

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u> </u>	(Y/N)
ADOPTED AS AMENDED	<u> </u>	(Y/N)
ADOPTED W/O OBJECTION	<u> </u>	(Y/N)
FAILED TO ADOPT	<u> </u>	(Y/N)
WITHDRAWN	<u> </u>	(Y/N)
OTHER	<u> </u>	

1 Committee/Subcommittee hearing bill: Regulatory Affairs
 2 Committee

3 Representative Moraitis offered the following:

4
 5 **Amendment 1 (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Present subsections (10) and (11) of section
 8 663.01, Florida Statutes, are renumbered as subsections (11) and
 9 (12) respectively, and a new subsection (10) is added to that
 10 section, to read:

11 663.01 Definitions.-As used in this part, the term:

12 (10) "International trust entity" means an international
 13 trust company, an international business, an international
 14 business organization, or an affiliated or subsidiary entity
 15 that is licensed, chartered, or similarly permitted to conduct
 16 trust business in a foreign country or countries under the laws
 17 of which it is organized and supervised.

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18 Section 2. Section 663.041, Florida Statutes, is created to
19 read:

20 663.041 Moratorium on the office's enforcement of licensing
21 requirements for an international trust entity or related
22 entities.-

23 (1) Until June 30, 2017, the office shall delay the
24 enforcement of the requirement under s. 663.04(4) relating to
25 the licensure of an organization or entity in this state
26 providing services to an international trust entity that engages
27 in the activities described in s. 663.0625. This delay applies
28 to any person who manages or controls or is employed by such
29 organization or entity that:

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

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

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

40 (d) Has not had any of its directors, executive officers,
41 principal shareholders, managers, or employees arrested for,
42 charged with, convicted of, or plead guilty or nolo contendere
43 to, regardless of adjudication, any offense that is punishable

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44 by imprisonment for 1 year or more, or to any offense that
45 involves money laundering, currency transaction reporting, tax
46 evasion, facilitating or furthering terrorism, fraud, or that is
47 otherwise related to the operation of a financial institution,
48 within the 10 years before the effective date of this section;

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

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

54 (g) Does not act as a fiduciary, which includes, but is not
55 limited to, accepting the fiduciary appointment, executing the
56 fiduciary documents that create the fiduciary relationship, or
57 making discretionary decisions regarding the investment or
58 distribution of fiduciary accounts; and

59 (h) Conducts those activities permissible for an
60 international trust company representative office as described
61 in s. 663.0625.

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

64 (3) An organization or entity that requests to qualify for
65 this moratorium shall notify the office in writing by letter on
66 official letterhead via United States Postal service or
67 commercial mail delivery service by July 1, 2016, and shall
68 provide the following:

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

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

73 (c) The addresses of its locations from which it conducts
74 business;

75 (d) A detailed list and description of the activities being
76 conducted at the locations from which it conducts business. The
77 detailed description must include the types of consumers that
78 utilize those activities and an explanation of how those
79 activities serve the business purpose of an international trust
80 entity.

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

83 1. The name of the international trust entity;

84 2. A list of the current officers and directors of the
85 international trust entity;

86 3. The country or countries where the international trust
87 entity is organized;

88 4. The supervisory or regulatory authority, or equivalent
89 or other similarly sanctioned body, organization, governmental
90 entity, or recognized authority that has licensing, chartering,
91 oversight, or similar responsibilities over the international
92 trust entity;

93 5. Proof that the international trust entity has been
94 authorized by a charter, license, or similar authorization by

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95 operation of law in its home country jurisdiction to engage in
96 trust business;

97 6. Proof that the international trust entity lawfully
98 exists and is in good standing under the laws of the
99 jurisdiction where it is chartered, licensed, organized, or
100 lawfully existing. The organization or entity shall submit a
101 certificate of good standing or equivalent document issued by
102 the supervisory or regulatory authority, or equivalent or other
103 similarly sanctioned body, organization, governmental entity, or
104 recognized authority that has similar responsibilities, of the
105 country where the international trust entity is licensed,
106 chartered, or has similar authorization by operation of law and
107 is duly organized and lawfully exists;

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

111 8. Proof that the international trust entity is not
112 operating under the direct control of the government,
113 regulatory, or supervisory authority of the jurisdiction of its
114 incorporation, through government intervention or any other
115 extraordinary actions, and confirmation that it has not been in
116 such a status or under such control at any time within the 7
117 years before the date of notification to the office.

118 (f) A declaration under penalty of perjury signed by an
119 executive officer or managing member of the organization or

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120 entity, declaring that the information provided to the office is
121 true and correct to the best of his or her knowledge.

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

124 (a) That the international trust entity is adequately
125 supervised by the appropriate regulatory authority, or
126 equivalent or other similarly sanctioned body, organization,
127 governmental entity, or recognized authority that has similar
128 responsibilities in the foreign country where it is organized,
129 chartered, or licensed, or has similar authorization by
130 operation of law; and

131 (b) That the jurisdiction of the international trust entity
132 or its offices, subsidiaries, or any affiliates that are
133 directly involved in or facilitate the financial services
134 functions, banking, or fiduciary activities of the international
135 trust entity, is not listed on the Financial Action Task Force
136 Public Statement or on its list of jurisdictions with
137 deficiencies in anti-money laundering or counterterrorism.

138 (5) For purposes of establishing adequate supervision under
139 paragraph (4) (a):

140 (a) An international trust entity with foreign
141 establishments is considered adequately supervised if it is
142 subject to consolidated supervision. As used in this paragraph,
143 "consolidated supervision" means supervision that enables the
144 appropriate regulatory authority, or equivalent or other
145 similarly sanctioned body, organization, governmental entity, or

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146 recognized authority that has similar responsibilities of the
147 home country supervisor to evaluate:

148 1. The safety and soundness of the international trust
149 entity's operations located within the home country supervisor's
150 primary jurisdiction; and

151 2. The safety and soundness of the operations performed by
152 the international trust entity's offices, subsidiaries, or any
153 affiliates that are directly involved in or facilitate the
154 financial services functions, banking, or fiduciary activities
155 of the international trust entity, wherever located.

156 (b) An international trust entity with no foreign
157 establishments is considered adequately supervised if the home
158 country supervisor can evaluate the safety and soundness of the
159 international trust entity's operations through its offices or
160 subsidiaries located in the home country. For purposes of this
161 paragraph, the home country supervisor is deemed to be able to
162 evaluate the safety and soundness of the international trust
163 entity of the home country supervisor if the home country
164 supervisor has the authority to collect and maintain information
165 on the following regulatory components:

166 1. The technical competence and administrative ability of
167 the management of the international trust entity;

168 2. The adequacy of the operational, accounting, and
169 internal control systems of the international trust entity,
170 particularly the international trust entity's ability to monitor

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171 and supervise the activities of its offices or subsidiaries
172 wherever located;

173 3. The adequacy of asset management and asset
174 administration policies and procedures;

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

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

179 6. The external and internal auditors' reports as well as
180 any management comment letters or any documented corrective
181 action by management.

182 (c) As used in paragraphs (4) (a), (5) (a), and (5) (b),
183 adequate supervision does not require supervision of companies
184 that control the international trust entity or supervision of
185 companies under common control with the international trust
186 entity but that are not in the international trust entity's
187 chain of control. However, in cases where a holding company is
188 the only controlling element in a trust business group, holding
189 company supervision by a home country supervisor shall be
190 required when it is needed to ensure consolidated supervision of
191 all trust business entities in the group.

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

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196 (e) An international trust entity and its offices or
197 subsidiaries is deemed to be adequately supervised if it is
198 subject to comprehensive supervision. For purposes of this
199 paragraph, comprehensive supervision:

200 1. Means supervision that ensures that the supervisory
201 processes and procedures are designed to inform the home country
202 supervisor about the international trust entity's financial
203 condition, including capital position; asset management and
204 asset administration; internal controls and audit; compliance
205 with existing laws and regulations; and capability of
206 management.

207 2. Does not require the home country supervisor to conduct
208 onsite examinations of the international trust entity or its
209 offices or subsidiaries. However, at a minimum, it requires that
210 the home country supervisor:

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

214 b. Is authorized to obtain information, by examination,
215 audits or by any other means, on the domestic and foreign
216 operations of the international trust entity, including its
217 offices and subsidiaries, and the authority to demand financial
218 reports which permit analysis of the consolidated condition of
219 the international trust entity;

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220 c. Is able to obtain information on the dealings and
221 relationships between the international trust entity and its
222 offices and subsidiaries, wherever located; and

223 d. Is authorized by the home country's laws to ensure the
224 safety and soundness of the international trust entity and its
225 offices and subsidiaries.

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

230 4. Includes the ability of the home country supervisor to
231 provide the office assurance of cooperation by both the
232 international trust entity and the home country supervisor.

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

235 (a) Upon receipt of any request, the office shall review
236 the information contained therein, and request any additional
237 information to complete the request to qualify for the
238 moratorium within 30 days after receipt. The organization or
239 entity shall provide the requested additional information within
240 45 days after the receipt of the notice from the office. If the
241 office does not make such request within 30 days after receipt,
242 the request to qualify for the moratorium is deemed complete as
243 of the date it was received.

244 (b) Within 20 days after receipt of any additional
245 information requested, the office shall deem the request to

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246 qualify for the moratorium complete or provide notification to
247 the organization or entity that the information provided does
248 not satisfy the office's request or requests.

249 (c) Within 90 days after receipt of a completed request to
250 qualify for the moratorium, the office shall confirm with the
251 organization or entity that they are or are not a party to the
252 moratorium.

253 1. If the office determines that an organization or entity
254 is not a party to the moratorium, the office shall issue a
255 notice of denial informing the organization or entity of its
256 determination. An organization or entity receiving a notice of
257 denial may request a hearing under chapter 120 to contest the
258 denial.

259 2. If the office fails to notify the organization or entity
260 within such time whether or not the organization or entity is a
261 party to the moratorium, then the organization or entity is
262 considered a party to the moratorium by operation of law.

263 (d) During the period of the moratorium, the office may
264 conduct an onsite visitation of an organization or entity to
265 confirm information provided to the office in deeming the
266 organization or entity qualified for the moratorium. If the
267 office finds that the organization or entity made a material
268 false statement in its request to qualify for the moratorium,
269 the office shall issue an immediate final order suspending the
270 organization's or entity's qualification and disqualifying the
271 organization or entity from participating in the moratorium. A

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272 material false statement made in the request to qualify for the
273 moratorium constitutes an immediate and serious danger to the
274 public health, safety, and welfare.

275 Section 3. Section 663.041, Florida Statutes, and the
276 amendments to section 663.01, Florida Statutes, made by this
277 act, are repealed on July 1, 2017.

278 Section 4. This act shall take effect upon becoming a law.
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282 **T I T L E A M E N D M E N T**

283 Remove everything before the enacting clause and insert:

284 A bill to be entitled

285 An act relating to international trust entities; amending s.
286 663.01, F.S.; defining the term "international trust entity";
287 creating s. 663.041, F.S.; providing for a moratorium for a
288 specified timeframe on enforcement by the Office of Financial
289 Regulation of certain licensure requirements for certain
290 organizations and entities providing services to international
291 trust companies; providing conditions to apply the moratorium to
292 specified persons of the organization or entity; providing for
293 construction; specifying requirements for a letter to the office
294 to request qualification as a party to the moratorium; requiring
295 the office to confirm specified findings when processing a
296 request; specifying circumstances for establishing adequate
297 supervision; providing procedures and timeframes for the

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298 office's processing of requests and the office's requests for
299 additional information; providing timeframes for the office to
300 confirm with the organization or entity whether it has been
301 confirmed as a party to the moratorium; requiring the office to
302 issue a notice of denial if it determines that an organization
303 or entity is not a party to the moratorium; providing that a
304 denied organization or entity may request a certain hearing to
305 contest the denial; providing for construction if certain
306 timeframes are not met; authorizing the office to conduct an
307 onsite visitation of an organization or entity for a specified
308 purpose until a specified time; requiring the office to issue an
309 immediate final order disqualifying an organization or entity if
310 it finds that such organization or entity made a material false
311 statement in its request; providing for construction; providing
312 for future repeal; providing an effective date.

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