions of credit are excluded from the
24 total liabilities and total assets of an international bank
25 agency or international branch unless the department
26 determines that inclusion of international banking facility
27 deposits, borrowings, and extensions of credit is necessary to
28 ensure the maintenance of a sound financial condition, protect
29 depositors, creditors, and the public interest, and maintain
30 public confidence in the business of the international bank
31 agency or international branch.~~Except as the department may~~

1 ~~require pursuant to subsection (6), international banking~~
2 ~~facility deposits and extensions of credit shall be excluded~~
3 ~~from the total liabilities and total assets of an~~
4 ~~international bank agency or international branch.~~

5 (8) Regardless of whether an international bank agency
6 or international branch complies with the requirements of this
7 section pursuant to subsections (1) or (3),if, by reason of
8 the existence, or the potential occurrence, of unusual or
9 extraordinary circumstances, the department finds it necessary
10 or desirable for maintaining a sound financial condition,
11 protecting creditors and the public interest, and maintaining
12 public confidence in the business of the international bank
13 agency or international branch it may by order require such
14 international ~~bank agency or international branch~~ banking
15 corporation to deposit cash ~~or~~ and eligible securities with a
16 bank or trust company located in this state, or to hold in
17 this state assets acceptable to the department in an aggregate
18 amount that bears such relationship as the department
19 prescribes to the aggregate liabilities of the international
20 bank agency or international branch ~~in an amount not exceeding~~
21 twice the amount required under subsection (1). The assets
22 required to be held in this state pursuant to this subsection
23 shall be deposited with a bank or trust company located in
24 this state that the international banking corporation
25 designates and the department approves.

26 Section 4. Sections 663.16, 663.17, 663.171, 663.172,
27 663.173, 663.174, 663.175, 663.176, 663.177, 663.178, 663.18,
28 and 663.181, Florida Statutes, are created to read:

29 663.16 Definitions.--As used in ss. 663.17-663.181,
30 the term:

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1 (1) "Business and property in this state" includes,
2 but is not limited to, all property of the international
3 banking corporation, real, personal, or mixed, whether
4 tangible or intangible:

5 (a) Wherever situated, constituting a part of the
6 business of the Florida agency and appearing on its books as
7 such.

8 (b) Situated within this state whether or not
9 constituting part of the business of the Florida agency or so
10 appearing on its books.

11 (2) "Claims" means debts, obligations, deposits, and
12 other similar items that the department takes possession of
13 pursuant to s. 663.17(1).

14 (3) "Creditors" and "depositors" means the owners of
15 claims.

16 (4) Except where the context otherwise requires,
17 "international banking corporation" or "corporation" means any
18 international bank agency operating in this state.

19 (5) "Officer" means the agent or other person in
20 charge of an international banking corporation.

21 (6) "Affiliate" means any person or group of persons
22 acting in concert that controls, is controlled by, or is under
23 common control of an international banking corporation.

24 (7) "Control" means any person or group of persons
25 acting in concert, directly or indirectly, owning,
26 controlling, or holding the power to vote more than 50 percent
27 of the voting stock of a company, or having the ability in any
28 manner to elect a majority of directors of a corporation, or
29 otherwise exercising a controlling influence over the
30 management and policies of a corporation as determined by the
31 department.

1 (8) "Qualified financial contract" means any
2 securities contract, commodity contract, forward contract,
3 including spot and forward foreign exchange, repurchase
4 agreement, swap agreement, or any similar agreement, any
5 option to enter into any such agreement, including any
6 combination of the foregoing, and any master agreement for
7 such agreements. Such master agreement, together with all
8 supplements thereto, shall be treated as one qualified
9 financial contract, provided that such contract, option, or
10 agreement, or combination of contracts, options, or agreements
11 is reflected in the books, accounts, or records of the
12 international banking corporation or a party provides evidence
13 of such agreement. The department may define, by rule,
14 securities contract, commodity contract, forward contract,
15 repurchase agreement, or swap agreement, and may, by rule or
16 order, determine any other agreement to be a qualified
17 financial contract for the purpose of this subsection. The
18 department may prescribe such rules relating to qualified
19 financial contracts and netting thereof as the department
20 deems appropriate.

21 (9) "Global payment net payment obligation" means the
22 amount, if any, owed by an international banking corporation
23 as a whole to a party, after giving effect to the netting
24 provisions of a qualified financial contract, with respect to
25 all transactions subject to netting under such qualified
26 financial contract.

27 (10) "Global net payment entitlement" means the
28 amount, if any, owed by a party or that would be owed if the
29 relevant agreements provided for payments to either party upon
30 termination thereof under any and all circumstances, to an
31 international banking corporation as a whole, after giving

1 effect to the netting provisions, with respect to all
2 transactions subject to netting under such qualified financial
3 contract.

4 (11) "Branch or agency net obligations" means, with
5 respect to a qualified financial contract, the amount, if any,
6 that would have been owed by the international banking
7 corporation to a party after netting only those transactions
8 entered into by the branch or agency and such party under such
9 qualified financial contract.

10 (12) "Branch or agency net payments entitlement"
11 means, with respect to a qualified financial contract, the
12 amount, if any, that would have been owed by a party to the
13 international banking corporation after netting only those
14 transactions entered into by the branch or agency and such
15 party under such qualified financial contract.

16 663.17 Liquidation; possession of business and
17 property; inventory of assets; wages; depositing collected
18 assets; appointing agents; appointment of judges.--

19 (1) The department may, at its discretion, take
20 possession of the business and property in this state of any
21 international banking corporation that has been licensed to
22 operate in this state upon finding that the corporation's
23 international bank agency operating in this state has violated
24 any law, has neglected or refused to comply with the terms of
25 a duly issued order of the department, is insolvent or
26 imminently insolvent, or is transacting business in an
27 unsound, unsafe, or unauthorized manner such that the
28 corporation is threatened with imminent insolvency, or that
29 the corporation is in liquidation at its domicile or
30 elsewhere. Title to such business and property shall vest by
31 operation of law in the department upon taking possession.

1 Thereafter, the department shall liquidate or otherwise deal
2 with such business and property in accordance with the
3 provisions of this part, chapter 658, and any other provision
4 relating to the liquidation of banking corporations. The
5 department may deal with such business and property and
6 prosecute and defend any and all actions relating to the
7 liquidation. Only the claims of creditors of the international
8 banking corporation arising out of transactions those
9 creditors had with the international banking corporation's
10 international bank agency or agencies located in this state
11 shall be accepted by the department for payment out of the
12 business and property which it has taken possession of in this
13 state. Acceptance or rejection of such claims by the
14 department shall not prejudice any creditor's rights to
15 otherwise share in other assets of the international banking
16 corporation. The following claims shall not be accepted by the
17 department for payment out of the business and property in the
18 department's possession in this state:

19 (a) Claims which would not represent an enforceable
20 legal obligation against an international bank agency if such
21 agency were a separate and independent legal entity.

22 (b) Amounts due and other liabilities to other
23 offices, agencies, and branches of and affiliates of such
24 international banking corporation.

25 (2) Whenever all accepted claims, together with
26 interest on such claims, and the expenses of the liquidation
27 have been paid in full or properly provided for, the
28 department, upon the order of a court of competent
29 jurisdiction, shall transfer the remaining assets to the
30 principal office of such international banking corporation, or
31 to the duly appointed domiciliary liquidator or receiver of

1 such corporation. Dividends and other amounts that remain
2 unclaimed or unpaid and are in the possession of the
3 department for 6 months after such transfer shall be deposited
4 by the department as provided by law.

5 (3) When the department takes possession of the
6 property and business of any international banking
7 corporation, the department shall:

8 (a) Give notice of such fact to all corporations,
9 unincorporated associations, partnerships, governmental
10 entities, and other entities and individuals known by the
11 department to hold any assets of such corporation. No
12 corporation, unincorporated association, partnership,
13 governmental entity, or other entity or individual having
14 notice or knowledge that the department has taken possession
15 of such corporation shall have a lien or charge for any
16 payment, advance, or clearance thereafter made against any of
17 the assets of such corporation for liability thereafter
18 incurred.

19 (b) Upon written demand of the department, any
20 corporation, unincorporated association, partnership,
21 governmental entity, or other entity or individual holding
22 assets of such corporation shall deliver such assets to the
23 department and shall be discharged from liability with respect
24 to any claim upon such assets; provided, such demand shall not
25 affect the right of a secured creditor with a perfected
26 security interest, or other valid lien or security interest
27 enforceable against third parties, to retain collateral,
28 including any right of such secured creditor under any
29 security agreement related to a qualified financial contract
30 to retain collateral and apply such collateral in accordance
31 with the provisions of the financial institutions codes.

1 (c) Nothing in paragraphs (a) and (b) shall affect any
2 right of set-off permitted under applicable law; provided, in
3 connection with the liquidation of an international bank
4 agency of any other international banking corporation pursuant
5 to this part, no entity or individual may set off the business
6 and property in this state of an international banking
7 corporation being liquidated under this subsection, against
8 the liabilities of such corporation other than those that
9 arise out of transactions engaged in by such entity or
10 individual with such international bank agency. For purposes
11 of this paragraph, liabilities shall be deemed to include, in
12 the case of qualified financial contracts, the lesser of the
13 two amounts calculated with respect to any such qualified
14 financial contract pursuant to s. 663.172(3), and this
15 paragraph shall not be deemed to authorize set-off except as
16 otherwise permissible under applicable law.

17 (4) Any international banking corporation of which the
18 department has taken possession or which is operating under
19 restrictions imposed by duly constituted authority may be
20 permitted to resume business subject to the department's
21 discretion and any conditions which the department may impose.

22 (5) After the department takes possession of and
23 determines to liquidate the property and business of any
24 international banking corporation, the department shall make
25 an inventory, in duplicate, of the assets of such corporation.
26 One copy of such inventory shall be filed in an office of the
27 department and one copy shall be filed with a court of
28 competent jurisdiction in the county in which the principal
29 office of such corporation is located.

30 (6) Notwithstanding s. 658.84, all wages actually
31 owing to the employees of an international banking corporation

1 for services rendered within 3 months prior to the date
2 possession was taken by the department, and not exceeding
3 \$2,000 to each employee, shall be paid prior to the payment of
4 any other debt or claim, and, in the discretion of the
5 department, may be paid as soon as practicable after taking
6 possession, except that at all times the department shall
7 reserve such funds as will, in the department's opinion, be
8 sufficient for the expenses of administration.

9 (7) The department is authorized, upon taking
10 possession of any international banking corporation, to
11 liquidate the affairs of such corporation and to do all acts
12 and to make such expenditures as in the department's judgment
13 are necessary to conserve the assets and business of the
14 corporation. The department shall proceed to collect the debts
15 due to the corporation. The department may, upon an order of a
16 court of competent jurisdiction, sell, assign, compromise, or
17 otherwise dispose of all bad or doubtful debts held by, and
18 compromise claims against, such corporation, other than
19 deposit claims, provided, whenever the principal amount of any
20 such debt or claim owed by or owing to such corporation does
21 not exceed \$50,000, the department may sell, assign,
22 compromise, or otherwise dispose of such debt or claim upon
23 such terms as the department may deem to be in the best
24 interests of such corporation wherever situated. When the real
25 property of an international banking corporation, to be
26 disposed of pursuant to this subsection, is located in a
27 county in this state other than a county in which an
28 application to the court for leave to dispose is made, the
29 department shall file a certified copy of the order of such
30 court authorizing such disposal in the office of the clerk of
31 the county in which such real property is located.

1 (8) Moneys collected by the department in liquidating
2 an international banking corporation shall be:

3 (a) Deposited on demand, time or otherwise, in one or
4 more banks, associations, or trust companies organized under
5 the laws of this state and, in the case of insolvency or
6 voluntary or involuntary liquidation of the depository, such
7 deposits shall be entitled to priority of payment equally with
8 any other priority given under the financial institutions
9 codes;

10 (b) Deposited on demand, time or otherwise, in one or
11 more national banks with a principal office located in this
12 state and with total assets exceeding \$1 billion; or

13 (c) Invested in obligations of the United States, or
14 obligation for which the full faith and credit of the United
15 States is pledged to provide for the payment of interest and
16 principal.

17 (9) The department may appoint one or more persons as
18 agent or agents to assist in the liquidation of the business
19 and affairs of any international banking corporation in the
20 department's possession. The department shall file a
21 certificate of such appointment in one of the department's
22 offices and shall file a certified copy of such certificate
23 with a court of competent jurisdiction in the county in which
24 the principal office of such corporation is located in this
25 state. The department may employ such counsel and expert
26 assistants under such titles that the department shall assign
27 to them, and may retain such officers or employees of such
28 corporation as the department deems necessary in the
29 liquidation and distribution of the corporation's assets. The
30 department may require such security as it may deem proper
31

1 from the agents and assistants appointed pursuant to the
2 provisions of this subsection.

3 (10) When the department has taken possession of and
4 is liquidating the business and property in this state of any
5 international banking corporation under the provisions of this
6 part, the department shall be entitled to the appointment of a
7 single judge to supervise the liquidation in the judicial
8 circuit in which the principal office of such corporation is
9 located. Such judge shall have the power to order expedited or
10 simplified procedures or order a reference whenever necessary
11 to resolve a matter in such liquidation.

12 (11) The compensation of agents and any other
13 employees appointed by the department to assist in the
14 liquidation of an international bank agency, the distribution
15 of its assets, or the expenses of supervision, shall be paid
16 out of the assets of the agency in the hands of the
17 department. Expenses of liquidation and approved claims for
18 fees and assessments due the department shall be given first
19 priority among unsecured creditors.

20 663.171 Liquidation; repudiation of contracts.--

21 (1) Except as otherwise provided in this section, when
22 the department has taken possession of the business and
23 property in this state of an international banking
24 corporation, the department may assume or repudiate any
25 contract, including an unexpired lease, of the corporation:

26 (a) To which such corporation is a party.

27 (b) The performance of which the department, in its
28 discretion, determines to be burdensome.

29 (c) The repudiation of which the department, in its
30 discretion, determines will promote the orderly administration
31 of the corporation's affairs.

1 (2) After the expiration of 90 days after the date the
2 department takes possession of an international banking
3 corporation, any party to a contract with such corporation may
4 demand in writing that the department assume or repudiate such
5 contract. If the department has not assumed or repudiated the
6 contract within 15 calendar days after the date of receipt of
7 such demand, the affected party may bring an action in a court
8 of competent jurisdiction in the county in which the principal
9 office of the corporation is located to obtain an order
10 requiring the department to assume or repudiate the contract.
11 If the department has not assumed or repudiated the contract
12 by at least 1 month before the last date for filing claims
13 against the corporation, such contract shall be deemed
14 repudiated.

15 (3) Notwithstanding subsection (2), with respect to an
16 unexpired lease of the corporation for rental of real property
17 under which the corporation was a lessee, if the department
18 remains in possession of the leasehold, the department shall
19 not be required to assume or repudiate such lease and may
20 continue in possession of such leasehold for the remainder of
21 the term of the lease in accordance with the terms of the
22 lease; provided, if the department later repudiates the lease
23 before the end of the lease term, any amounts that may be due
24 the lessor with respect to such lease shall be calculated as
25 provided by law.

26 (4) Notwithstanding any other provision of this
27 section relating to liquidating an international banking
28 corporation, the department shall not assume or repudiate any
29 qualified financial contract that the international bank
30 agency entered into which is subject to a multi-branch or
31 multi-agency netting agreement or arrangement that provides

1 for netting present or future payment obligations or payment
2 entitlements, including termination or close-out values
3 relating to the obligations or entitlements, among the parties
4 to the contract and agreement or arrangement and the
5 department may, but shall not be required to, assume or
6 repudiate any other qualified financial contract an
7 international bank agency entered into; provided, upon the
8 repudiation of any qualified financial contract or the
9 termination or liquidation of any qualified financial contract
10 in accordance with its terms, the liability of the department
11 under such qualified financial contract shall be determined in
12 accordance with s. 663.172.

13 663.172 Liability on repudiation or termination of
14 contracts.--

15 (1) Except as otherwise provided in this section, upon
16 the repudiation or termination of any contract pursuant to s.
17 663.171, the liability of the department shall be limited to
18 the actual direct compensatory damages of the parties to the
19 contract, determined as of the date the department took
20 possession of the international banking corporation. The
21 department shall not be liable for any future wages other than
22 severance payments, to the extent such payments are reasonable
23 standards, or for payments for future service, costs of cover,
24 or any consequential, punitive, or exemplary damages, damages
25 for lost profits or lost opportunity, or damages for pain and
26 suffering.

27 (2) Except as otherwise provided in this section, the
28 liability of the department, upon the repudiation of any
29 qualified financial contract or in connection with the
30 termination or liquidation of any qualified financial contract
31 in accordance with the terms of such contract, shall be

1 limited as provided in subsection (1), except compensatory
2 damages shall be deemed to include normal and reasonable costs
3 of cover or other reasonable measures of damages used among
4 participants in the market for qualified financial contract
5 claims, calculated as of the date of repudiation or the date
6 of the termination of such qualified financial contract in
7 accordance with the terms of the contract. Upon the
8 repudiation of any qualified financial contract or in
9 connection with the termination or liquidation of any
10 qualified financial contract in accordance with the terms of
11 such contract, the department shall be entitled to damages and
12 such damages shall be paid to the department upon written
13 demand from the department to the other party or parties to
14 the contract.

15 (3) In the case of the liquidation of an international
16 bank agency of an international banking corporation by the
17 department, with respect to qualified financial contracts
18 subject to netting agreements or arrangements that provide for
19 netting present or future payment obligations or payment
20 entitlements, including termination or close-out values
21 relating to the obligations or entitlements, among the parties
22 to the contracts and agreements or arrangements, the liability
23 of the department to any party to any such qualified financial
24 contract upon the repudiation or in any connection with the
25 termination or liquidation of such qualified financial
26 contract in accordance with the terms of such contract shall
27 be limited to the lesser of:

28 (a) The global net payment obligation; or
29 (b) The branch to agency or agency to agency net
30 payment obligation.

31

1 (4) The liability of the department to a party under
2 this section shall be reduced by any amount otherwise paid or
3 received by the party with respect to the global net payment
4 obligation pursuant to such qualified financial contract
5 which, if added to the liability of the department under
6 subsection (1), would exceed the global net payment
7 obligation. The liability of the department under this section
8 to a party to a qualified financial contract also shall be
9 reduced by the fair market value or the amount of any proceeds
10 of collateral that secures and has been applied to satisfy the
11 obligations of the international banking corporation to the
12 party pursuant to such qualified financial contract. If
13 netting under the applicable netting agreement or arrangement
14 results in a branch to agency net payment entitlement,
15 notwithstanding any provision in any such contract that
16 purports to effect a forfeiture of such entitlement, the
17 department may make written demand for and shall be entitled
18 to received from the party to such contract an amount not to
19 exceed the lesser of the global net payment entitlement or the
20 branch to agency net payment entitlement.

21 (5) The liability of a party under this section shall
22 be reduced by any amount otherwise paid to or received by the
23 department or any other liquidator or receiver of the
24 international banking corporation with respect to the global
25 net payment entitlement pursuant to such qualified financial
26 contract which, if added to the liability of the party under
27 this section, would exceed the global net payments
28 entitlement. The liability of a party under this section to
29 the department pursuant to such qualified financial contract
30 also shall be reduced by the fair market value of the amount
31 of any proceeds of the collateral that secures and has been

1 applied to satisfy the obligations of the party to the
2 international banking corporation pursuant to such qualified
3 financial contract.

4 663.173 Qualified financial contract; net obligation
5 and net entitlement.--A party to a qualified financial
6 contract with an international banking corporation, possession
7 of which has been taken by the department pursuant to s.
8 663.17, which party has a perfected security interest in
9 collateral or other valid lien or security interest in
10 collateral enforceable against third parties pursuant to a
11 security arrangement related to such qualified financial
12 contract, may retain all such collateral and, upon repudiation
13 or termination of such qualified financial contract in
14 accordance with the terms of the contract, may apply such
15 collateral in satisfaction of any claims secured by the
16 collateral provided the total amount so applied to such claims
17 shall in no event exceed the global net payment obligation, if
18 any.

19 663.174 Repudiation; lease, lessee, or lessor; real or
20 personal property.--

21 (1) If the department repudiates a lease of an
22 international banking corporation, the real or personal
23 property under which the corporation was a lessee, the lessor
24 under such lease shall be entitled to file a claim with the
25 department for the lesser of:

26 (a) The amount designated as liquidated damages
27 contained in the lease between the corporation and the lessor;

28 (b) The amount equal to 1 year's rent under the terms
29 of the repudiated lease; or

30 (c) An amount equal to the rent for the remaining term
31 of the lease.

1 (2) If the department repudiates the lease of an
2 international banking corporation for the rental of real
3 property under which the corporation was the lessor and the
4 lease was not in default at the time of the repudiation, the
5 lessee under such lease may:

6 (a) Treat the lease as terminated by such repudiation
7 and vacate the premises; or

8 (b) Remain in possession of the leasehold interest for
9 the balance of the term of the lease, and for any renewal or
10 extension of such term that is enforceable by such lessee
11 under applicable non-insolvency law, unless the lessee
12 defaults under the terms of the lease after the date of such
13 repudiation. If the lessee remains in possession of the
14 leasehold interest, the lessee shall continue to pay to the
15 department the contractual rent pursuant to the terms of the
16 lease after the date of the repudiation of such lease and may
17 offset against such rent payment any damages which may accrue
18 due to nonperformance of any obligation of the corporation
19 under the lease after the date of repudiation.

20
21 The department shall not be liable to the lessee for any
22 damages arising after such date as a result of the repudiation
23 other than the amount of any offset allowed under this
24 paragraph. Nothing in this subsection prohibits the department
25 from entering into a new contract with the lessee for the
26 rental of the leasehold which was the subject of the
27 repudiated lease.

28 (3) Except as otherwise provided, notwithstanding any
29 provision in an unexpired lease or other contract or in
30 applicable law, a contract or unexpired lease of an
31 international banking corporation may not be terminated or

1 modified by any party other than the department without the
2 concurrence of the department, and any right or obligation
3 under such contract or lease may not be terminated or
4 modified, at any time after the department has taken
5 possession, solely pursuant to a provision in such contract or
6 lease purporting to allow termination or modification upon the
7 department's taking possession or upon the insolvency or
8 liquidation or deterioration of the financial condition of the
9 corporation.

10 (4) Nothing in this section affects the right of a
11 party to contract with an international banking corporation to
12 seek performance of such contract or damages under such
13 contract in any other jurisdiction; provided, the department
14 shall not be liable for the performance of such contract or
15 damages under such contract in any other jurisdiction.

16 (5) The rights granted in this section are in addition
17 to any other rights available to the department under common
18 law or any other law.

19 663.175 Liquidation; continuation, stay, and
20 injunction.--

21 (1) Except as provided in this section, the
22 department's taking of possession of any international banking
23 corporation and the liquidation of the corporation shall
24 operate as a stay of and as an injunction against, as of the
25 date the department takes possession of the corporation and
26 applicable to all persons or entities:

27 (a) The commencement or continuation, including the
28 issuance or employment of process, of a judicial,
29 administrative, or other action or proceeding against the
30 corporation that was or could have been commenced before the
31

1 taking of possession, or to cover a claim against the
2 corporation that arose before the taking of possession.

3 (b) The enforcement against the corporation, or the
4 business and property of the corporation in this state, of a
5 judgment obtained before the taking of possession.

6 (c) Any act to obtain possession of property of the
7 corporation or of property from the corporation or to exercise
8 control over property of the corporation.

9 (d) Any act to create, perfect, or enforce any lien
10 against property of the corporation.

11 (e) Any act to create, perfect, or enforce against
12 property of the corporation any lien to the extent that such
13 lien secures a claim that arose before the taking of
14 possession.

15 (f) Any act to collect, assess, or recover a claim
16 against the corporation and the liquidation of the corporation
17 does not operate as a stay of or as an injunction against the
18 claim.

19 (2) The department's taking of possession of an
20 international banking corporation and the liquidation of the
21 corporation does not operate as a stay of or as an injunction
22 against:

23 (a)1. The filing of a claim in the liquidation of the
24 corporation;

25 2. The making of a demand upon the department to
26 assume or repudiate a contract of the corporation;

27 3. The exercise of any set-off otherwise permissible
28 under applicable law except limited by s. 663.17;

29 4. The right of any secured creditor with a perfected
30 security interest or other valid lien or security interest
31 enforceable against third parties to retain collateral,

1 including any right of such secured creditor under any
2 security agreement related to a qualified financial contract
3 as defined in s. 663.17 to retain collateral and to apply such
4 collateral in accordance with s. 663.173;

5 5. Any automatic termination in accordance with the
6 terms of any qualified financial contract or any right to
7 cause the termination or liquidation of any qualified
8 financial contract, as defined in this part in accordance with
9 the terms of such contract;

10 6. Any right to offset or net out any termination
11 value, payment amount, or other transfer obligation arising
12 under or in connection with one or more such qualified
13 financial contracts; or

14 7. The commencement of an action under s. 663.181 or
15 any other action relating to the liquidation of the
16 corporation before the court of competent jurisdiction
17 overseeing the liquidation of the corporation.

18 (b) The commencement or continuation of a criminal
19 action or proceeding against the corporation.

20 (c) The commencement or continuation of an action or
21 proceeding pursuant to a governmental unit's police or
22 regulatory power.

23 (d) The enforcement of a judgment, other than money
24 judgment, obtained in an action or proceeding by a
25 governmental unit to enforce such governmental unit's police
26 or regulatory power.

27 (e) The issuance to the corporation by a governmental
28 unit of a notice of tax deficiency.

29 (f) The commencement or continuation of a judicial
30 action or proceeding by a secured creditor with a perfected
31 security interest, or other valid lien or security interest

1 enforceable against third parties, including any right of such
2 secured creditor under any security arrangement related to a
3 qualified financial contract to enforce such interest or lien.

4 (3) Except as otherwise provided in this section:

5 (a) The staying or enjoining of an act against
6 property of an international banking corporation under this
7 section shall continue until such property is no longer the
8 property of the department in possession of the corporation.

9 (b) The staying or enjoining of any other act under
10 this section shall continue until the department has concluded
11 liquidating the corporation.

12 (4) For good cause shown, on request of a party in
13 interest and after notice and hearing, a court of competent
14 jurisdiction overseeing the liquidation of an international
15 banking corporation may grant relief from a stay or injunction
16 provided under this section, including, but not limited to,
17 terminating, annulling, modifying, or conditioning such stay
18 or injunction.

19 (5) In the case of any willful violation of a stay or
20 injunction provided in this section by any person who has
21 knowledge of the department's taking of possession of an
22 international banking corporation that is the subject of the
23 stay or injunction, the department shall recover actual
24 damages, including costs and fees and, in appropriate
25 circumstances, may recover punitive damages.

26 663.176 Liquidation; notice of possession.--When the
27 department has taken possession of an international banking
28 corporation and has determined to liquidate the corporation's
29 affairs, the department shall notify all persons who may have
30 claims against the corporation to present such claims to the
31 department and make proper proof of such claims within 4

1 months after the date of such notice and at a place specified
2 in the notice; provided, if the department finds that a
3 shorter period than 4 months will afford a reasonable time for
4 presenting claims and making proof of such claims, the
5 department may specify such shorter period which shall in no
6 event be less than 30 days. In any event, the department shall
7 specify in such notice the last day for processing claims and
8 for making proof of such claims. The department shall cause
9 such notice to be mailed to all persons whose names appear as
10 creditors upon the books of the corporation. Such notice to
11 persons appearing as depositors shall be mailed to the address
12 appearing upon the deposit records or ledger of the
13 corporation. The department shall also cause such notice to be
14 published biweekly in such newspaper or newspapers as the
15 department may direct in the county where the principal office
16 of the corporation in the state is located and, in the
17 department's discretion, elsewhere for publication 3
18 consecutive months, the first to be published more than 90
19 days before the last day fixed in such notice for presenting
20 proof of claims. However, if the notice requires claims to be
21 presented within less than 4 months, the department shall
22 cause such notice to be published weekly in such newspaper or
23 newspapers as the department may direct for 3 consecutive
24 weeks, the first publication to be published more than 21 days
25 before the last day fixed in such notice for presenting
26 claims. Such notice shall specify that all persons having
27 claims for priority of payment shall make demand in writing
28 for priority in the proof of their claims. The department
29 shall have no power to accept any claim presented after the
30 date specified in such notice as the last date for presenting
31 claims.

1 663.177 Disposition of property held as bailee or
2 depository; opening of safe deposit boxes; disposal of
3 contents.--

4 (1) The department may, after it has taken possession
5 of the business and property of an international banking
6 corporation, send a written notice by registered mail to each
7 person claiming, or appearing upon the books of the
8 corporation, to be:

9 (a) The owner of any personal property in the custody
10 or possession of the corporation, as bailee or depository for
11 hire or otherwise, including the contents of any safe, vault,
12 or box opened after taking possession of such property for
13 nonpayment of any rent; or

14 (b) The lessee of any safe, vault, or box, to such
15 person's last address appearing on the books of the
16 international banking corporation or the last known address if
17 no address appears on such books, notifying such person to
18 remove all such property or the contents of any such safe,
19 vault, or box, within a period stated in such notice which
20 period shall be not less than 60 days after the date of such
21 notice. The contract of bailment or of deposit for hire, or
22 lease of safe, vault, or box, if any, between the person to
23 whom such notice is mailed and the corporation shall cease
24 upon the date for removal fixed in such notice. Such persons
25 shall have a claim against the corporation for the amount of
26 unearned rent or charges, if any, paid by such person from the
27 date fixed in such notice, if the property or contents is
28 removed on or before such date, or from the date of actual
29 removal, if the property or contents is removed after such
30 date.

31

1 (2) If such property or contents are not removed, and
2 all rent or storage and other charges accrued up to that time,
3 if any, are not paid, within the time fixed by such notice,
4 the department may cause such property to be inventoried, or
5 such safe, vault, or box, or any package, parcel, or
6 receptacle in the custody or possession of the corporation as
7 bailee or depositary for hire or otherwise, to be opened and
8 the contents, if any, to be removed and inventoried. Such
9 property or contents shall be sealed by a notary public in a
10 package distinctly marked by the department with the name of
11 the person in whose name such property or such safe, vault,
12 box, package, parcel, or receptacle is recorded upon the books
13 of the corporation and a copy of such inventory shall be
14 certified and attached to such package by such notary public.
15 The package shall be kept in a place that the department
16 determines at the expense and risk of the person in whose name
17 it is recorded until delivered to such person or until sold,
18 destroyed, or otherwise disposed of. Such package may, pending
19 final disposition of its contents, be opened by the department
20 for inspection or appraisal or to enable the department to
21 exercise any powers conferred or duties imposed by this part.
22 Whenever such package is opened, the department shall endorse
23 on the outside of the package the date of opening and
24 resealing and shall prepare an affidavit which shall be
25 attached to the package showing the reason for opening and the
26 articles, if any, removed from the package or placed or
27 replaced in the package.

28 (3) At any time prior to the sale, destruction, or
29 other disposition of the contents of the package, the person
30 in whose name the package is recorded may require the delivery
31 of the package upon the payment of all rental or storage

1 charges accrued, and all other charges or expenses paid or
2 incurred to the date of delivery with respect to such package
3 or contents of the package including the cost of inventorying
4 or of opening and inventorying, the fees of the notary public,
5 the cost of preparing and mailing the notice, and advertising,
6 if any.

7 (4) After the expiration of 1 year after the mailing
8 of the notice required in subsection (1), the department may
9 apply to a court of competent jurisdiction for an order
10 authorizing the department to sell, destroy, or otherwise
11 dispose of the contents of such package. Whenever, pursuant to
12 the provisions of this subsection, the department is given the
13 power to sell the contents of any package, such power to sell
14 shall be deemed a power to sell in satisfaction of a lien for
15 nonpayment of rental or storage charges accrued, and all other
16 charges and expenses paid or incurred to the date of sale with
17 respect to such package and the contents of the package,
18 including charges and expenses described in subsection (3).

19 (5) The provisions of this section do not affect or
20 preclude any other remedy, by action or otherwise, for the
21 enforcement of claims or rights of the department, or of an
22 international banking corporation of which the department is
23 in possession, against the person in whose name any property
24 or any safe, vault, box, package, parcel, or receptacle is
25 recorded, or affect or bar the right of the department or the
26 corporation to recover, before sale, any debt or claim due to
27 the department or the corporation, or, after sale, so much of
28 the debt or claim as is not paid by the proceeds of the sale.

29 663.178 Claims; valuation; priority; listing; filing;
30 objection; endorsement; adverse interest.--

31

1 (1) Proof of claim shall consist of a written
2 statement under oath signed by the claimant or his or her
3 attorney in fact and shall be in such form as the department
4 requires.

5 (2) The department shall not accept a claim based on
6 an agreement with an international banking corporation unless
7 the agreement is reflected on the accounts, books, or records
8 of the corporation or a creditor provides documentary evidence
9 of such agreement. The department may adopt any rules
10 determined necessary to implement this section.

11 (3) No claim or account of any secured claimant or
12 creditor shall be accepted at a sum greater than the
13 difference between the face value of the claim or account and
14 the value of the security itself as of the commencement of the
15 liquidation unless the claimant or creditor, prior to the
16 expiration of the time fixed by the department for the
17 presentation of claims, surrenders his or her security to the
18 department, in which event the claim or account may be
19 accepted in its full face amount.

20 (4) The department shall not determine priorities in
21 accepting or rejecting claims and the acceptance by the
22 department of a claim in which priority of payment is demanded
23 shall not entitle the claimant to priority. Accepted claims in
24 which priority of payment is demanded shall be presented to a
25 court of competent jurisdiction on notice to the claimant for
26 determination as to the priority of payment of such claims.
27 Except as otherwise provided in ss. 663.17-663.181, all claims
28 entitled to priority of payment shall be paid ratably and
29 proportionately.

30 (5) The department shall prepare in duplicate a
31 complete list of all claims presented, specifying the name of

1 the claimant, the nature of the claim, and the amount of such
2 claim. Such list shall also contain a statement of accounts
3 payable as shown by the books and records of the corporation
4 and as to which no claims have been presented, specifying the
5 name of each person to whom such account appears to be
6 payable, the nature of the debt, and the amount of such claim.
7 Within 60 days after the last date fixed in the notice to
8 creditors to present and make proof of claims, the department
9 shall file one copy of such list in one of its offices for
10 public inspection and shall file one copy with a court of
11 competent jurisdiction in the county in which the principal
12 office of the corporation is located.

13 (6) Within 40 days after the department has filed in
14 its office a copy of the list of claims required by subsection
15 (5), objections to any claim presented or to any account
16 appearing on such list may be made by any party interested by
17 filing such objections with the department, in writing, signed
18 by the objector, and verified. Unless the department rejects
19 any claim or accounts to which objections have been filed with
20 it, the department shall, within 60 days after the time to
21 file such objections has expired, apply to a court of
22 competent jurisdiction, upon notice to the objector, for an
23 order directing the department as to the disposition of such
24 claim or account. The court may then dispose of such
25 objections or may order a reference for that purpose.

26 (7) The department shall, not later than 60 days after
27 the time has expired to file objections to claims presented,
28 accept or reject, in whole or in part, every filed claim,
29 except claims as to which objections are still pending before
30 a court, and shall accept or reject, in whole or in part,
31 every account payable as shown by the books and records and as

1 to which no claim has been presented, except accounts as to
2 which objections are still pending before a court. Whenever
3 the department accepts a portion of a claim or account and
4 rejects the remainder, the portion accepted and the portion
5 rejected shall, for the purpose of this section, each be
6 deemed separate claims or accounts.

7 (8) Every claim or account payable accepted by the
8 department shall be endorsed as "accepted" and be filed so
9 endorsed. If the department is unable, from the books,
10 accounts, or records of an international banking corporation,
11 to determine the ownership of a claim or account payable or if
12 for any other reason the department doubts the validity of any
13 claim or account payable, the department shall reject such
14 claim or account payable and shall endorse the claim or
15 account payable as "rejected" and file it as so endorsed. The
16 department shall mail notice of such acceptance or rejection
17 within 14 calendar days after the department has accepted or
18 rejected all claims filed. If a proof of claim has been filed,
19 such notice need be mailed only to the address appearing on
20 such claim and, if no proof of claim has been filed, the
21 notice need be mailed only to the address appearing upon the
22 books of the corporation. If the department is unable from the
23 proof of claim or the books and records of the corporation to
24 identify a name or address, such notice of rejection need not
25 be given.

26 (9) Within 30 days after the department has accepted
27 or rejected all claims filed, and all accounts payable as
28 shown by the books and records as to which no claims have been
29 presented, the department shall make a list of all such claims
30 and accounts accepted or rejected by the department for public
31 inspection and file one copy of such list in an office of the

1 department and one copy with a court of competent jurisdiction
2 in the county in which the principal Florida office of such
3 corporation is located.

4 (10) When the department has accepted a filed claim
5 and has filed such claim, endorsed as "accepted," the
6 claimant, unless priority of payment has been demanded and
7 such claim is entitled by law to priority of payment, shall be
8 entitled to share ratably with other general creditors in the
9 distribution of the proceeds of the liquidation of the assets
10 of the international banking corporation; provided, any
11 accepted claim or claims for taxes owed to any taxing
12 authority shall be paid in full, to the extent that assets of
13 the corporation are available, prior to the payment of any
14 other accepted claim pursuant to this section. If the claimant
15 has demanded priority of payment, the receipt and acceptance
16 of ratable dividends shall be without prejudice to the right
17 of such priority of payment.

18 (11) Any person who fails to demand in writing
19 priority of payment as specified in the notice to file claims
20 shall be deemed to have waived and abandoned any right to such
21 priority of payment. Any person who fails to demand in writing
22 priority of payment as provided in this section is not
23 entitled to maintain any action or proceeding for any priority
24 of payment. In any action or proceeding for priority of
25 payment, the claimant shall allege and prove that the claim
26 upon which the action is instituted was filed and demand for
27 priority of payment was made in writing.

28 (12) Within 6 months after the date the department
29 files the list of claims and accounts payable which are
30 accepted or rejected by the department, a claimant whose claim
31 has been filed and has not been accepted by the department, or

1 any person whose account payable as shown by the books and
2 records as to which no claim has been presented, has not been
3 accepted by the department, may institute and maintain an
4 action against the international banking corporation. Such
5 action may be maintained only in a court of competent
6 jurisdiction in the county in which the principal Florida
7 office of such international banking corporation is located.

8 (13) A lien shall not attach to any property or assets
9 of an international banking corporation as a result of any
10 judicial process after the department has taken possession of
11 the assets of the corporation.

12 (14) No action shall be maintained against an
13 international banking corporation while the department is in
14 possession of the affairs and business of the corporation
15 unless brought within the period of limitation specified in s.
16 663.17. In any action instituted against such corporation
17 while the department is in possession of the corporation's
18 property and business, the plaintiff shall be required to
19 allege and prove that the claim upon which the action is
20 instituted was filed and that such claim has not been accepted
21 or, in the case of an action upon an account as to which no
22 claim has been presented, the plaintiff shall be required to
23 allege and prove that such account appeared upon the books and
24 records and that such account has not been accepted.

25 (15) Notice to the department of an adverse interest
26 in a claim or account payable accepted by the department to
27 the credit of any person shall not require the department to
28 recognize such adverse claimant unless the adverse claimant
29 also:

30 (a) Procures a restraining order, injunction, or other
31 appropriate process against the department from a court of

1 competent jurisdiction in a cause instituted by the department
2 in which the person to whose credit such claim or account
3 payable was accepted or his or her executor or administrator
4 is made a party and served with summons; or

5 (b) Executes to the department, in a form and with
6 sureties acceptable to the department, a bond indemnifying the
7 department from any and all liability, loss, damage, cost, and
8 expenses for and on account of the payment of dividends.

9 (16) In any action or proceeding against the
10 department to recover dividends accepted, if there is any
11 person who is not a party to the action who makes such a
12 claim, the court in which the action or proceeding is pending
13 may, on the motion of the department, make an order amending
14 the proceedings making such person a party to such action or
15 proceeding and the court shall thereafter proceed to determine
16 the rights and interests of the parties to such funds. The
17 remedy provided in this section is in addition to and not
18 exclusive of that provided in any other interpleader.

19 663.18 Fees.--The department is not required to pay
20 any fee to any clerk, sheriff, register, or other public
21 officer for entering, filing, docketing, registering,
22 recording, executing, or issuing a copy, transcript, extract,
23 or certificate of, or authenticating or exemplifying, any
24 paper, record, or instrument pertaining to the exercise by the
25 department of any powers conferred or duties imposed upon the
26 department by the provisions of this part, whether or not such
27 paper, record, or instrument is executed by the department and
28 whether or not it is connected with an action. The term
29 "action" is construed as including a special proceeding in any
30 action.

31

1 663.181 Manner and time within which taking possession
2 may be tested.--At any time within 10 days after the
3 department has taken possession of the property and business
4 of an international banking corporation, such corporation may
5 apply to a court of competent jurisdiction in the county in
6 which its principal office is located in this state for an
7 order requiring the department to show cause why the
8 department should not be enjoined from continuing such
9 possession. The court may, upon good cause shown, direct the
10 department to refrain from such proceedings and to surrender
11 such possession.

12 Section 5. Subsection (2) of section 663.02, Florida
13 Statutes, is hereby repealed.

14 Section 6. This act shall take effect October 1, 1997.

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