

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Banking and Insurance

BILL: SB 1078

INTRODUCER: Senator Garcia

SUBJECT: International Financial Institutions

DATE: March 24, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Knudson	Knudson	BI	Pre-meeting
2.			AP	
3.			RC	

I. Summary:

SB 1078 creates a regulatory framework for limited service affiliates (LSAs). The LSAs are marketing and liaison offices that engage in activities for the benefit of an international trust entity. This will allow multiple types of foreign entities licensed to conduct trust business in a foreign country to open LSAs, some of which may choose to conduct marketing operations through an LSA rather than an ITCRO.

In 2016, the Legislature imposed a moratorium on the OFR's enforcement with respect to the licensure of an entity in Florida providing services to an international trust entity (ITE) that engages in international trust company representative office (ITCRO) activities described in s. 663.0625, F.S., if it meets certain conditions. The moratorium expires June 30, 2017, and applies to the ITE, which is the offshore entity and the Florida entity that is providing marketing and customer assistance on behalf of the ITE. An "international trust entity," is any international trust company, international business, international business organization, or affiliated or subsidiary entities that are licensed, chartered, or similarly permitted to conduct trust business in a foreign country or countries under the laws of which it is organized and supervised.

The bill revises the regulatory framework of international trust entities under the Office of Financial Regulation. The bill classifies "international trust entities" (ITE) and "limited service affiliates" as financial institutions, subjecting them to the regulatory jurisdiction of the Office of Financial Regulation (OFR) under ch. 655, F.S. The bill eliminates the classification of "foreign trust companies" as "international banking corporations" thus no longer subjecting foreign trust companies to regulation as international banking corporations by the OFR under part I of ch. 663, F.S. Trusts, as non-depository entities, do not require the same oversight as banks.

II. Present Situation:

Regulation of the International Financial Services Market

Miami, the gateway to Latin America, is home to the second-largest banking and finance hub in the United States.¹ Estate, tax, and asset protection planning are important components of the region's financial sector, attracting international financial institutions from Europe, Latin America, and Canada serving individual, family, and business customers.

The Office of Financial Regulation (OFR) regulates state-chartered depository and non-depository financial institutions and financial service companies. One of the OFR's primary goals is to protect consumers while preserving the integrity of Florida's markets and financial service industries. To achieve this goal, Florida law provides the OFR with regulatory authority over entities regulated under the Financial Institutions Codes (codes).²

International Banking Corporations

The OFR licenses and regulates international banking corporations³ that transact business in Florida.⁴ International banking entities enable depository institutions in the United States to offer deposit and loan services to foreign residents and institutions, and are subject to the jurisdiction of the Board of Governors of the Federal Reserve. The OFR does not regulate institutions chartered and regulated by foreign jurisdictions, except to the extent that those foreign institutions seek to engage in the banking or trust business in Florida. If foreign institutions do so, they must obtain a Florida charter and comply with the provisions of ch. 663, F.S., and the applicable codes.

An international banking corporation may operate through a variety of business models, all of which are subject to licensure by the OFR.⁵ These models include international bank agencies, international representative offices, international trust company representative offices (ITCRO), international administrative offices, and international branches. The definition of "financial institution"⁶ includes an international banking corporation and all of these entities. As of February 2017, there were no ITCROs licensed with the OFR; however, two international administrative offices, nine international bank agencies, six international representative offices, and six international bank branches were licensed with the OFR.⁷ In addition, the OFR qualified

¹ See http://bus.miami.edu/magazine/fall2014/features/miami_the_global_hub.html (Fall 2014) (last viewed Mar. 24, 2017).

² Financial Institutions Codes include chs. 655, F.S., relating to financial institutions generally, 657, F.S., relating to banks and trust companies, 660 relating to trust business, 662 family trust companies, 663 relating to international banking, 665, F.S., relating to associations, and 657, F.S., relating to savings banks.

³ An international banking corporation, such as a foreign commercial bank, foreign merchant bank, or other foreign institution that engages in banking activities used in connection with the business of banking in the country where such foreign institution is organized or operating. The term also includes foreign trust companies, or any similar business entities, including, but not limited to, foreign banks with fiduciary powers, that conduct trust business as defined in the codes. See s. 663.01(6), F.S.

⁴ Sections 663.04 and 663.05, F.S.

⁵ Section 663.06(1), F.S.

⁶ Section 655.005(i), F.S.

⁷ Office of Financial Regulation, *Financial Institution Search*, at <https://real.flofr.com/ConsumerServices/FinancialInstitutions/InstSrch.aspx> (last visited Mar. 24, 2017).

six entities for the moratorium on the OFR's enforcement of licensing requirements for an international trust entity or related parties pursuant to s. 663.0441, F.S.⁸

If an international banking corporation (IBC) wants to operate an office in Florida, which includes an ITCRO, the IBC is required to meet minimum licensure requirements, and is subject to the examination and enforcement authority of the OFR. The OFR may not issue a license to an international banking corporation unless it:

- Holds an unrestricted license to conduct trust business in the foreign country under the law of which it is organized and chartered;
- Has been authorized by the foreign country's trust business regulatory authority to establish the proposed international trust representative office;
- Is adequately supervised by the central bank or trust regulatory agency in the foreign country in which it is organized and chartered;⁹
- Meets all requirements under the Financial Institutions Codes for the operation of a trust company or trust department as if it was a state-chartered trust company or bank authorized to exercise fiduciary powers; and
- Meets a minimum capital requirement of \$20 million.

Section 663.02, F.S., subjects international banking corporations with offices in Florida to the provisions of ch. 655, F.S., as though such corporations are state banks or trust companies.¹⁰ Further, s. 663.02, F.S., provides that neither an international bank agency nor an international branch shall have any greater right under, or by virtue of s. 663.02, F.S., than is granted to banks organized under the laws of this state.

International Bank Agencies and International Branches. International bank agencies and international branches are permitted to conduct activities similar to those of a state-chartered financial institution. These activities include making and servicing loans, acting as a custodian, furnishing investment advice, conducting foreign exchange activities and trading in securities and commercial paper.¹¹ An international branch has the same rights and privileges as a federally licensed international branch.¹²

⁸ The following entities qualified for the moratorium: JTC Miami Corporation, Citco Corporate Services, Inc., Amicorp Services Ltd., Corpag Services USA, Inc., Integritas Inc., and Cisa Latam LLC. Email correspondence from the Office of Financial Regulation (Feb. 27, 2017) (on file with Senate Committee on Banking and Insurance).

⁹ Section 663.05(8), F.S., requires the OFR to establish general principles to evaluate the adequacy of supervision of an international banking corporation's foreign establishments, and must address at a minimum, the capital adequacy, asset quality, management, earnings, liquidity, internal controls, audits, and foreign exchange operations and positions of the international banking corporation. See Rule 69U-140.003, F.A.C., *Principles of Adequate Supervision of an International Banking Corporation's Foreign Establishment*.

¹⁰ Section 663.02, F.S., provides that it is the intent of the Legislature that the following provisions apply to such entities: s. 655.031, F.S., relating to administrative enforcement guidelines; s. 655.032, F.S., relating to investigations, subpoenas, hearings, and witnesses; s. 655.0321, F.S., relating to hearings, proceedings, related documents, and restricted access; s. 655.033, F.S., relating to cease and desist orders; s. 655.037, F.S., relating to removal by the office of an officer, director, committee member, employee, or other person; s. 655.041, F.S., relating to administrative fines and enforcement; and s. 655.50, F.S., relating to the control of money laundering and terrorist financing; and any law for which the penalty is increased under s. 775.31, F.S., for facilitating or furthering terrorism.

¹¹ Section 663.061, F.S.

¹² Section 663.064, F.S.

International Representative Offices and International Administrative Offices. International representative offices and international administrative offices perform activities that are more limited, such as soliciting business for the IBC, providing information to customers concerning their accounts, receiving applications for services, transmitting documents for customers, and arranging for customers to transact business on their accounts.¹³ In addition to the powers delineated above, an administrative office may administer personnel and operations, engage in data processing and recordkeeping, and negotiate, approve, or service loans or extensions of credit and investments.¹⁴

International Trust Company Representative Offices. An ITCRO is an office of an international banking corporation or trust company organized and licensed under the laws of a foreign country, which is established or maintained in Florida for engaging in the nonfiduciary activities described in s. 663.0625, F.S.¹⁵ An ITCRO may also include any affiliate, subsidiary, or other person that engages in such activities on behalf of such international banking corporation or trust company from an office located in Florida.¹⁶ An ITCRO is not a bank and may not accept deposits or make loans. The activities of a licensed ITCRO are limited to engaging in the following non-fiduciary activities that are ancillary to the trust business of the international banking corporation, such as:

- Advertising, marketing, and soliciting for fiduciary business on behalf of an international banking corporation or trust company;
- Contacting existing or potential customers and answering questions and providing information about matters related to customer accounts;
- Serving as a liaison in Florida between the international banking corporation or trust company and its existing or potential customers; and
- Such other activities as may be approved by the OFR or rules of the Financial Services Commission (commission).¹⁷

In 2016, the Legislature imposed a moratorium on the OFR's enforcement with respect to the licensure of an entity in Florida providing services to an international trust entity (ITE) that engages in ITCRO activities described in s. 663.0625, F.S., if it meets certain conditions. The moratorium expires June 30, 2017, and applies to the ITE, which is the offshore entity and the Florida entity that is providing marketing and customer assistance on behalf of the ITE. An "international trust entity," is defined to mean any international trust company, international business, international business organization, or affiliated or subsidiary entities that are licensed, chartered, or similarly permitted to conduct trust business in a foreign country or countries under the laws of which it is organized and supervised.

¹³ Section 663.062, F.S.

¹⁴ Section 663.063, F.S.

¹⁵ In 2010, legislation was enacted to establish OFR's oversight responsibilities of "offshore" international non-depository trust companies that wanted to maintain an ITCRO in Florida [ch. 2010-9, Laws of Fla.]. The legislation defined the ITCRO entity and established the licensing and regulatory requirements for these entities under the OFR. This legislation was in response to the exposure of the \$8 billion dollar Ponzi scheme perpetrated by Allen Stanford. Because Florida law did not address representative offices of international non-depository trust companies at that time, Mr. Stanford was able to facilitate his scheme in Florida through the establishment of a representative office in Miami, Florida.

¹⁶ Section 663.01(9), F.S.

¹⁷ Section 663.0625, F.S.

III. Effect of Proposed Changes:

Regulation of International Trust Entities and Limited Service Affiliates as Financial Institutions

Section 1 amends s. 655.005(1)(i), F.S., to expand the definition of “financial institution” to include an international trust entity and a limited service affiliate. This subjects international trust entities and limited service affiliates to the regulatory jurisdiction of the Office of Financial Regulation under ch. 655, F.S.

Section 2 amends s. 655.059, F.S., to allow home-country supervisors access to confidential books and records of an international banking corporation or international trust entity that conducts onsite or offsite examinations outside Florida. The supervision of licensed locations of an international banking corporation or international trust entity in Florida requires the sharing of information with the bank regulatory agency or other similarly sanctioned organization located in the home jurisdiction of the international entity. These regulatory agencies known as the “home-country supervisor,” fulfill a similar function to the OFR in the home jurisdiction. Currently, the home-country supervisor of an international banking corporation or international trust company must travel to Florida to review and examine documents at the licensee’s location.

Removal of Foreign Trust Companies from Regulation as International Banking Corporations

Section 3 amends s. 663.01, F.S., to revise the definition of the term “international banking corporation” by removing the term, “foreign trust companies,” from the definition. This removes “foreign trust companies” from being regulated as “international banking corporations” under part I of ch. 663, F.S.

Regulation of Limited Service Affiliates of International Trust Entities

Sections 4 - 15 create part III of ch. 663 (ss. 663.530 - 663.540, F.S.) to establish the regulatory framework for limited service affiliates of international trust entities. A limited service affiliate is a stand-alone entity whose registration is independent of any affiliated international trust entities. A limited service affiliate may provide services for any number of affiliated international trust entities. Since a limited service affiliate is a stand-alone entity and is not subject to any other regulations, the permissible activities are limited to marketing and liaison activities, advertising and marketing at trade events, and transmitting documents between affiliated international trust entities and their clients.

Section 5 creates s. 663.530, F.S., which defines terms used in part III. The term, “limited service affiliate,” is defined to mean a marketing and liaison office that engages in the permissible activities enumerated in s. 663.531, F.S., for the benefit of an international trust entity.

Section 6 creates s. 663.531, F.S., which specifies the permissible activities of a limited service affiliate. Permissible activities include marketing and liaison activities, advertising and marketing at trade events, and transmitting documents between affiliated international trust

entities and their clients. Descriptions of impermissible activities are provided and include acting as a fiduciary, advertising to the public, and otherwise engaging in banking or trust business. Guidance for permissible website usage and mandatory disclosure are prescribed. The OFR is authorized to enforce the chapter through the remedies and penalties available to it through the financial institutions codes.

Section 7 creates s. 663.532, F.S., to require registration of limited service affiliates. An applicant must submit a nonrefundable \$2,500 registration fee along with a written notice containing specified information regarding the registrant. This information includes services and activities of the applicant on behalf of the ITE, disclosures about officers, directors, and other parties who will be part of the operations of the limited service affiliate, and disclosures about the ITEs that the limited service affiliate will be providing services for in Florida. Once OFR deems the notice complete, the OFR has 120 days to register the LSA or issue a denial with notice of ch. 120, F.S., rights for denied applicants. The OFR is authorized to suspend, revoke, or deny a registration in certain circumstances. A person or entity in operation as of January 1, 2018, which meets the definition of a LSA must apply for registration as a LSA on or before March 31, 2018, or cease doing business in Florida. An entity that previously qualified under the moratorium in s. 663.041, F.S., must register as a LSA or cease doing business in Florida.

Sections 8 and 12 create s. 663.533, F.S., and s. 663.537, F.S., to provide applicability of the financial institutions codes.

The OFR is authorized to examine and investigate a limited service affiliate pursuant to ensure compliance with the financial institutions codes. The OFR must examine each LSA within the first 18 months after it initially registers. The limited service affiliate is responsible for the payment of the examination fee, which is the actual cost of the examination. The OFR may levy a late fee of up to \$100 per day for an unintentional failure to timely pay an examination fee, or if the failure is intentional, a late fee of up to \$1,000 per day. All fees must be deposited into the Financial Institutions' Regulatory Trust Fund for administering part III.

Section 9 creates s. 663.534, F.S., which requires registrants to report any changes in the information provided to the OFR during registration.

Section 10 creates s. 663.535, F.S., which requires a disclosure that must accompany any marketing or advertising materials disseminated by a limited service affiliate. The disclosure notifies those in receipt of the marketing or advertising materials that the OFR does not have regulatory oversight of the affiliated international trust entities served by the limited service affiliate. The disclosure also notifies those in receipt of the marketing or advertising materials that the limited service affiliate may not act as a fiduciary. The disclosure thus further deters impermissible activities and puts the consumer on notice of which activities are impermissible.

Section 11 creates s. 663.536, F.S., to require a limited service affiliate to maintain specified records of their activities at trade, industry, or professional events.

Section 13 creates s. 663.538, F.S., to establish grounds for the suspension, revocation, or voluntary surrender of a registration and authorizes the commission to adopt rules. A limited service affiliate seeking to surrender its registration must notify the OFR of its intention to do so

at least 60 days prior to the date of the proposed surrender. The section authorizes the OFR to conduct an examination of the books and records of a limited service affiliate who proposes to surrender their registration to ensure the winding down of operations.

Section 14 creates s. 663.539, F.S., which requires renewal of registrations every 2 years. At renewal, a registrant must provide any information as required by the commission, and pay a \$500 nonrefundable renewal fee. Further, a registrant must provide a statement under penalty of perjury that the information for the purposes of renewal is true and correct.

Section 15 creates s. 663.540, F.S., which provides that a LSA is not required to produce certain books and records pertaining to a customer of an affiliated ITE that is located outside of the United States in response to a civil subpoena if the book or record is maintained outside of the United States and is not in the possession or control of the affiliated LSA with exceptions. Section 663.021, F.S., has the same provision applicable to international banking corporations.

Section 16 provides this act will take effect January 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill creates registration fees, renewal fees, examination fees, and late fees that are applicable to limited service affiliates under part III of ch. 663, F.S. International banking corporations are already subject to such fees under part I.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill contains provisions similar to those in CS/SB 736.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 655.005, 655.059, 663.01.

This bill creates the following sections of the Florida Statutes: 663.530, 663.540, 663.531, 663.532, 663.533, 663.534, 663.535, 663.536, 663.537, 663.538, 663.539.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.