

20161106er

1
2 An act relating to international trust entities;
3 amending s. 663.01, F.S.; defining the term
4 "international trust entity"; creating s. 663.041,
5 F.S.; providing for a moratorium for a specified
6 timeframe on enforcement by the Office of Financial
7 Regulation of certain licensure requirements for
8 certain organizations and entities providing services
9 to international trust companies; providing conditions
10 to apply the moratorium to specified persons of the
11 organization or entity; providing for construction;
12 specifying requirements for a letter to the office to
13 request qualification as a party to the moratorium;
14 requiring the office to confirm specified findings
15 when processing a request; specifying circumstances
16 for establishing adequate supervision; providing
17 procedures and timeframes for the office's processing
18 of requests and the office's requests for additional
19 information; providing timeframes for the office to
20 confirm with the organization or entity whether it has
21 been confirmed as a party to the moratorium; requiring
22 the office to issue a notice of denial if it
23 determines that an organization or entity is not a
24 party to the moratorium; providing that a denied
25 organization or entity may request a certain hearing
26 to contest the denial; providing for construction if
27 certain timeframes are not met; authorizing the office
28 to conduct an onsite visitation of an organization or
29 entity for a specified purpose until a specified time;

20161106er

30 requiring the office to issue an immediate final order
31 disqualifying an organization or entity if it finds
32 that such organization or entity made a material false
33 statement in its request; providing for construction;
34 providing for future repeal; providing an effective
35 date.

36
37 Be It Enacted by the Legislature of the State of Florida:

38
39 Section 1. Present subsections (10) and (11) of section
40 663.01, Florida Statutes, are renumbered as subsections (11) and
41 (12), respectively, and a new subsection (10) is added to that
42 section, to read:

43 663.01 Definitions.—As used in this part, the term:

44 (10) "International trust entity" means an international
45 trust company, an international business, an international
46 business organization, or an affiliated or subsidiary entity
47 that is licensed, chartered, or similarly permitted to conduct
48 trust business in a foreign country or countries under the laws
49 of which it is organized and supervised.

50 Section 2. Section 663.041, Florida Statutes, is created to
51 read:

52 663.041 Moratorium on the office's enforcement of licensing
53 requirements for an international trust entity or related
54 entities.—

55 (1) Until June 30, 2017, the office shall delay the
56 enforcement of the requirement under s. 663.04(4) relating to
57 licensure of an organization or entity in this state providing
58 services to an international trust entity that engages in the

20161106er

59 activities described in s. 663.0625. This delay applies to any
60 person who manages or controls or is employed by such
61 organization or entity that:

62 (a) Has been organized to conduct business in this state
63 before October 1, 2013;

64 (b) Has not been fined or sanctioned as a result of any
65 complaint to the office or to any other state or federal
66 regulatory agency;

67 (c) Has not been convicted of a felony or ordered to pay a
68 fine or penalty in any proceeding initiated by any federal,
69 state, foreign, or local law enforcement agency or international
70 agency within the 10 years before the effective date of this
71 section;

72 (d) Has not had any of its directors, executive officers,
73 principal shareholders, managers, or employees arrested for,
74 charged with, convicted of, or plead guilty or nolo contendere
75 to, regardless of adjudication, any offense that is punishable
76 by imprisonment for 1 year or more, or to any offense that
77 involves money laundering, currency transaction reporting, tax
78 evasion, facilitating or furthering terrorism, fraud, or that is
79 otherwise related to the operation of a financial institution,
80 within the 10 years before the effective date of this section;

81 (e) Does not provide services for any international trust
82 entity that is in bankruptcy, conservatorship, receivership,
83 liquidation, or a similar status under the laws of any country;

84 (f) Does not provide banking services or promote or sell
85 investments or accept custody of assets;

86 (g) Does not act as a fiduciary, which includes, but is not
87 limited to, accepting the fiduciary appointment, executing the

20161106er

88 fiduciary documents that create the fiduciary relationship, or
89 making discretionary decisions regarding the investment or
90 distribution of fiduciary accounts; and

91 (h) Conducts those activities permissible for an
92 international trust company representative office as described
93 in s. 663.0625.

94 (2) This moratorium does not prevent the office from
95 otherwise enforcing the financial institutions codes.

96 (3) An organization or entity that requests to qualify for
97 this moratorium shall notify the office in writing by letter on
98 official letterhead via United States Postal Service or
99 commercial mail delivery service by July 1, 2016, and shall
100 provide the following:

101 (a) Written proof that it has been organized to do business
102 in this state before October 1, 2013;

103 (b) The name or names under which it conducts business in
104 this state;

105 (c) The addresses of its locations from which it conducts
106 business;

107 (d) A detailed list and description of the activities being
108 conducted at the locations from which it conducts business. The
109 detailed description must include the types of consumers that
110 utilize those activities and an explanation of how those
111 activities serve the business purpose of an international trust
112 entity.

113 (e) As to each international trust entity the organization
114 or entity provides services for in this state, the following:

115 1. The name of the international trust entity;

116 2. A list of the current officers and directors of the

20161106er

117 international trust entity;

118 3. The country or countries where the international trust
119 entity is organized;

120 4. The supervisory or regulatory authority, or equivalent
121 or other similarly sanctioned body, organization, governmental
122 entity, or recognized authority that has licensing, chartering,
123 oversight, or similar responsibilities over the international
124 trust entity;

125 5. Proof that the international trust entity has been
126 authorized by a charter, license, or similar authorization by
127 operation of law in its home country jurisdiction to engage in
128 trust business;

129 6. Proof that the international trust entity lawfully
130 exists and is in good standing under the laws of the
131 jurisdiction where it is chartered, licensed, organized, or
132 lawfully existing. The organization or entity shall submit a
133 certificate of good standing or equivalent document issued by
134 the supervisory or regulatory authority, or equivalent or other
135 similarly sanctioned body, organization, governmental entity, or
136 recognized authority that has similar responsibilities, of the
137 country where the international trust entity is licensed,
138 chartered, or has similar authorization by operation of law and
139 is duly organized and lawfully exists;

140 7. A statement that the international trust entity is not
141 in bankruptcy, conservatorship, receivership, liquidation, or in
142 a similar status under the laws of any country; and

143 8. Proof that the international trust entity is not
144 operating under the direct control of the government,
145 regulatory, or supervisory authority of the jurisdiction of its

20161106er

146 incorporation, through government intervention or any other
147 extraordinary actions, and confirmation that it has not been in
148 such a status or under such control at any time within the 7
149 years before the date of notification to the office.

150 (f) A declaration under penalty of perjury signed by an
151 executive officer or managing member of the organization or
152 entity, declaring that the information provided to the office is
153 true and correct to the best of his or her knowledge.

154 (4) In processing the request to qualify for the
155 moratorium, the office shall confirm the following:

156 (a) That the international trust entity is adequately
157 supervised by the appropriate regulatory authority, or
158 equivalent or other similarly sanctioned body, organization,
159 governmental entity, or recognized authority that has similar
160 responsibilities in the foreign country where it is organized,
161 chartered, or licensed, or has similar authorization by
162 operation of law; and

163 (b) That the jurisdiction of the international trust entity
164 or its offices, subsidiaries, or any affiliates that are
165 directly involved in or facilitate the financial services
166 functions, banking, or fiduciary activities of the international
167 trust entity, is not listed on the Financial Action Task Force
168 Public Statement or on its list of jurisdictions with
169 deficiencies in anti-money laundering or counterterrorism.

170 (5) For purposes of establishing adequate supervision under
171 paragraph (4) (a):

172 (a) An international trust entity with foreign
173 establishments is considered adequately supervised if it is
174 subject to consolidated supervision. As used in this paragraph,

20161106er

175 "consolidated supervision" means supervision that enables the
176 appropriate regulatory authority, or equivalent or other
177 similarly sanctioned body, organization, governmental entity, or
178 recognized authority that has similar responsibilities of the
179 home country (home country supervisor) to evaluate:

180 1. The safety and soundness of the international trust
181 entity's operations located within the home country supervisor's
182 primary jurisdiction; and

183 2. The safety and soundness of the operations performed by
184 the international trust entity's offices, subsidiaries, or any
185 affiliates that are directly involved in or facilitate the
186 financial services functions, banking, or fiduciary activities
187 of the international trust entity, wherever located.

188 (b) An international trust entity with no foreign
189 establishments is considered adequately supervised if the home
190 country supervisor can evaluate the safety and soundness of the
191 international trust entity's operations through its offices or
192 subsidiaries located in the home country. For purposes of this
193 paragraph, the home country supervisor is deemed to be able to
194 evaluate the safety and soundness of the international trust
195 entity if the home country supervisor has the authority to
196 collect and maintain information on the following regulatory
197 components:

198 1. The technical competence and administrative ability of
199 the management of the international trust entity;

200 2. The adequacy of the operational, accounting, and
201 internal control systems of the international trust entity,
202 particularly the international trust entity's ability to monitor
203 and supervise the activities of its offices or subsidiaries

20161106er

204 wherever located;

205 3. The adequacy of asset management and asset
206 administration policies and procedures;

207 4. The capital adequacy of the international trust entity,
208 its offices or subsidiaries as specified by any capital adequacy
209 guidelines in the home country;

210 5. The earnings of the international trust entity; and

211 6. The external and internal auditors' reports as well as
212 any management comment letters or any documented corrective
213 action by management.

214 (c) As used in paragraphs (4) (a), (5) (a), and (5) (b),
215 adequate supervision does not require supervision of companies
216 that control the international trust entity or supervision of
217 companies under common control with the international trust
218 entity but that are not in the international trust entity's
219 chain of control. However, in cases where a holding company is
220 the only controlling element in a trust business group, holding
221 company supervision by a home country supervisor shall be
222 required when it is needed to ensure consolidated supervision of
223 all trust business entities in the group.

224 (d) If a holding company is not supervised, adequate
225 supervision is deemed to exist if the home country supervisor
226 regulates transactions between the international trust entity
227 and controlling persons or entities under common control.

228 (e) An international trust entity and its offices or
229 subsidiaries is deemed to be adequately supervised if it is
230 subject to comprehensive supervision. For purposes of this
231 paragraph, comprehensive supervision:

232 1. Means supervision that ensures that the supervisory

20161106er

233 processes and procedures are designed to inform the home country
234 supervisor about the international trust entity's financial
235 condition, including capital position; asset management and
236 asset administration; internal controls and audit; compliance
237 with existing laws and regulations; and capability of
238 management.

239 2. Does not require the home country supervisor to conduct
240 onsite examinations of the international trust entity or its
241 offices or subsidiaries. However, at a minimum, it requires that
242 the home country supervisor:

243 a. Is able to determine that the international trust entity
244 and its offices and subsidiaries have adequate procedures for
245 monitoring and controlling its domestic and foreign operations;

246 b. Is authorized to obtain information, by examination,
247 audits or by other means, on the domestic and foreign operations
248 of the international trust entity, including its offices and
249 subsidiaries, and the authority to demand financial reports
250 which permit analysis of the consolidated condition of the
251 international trust entity;

252 c. Is able to obtain information on the dealings and
253 relationships between the international trust entity and its
254 offices and subsidiaries, wherever located; and

255 d. Is authorized by the home country's laws to ensure the
256 safety and soundness of the international trust entity and its
257 offices and subsidiaries.

258 3. Includes the ability and willingness of the home country
259 supervisor to provide the office early notice of any weaknesses
260 being experienced by the international trust entities, including
261 its offices or subsidiaries wherever located.

20161106er

262 4. Includes the ability of the home country supervisor to
263 provide the office assurance of cooperation by both the
264 international trust entity and the home country supervisor.

265 (6) The office shall process requests made for inclusion
266 under the moratorium as follows:

267 (a) Upon receipt of any request, the office shall review
268 the information contained therein, and request any additional
269 information to complete the request to qualify for the
270 moratorium within 30 days after receipt. The organization or
271 entity shall provide the requested additional information within
272 45 days after the receipt of the notice from the office. If the
273 office does not make such request within 30 days after receipt,
274 the request to qualify for the moratorium is deemed complete as
275 of the date it was received.

276 (b) Within 20 days after receipt of any additional
277 information requested, the office shall deem the request to
278 qualify for the moratorium complete or provide notification to
279 the organization or entity that the information provided does
280 not satisfy the office's request or requests.

281 (c) Within 90 days after receipt of a completed request to
282 qualify for the moratorium, the office shall confirm with the
283 organization or entity that they are or are not a party to the
284 moratorium.

285 1. If the office determines that an organization or entity
286 is not a party to the moratorium, the office shall issue a
287 notice of denial informing the organization or entity of its
288 determination. An organization or entity receiving a notice of
289 denial may request a hearing under chapter 120 to contest the
290 denial.

20161106er

291 2. If the office fails to notify the organization or entity
292 within such time whether or not the organization or entity is a
293 party to the moratorium, then the organization or entity is
294 considered a party to the moratorium by operation of law.

295 (d) During the period of the moratorium, the office may
296 conduct an onsite visitation of an organization or entity to
297 confirm information provided to the office in deeming the
298 organization or entity qualified for the moratorium. If the
299 office finds that the organization or entity made a material
300 false statement in its request to qualify for the moratorium,
301 the office shall issue an immediate final order suspending the
302 organization's or entity's qualification and disqualifying the
303 organization or entity from participating in the moratorium. A
304 material false statement made in the request to qualify for the
305 moratorium constitutes an immediate and serious danger to the
306 public health, safety, and welfare.

307 Section 3. Section 663.041, Florida Statutes, and the
308 amendments to section 663.01, Florida Statutes, made by this
309 act, are repealed on July 1, 2017.

310 Section 4. This act shall take effect upon becoming a law.