

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 Appropriations

BILL: CS/CS/SB 736

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on General Government); Banking and Insurance Committee; and Senators Mayfield and Steube

SUBJECT: International Financial Institutions

DATE: April 17, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Sanders/Johnson</u>	<u>Betta</u>	<u>AGG</u>	<u>Recommend: Fav/CS</u>
3.	<u>Sanders/Johnson</u>	<u>Hansen</u>	<u>AP</u>	<u>Fav/CS</u>
4.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 736 modernizes the regulatory framework of international financial services under the Office of Financial Regulation (OFR), which will promote the growth of international financial services market in Florida. The bill revises provisions relating to the regulation of international banking corporations and international trust company representative offices (ITCROs) of international trust entities and creates a regulatory framework for qualified limited service affiliates (QLSAs). QLSAs are marketing and liaison offices that engage in permissible activities for the benefit of an international trust entity (ITE) and are qualified by the OFR. An ITE is an international trust company, an international business, an international business organization, or an affiliated or subsidiary entities that is 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. An ITCRO may conduct any nonfiduciary activities that are ancillary to the fiduciary business of its international trust entity, such as marketing and soliciting for fiduciary business on behalf of the ITE. The bill provides the following changes:

- Establishes oversight of qualified limited service affiliates and offices of international trust entities.
- Provides an abbreviated application process to establish additional locations of an entity that meets certain conditions.

- Authorizes the OFR to implement a risk-based approach for capital requirements, which will allow the OFR to calculate capital requirements that reflect an entity's business model and its particular inherent risk profile.
- Provides the OFR with discretion to allow an after-the-fact licensure process of an entity in the event of an acquisition, merger, or consolidation, which would allow continuity of operations.
- Clarifies permissible activities of entities regulated under chapter 663, Florida Statutes.

The bill creates regulatory fines and fees. In its analysis, the OFR indicates it can maintain regulatory oversight with current staffing levels.¹

Except as otherwise provided, the bill has an effective date of January 1, 2018.

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.² 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).³

International Banking Corporations

The OFR licenses and regulates international banking corporations⁴ that transact business in Florida.⁵ 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

¹ Office of Financial Regulation, Senate Bill 736 Fiscal Analysis (on file with the Senate Appropriations Subcommittee on General Government).

² See http://bus.miami.edu/magazine/fall2014/features/miami_the_global_hub.html (Fall 2014) (last viewed Feb. 27, 2017).

³ Financial Institutions Codes include chs. 655 relating to financial institutions generally, 657 relating to banks and trust companies, 660 relating to trust business, 662 family trust companies, 663 relating to international banking, 665 relating to associations, and 657 relating to savings banks.

⁴ An international banking corporation, such as a foreign commercial bank, foreign merchant bank, or other foreign institution that engages in banking activities usual 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.

⁵ Sections 663.04 and 663.05, F.S.

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.⁶ 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”⁷ 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.⁸ In addition, the OFR qualified 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.⁹

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;¹⁰
- 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.¹¹

⁶ Section 663.06(1), F.S.

⁷ Section 655.005(i), F.S.

⁸ Office of Financial Regulation, *Financial Institution Search*, at <https://real.flofr.com/ConsumerServices/FinancialInstitutions/InstSrch.aspx> (last visited February 25, 2017).

⁹ 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).

¹⁰ 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*.

¹¹ 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

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.¹² An international branch has the same rights and privileges as a federally licensed international branch.¹³

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.¹⁴ 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.¹⁵

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.¹⁶ 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.¹⁷ 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;

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.

¹² Section 663.061, F.S.

¹³ Section 663.064, F.S.

¹⁴ Section 663.062, F.S.

¹⁵ Section 663.063, F.S.

¹⁶ 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.

¹⁷ Section 663.01(9), F.S.

- 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).¹⁸

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.

III. Effect of Proposed Changes:

Regulation of International Banking Corporations and their Offices

Sections 1 through 19 amend provisions of part I of ch. 663, F.S., and ss. 655.005 and 655.059, F.S., relating to the regulation of international banking corporations. In addition, technical conforming changes are made to transfer provisions relating to the regulation of offices of international trust entities and international trust company representative offices (ITCROs) to the newly created part III of ch. 663, F.S., and create the regulation of qualified limited service affiliates (QLSA) in the newly created part IV of ch. 663, F.S. Many of the sections provide technical, conforming changes relating to the newly created parts III or IV.

Sections 1, 4, 5, and 6 revise definitions. **Section 1** amends s. 655.005, F.S. The section expands the definition of the term "financial institution" to include an international trust entity and a QLSA, which are located in the newly created parts III and IV. **Section 4** amends s. 663.01, F.S. This section revises the definition of the term "international banking corporation" by removing the term "foreign trust companies" from the definition. A foreign trust company will be included within the definition of the term "international trust entity," which is transferred along with the regulation of offices of international trust entities in the newly created part III. The term, "international trust entity," is also defined and used in part IV. Section 4 removes the term, "international trust company representative office," to conform to Section 22. **Section 5** amends s. 663.02, F.S. The definition of the term, "international banking corporation," is amended to reflect definition changes in Section 4. **Section 6** revises s. 663.021, F.S. This section removes the term "international trust company representative officer" to conform to the definition change reflected in Section 4.

Section 2 amends s. 665.059, 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

¹⁸ Section 663.0625, F.S.

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 Office of Financial Regulation (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.

Section 3 creates s. 663.001, F.S., to establish a legal and regulatory framework for the conduct by international banking corporations of financial services business in Florida. Section 3 serves to:

- Support the Florida operations of international banking corporations and promote the growth of international financial services to benefit the economy and consumers of this state; and,
- Provide for appropriate supervision and regulatory oversight to ensure that financial services activities of international banking corporations in this state are conducted responsibly and in a safe and sound manner.

Section 7 amends s. 663.04, F.S. Section 7 reduces the time that an international institution must wait to qualify for licensure after experiencing certain changes in status or control (e.g., bankruptcy or government intervention such as bailouts) from seven to three years. The section further authorizes the OFR to permit an international branch, international bank agency, international administrative office, or international representative office to remain operational while the international banking corporation is experiencing certain types of status or control in the home country pursuant to the provisions of s. 663.11(11)(1)(b), F.S. (*See* Section 17.) Currently, if an international banking corporation is placed in bankruptcy, conservatorship, receivership, liquidation, or is operating under the direct control of its home government or regulator due to government intervention or other extraordinary actions, then the license of is automatically terminated and that entity may not transact any banking or trust business or maintain any office in Florida. This change may allow the entity to remain open for business to ensure continuity of operations, as issues affecting the home country institution are resolved.

Section 8 adds and redesignates subsections within s. 663.05, F.S. This section creates an abbreviated application process for international banking corporations to establish additional locations in Florida. Currently, international banking corporations are subject to a full licensure process for each new office location. The OFR will maintain the discretion, as provided in current law, to require an international banking corporation seeking such approval to submit a full application. For applications filed on or after January 1, 2018, the time limitations for approval or disapproval must be prescribed by commission rule. Currently, there are no time limitations governing applications for licensure under ch. 663, F.S.

This section expands the group of international financial institutions that may establish facilities or exercise their powers in Florida. Currently, the OFR is not permitted to grant a license to an international banking corporation if the laws of their home country did not contemplate a Florida bank, specifically, establishing a similar type of operation in the international banking corporation’s home country. In order to enforce this requirement, the application for approval to establish an international branch or international bank agency requires the applicant (the international banking corporation) to provide documentation that the international banking corporation is chartered in a jurisdiction in which any bank having its principal place of business

in Florida may establish similar facilities or exercise similar powers, or that Federal law permits the appropriate federal regulatory authority to issue a comparable license to the international banking corporation. This section is amended to provide that reciprocity is dependent upon whether a financial institution based anywhere in the United States, not just in Florida, could establish a similar type of operation in the international banking corporation's home country. This approach also eliminates potential ambiguity since the laws of other countries typically do not contemplate reciprocity on a state level. This section provides technical and conforming changes.

Section 9 amends s. 663.055, F.S. The bill authorizes the OFR to adopt a risk-based approach for capital requirements of international banks. This approach will allow the OFR to evaluate the varying levels and types of risk inherent in the activities of a particular bank. However, the total capital amounts must meet at least the minimum required under s. 658.21(2), F.S. Current statutes contain a static approach for capital requirements:

- \$20 million to establish a representative office; and,
- \$40 million, or between \$20 million and \$40 million if certain conditions are met, to establish an agency, branch, or administrative office.

The commission will establish by rule the criteria for determining the adequacy of an international banking corporation's financial resources prior to establishing an office in Florida. Additionally, the section deletes a provision that references OFR's role in adopting rules to maintain the safe and sound condition of international banking corporations since the OFR does not examine such entities for safety and soundness. Rather, the OFR determines whether the corporation has adequate supervision by the home country supervisor.

Section 10 makes technical changes to s. 663.06, F.S.

Section 11 creates s. 663.0601, F.S. This section authorizes the OFR to implement an after-the-fact licensure process in the event of the acquisition, merger, or consolidation of international banking corporations.¹⁹ Subject to certain requirements, in the event that an international banking corporation proposes to acquire, merge, or consolidate with an international banking corporation that currently has an office in Florida, the transaction in the home country is permitted to occur prior to the OFR receiving an application for the resulting entity to have an office in Florida. Currently, as soon as such a transaction occurs, the statute terminates the license of an international banking corporation's Florida office. This change will allow continuity of operations of the Florida office despite a merger, acquisition, or consolidation of the international banking corporation.

Section 12 amends s. 663.061, F.S. This section authorizes additional permissible activities for international bank agencies. This will allow an international bank agency to provide nonresidents with investment management services for domestic investments. Currently, an international bank agency can only do so with regard to international or foreign investments. Additionally, the section clarifies that an international bank agency may engage in any activities permissible for an international administrative office and international representative office. International bank agencies are already permitted by s. 663.06(5)(b), F.S., to engage in those activities.

¹⁹ This provision is modeled after federal regulations [12 C.F.R. s. 211.24(6)].

Sections 13 through 15 clarify the permissible activities of offices of an IBC. **Section 13** amends s. 663.062, F.S. This section clarifies that a representative office of an international banking corporation is not subject to licensure under the newly created part III of ch. 663, F.S., because it may engage in any activities permissible for an ITCRO. **Section 14** amends s. 663.063, F.S., and clarifies that an international administrative office may engage in the activities permissible for an international representative office, which is already permitted by s. 663.06(5)(c), F.S., to engage in those activities. **Section 15** amends s. 663.064, F.S. This section authorizes the commission to prescribe by rule the types of deposits international branches may accept. The current statute does not provide an enumerated list of permissible deposits. The section also clarifies that an international branch may engage in any activities permissible for an international bank agency, international administrative office, and international representative office. International branches are already permitted by s. 663.06(5)(a), F.S., to engage in those activities.

Section 16 amends s. 663.09, F.S. This section revises record requirements by allowing a licensed office to maintain certain documents in a language other than English. Currently, each international banking corporation with a licensed office in Florida must keep a correct and complete books and records of that office, policies and procedures, ledger, charter, and bylaws in the English language. The OFR maintains the right to request any document it deems necessary for regulation and supervision be translated into English at the expense of the international banking corporation.

Section 17 amends s. 663.11, F.S., to allow an international branch, international bank agency, international administrative office, or international representative office to remain open and in operation while the international banking corporation is experiencing certain types of changes in status or control (e.g., bankruptcy or government intervention such as bailouts) if certain conditions are met. Within 30 days of a change in status or control, the licensee must provide the OFR with a plan to wind down the business, or as an alternative, the licensee may submit an interim operational plan for its continued operations. If the OFR determines that the plan does not allow for the conduct of business in a safe and sound manner, the OFR must revoke the license. This change may allow continuity of operations as operations in the home country institution are being resolved.

Section 18 amends s. 663.12, F.S. This section removes language relating to the nonrefundable application fee for establishing an international trust company representative office since the regulation of these entities is transferred to part III.

Section 19 makes technical changes to s. 663.17, F.S.

Regulation of International Trust Entities and ITCROs

Sections 20 through 37 create part III of ch. 663, F.S. The Division of Law Revision and Information is directed to create part III consisting of ss. 663.4001 - 663.416, F.S., which provide for the regulation of licensed offices of international trust entities and is applicable to trust business. Part III is entitled "International Trust Company Representative Offices." According to the OFR, these provisions will create a level playing field between the representative offices of

an international banking corporation and the similarly functioning ITCROs of an international trust entity.

Section 21 creates s. 663.4001, F.S. This section establishes a legal and regulatory framework for the conduct by international trust entities within the state.

Section 22 creates s. 663.401, F.S., and provides definitions for part III. The definition of “international trust company representative office” is transferred from part I and other definitions are provided.

Section 23 creates s. 663.402, F.S. This section provides applicability of the financial institutions codes and specifies that the financial institutions codes do not authorize an international trust entity to conduct trust business in Florida.

Section 24 creates s. 663.403, F.S., and provides applicability of the Florida Business Corporation Act. This section is consistent with s. 663.03, F.S., which applies to international banking corporations and their Florida offices.

Section 25 creates s. 663.404, F.S. This section specifies requirements an international trust entity must meet to establish and maintain an ITCRO in Florida. This section also permits an ITCRO to remain open while the international trust entity is experiencing certain types of changes in status, or control (e.g., bankruptcy or government intervention such as bailouts) pursuant to the provisions of s. 663.412(1)(b), F.S., (*See* Section 34). Currently, termination of an ITCRO’s license occurs if the home country institution experiences one of these events. This change ensures continuity of operations while issues in the home country institution are resolved.

Section 26 creates s. 663.405, F.S. This section provides that ITCROs are not required to produce certain books and records in response to a civil subpoena if the books and records are maintained outside of the United States and not in its possession or control of the ITCRO. Section 663.021, F.S., providing the same language, had previously applied to international trust company representative offices along with all offices of international banking corporations. Since the bill transfers the regulation of ITCRO to part III, this is a conforming change and provides parity with the treatment of Florida offices of an international banking corporation.

Sections 27, 34, 35, and 37 create ss. 663.406, 663.412, 663.413 and 663.415, F.S., respectively. These sections specify licensure requirements and grounds for termination of a license of an office of an international trust entity. The international trust entity must submit an application along with a nonrefundable \$5,000 filing fee, and provide detailed background information to the OFR. The section authorizes the OFR to allow an international trust entity meeting certain requirements to establish additional locations in Florida by submitting an abbreviated application to the OFR. This provision creates parity between ITCROs and the Florida offices of an international banking corporation. (*See* Section 8.) The commission is authorized to adopt rules. An ITE that maintains an office licensed under part III is also responsible for paying for the costs of OFR examinations.

The bill delineates the circumstances that would result in the termination of a license of an office of an international trust entity. The section also authorizes the OFR to permit an ITCRO to

remain open and operational while the international trust entity is experiencing certain types of status or control if certain conditions are met. Currently, any international banking corporation (the definition of which encompasses an ITCRO) placed in bankruptcy, conservatorship, receivership, liquidation, or is operating under the direct control of its home government or regulator due to government intervention or other extraordinary actions, may no longer transact any banking or trust business or maintain any office in Florida to carry on such business. This provision may provide continuity of operations as the entity addresses issues in the home country institution. The bill provides similar flexibility for international banking corporations (See Section 7.). The section maintains parity between international trust company representative offices and the Florida offices of an international banking corporation.

Section 28 creates s. 663.407, F.S., and authorizes the OFR to adopt a risk-based approach for capital requirements of international trust entities rather than requiring the same minimum amount for all entities. Currently, s. 663.055, F.S., of part I addresses ITCROs, which requires the home country institution to meet a minimum a \$20 million capital requirement in order to establish a representative office.

Section 29 creates s. 663.408, F.S., and establishes the requirements and limitations for the licenses of international trust companies. The section specifies grounds for the OFR to revoke a license to operate an ITCRO and provides rulemaking authority for the commission to prescribe procedures for the surrender of a license. This is consistent with the provisions of s. 663.06, F.S., which applies to offices of an international banking corporation.

Section 30 creates s. 663.4081, F.S. This section authorizes the OFR to issue an after-the-fact licensure process in the event of the acquisition, merger, or consolidation of international trust entities. Subject to certain requirements, in the event that an international trust entity proposes to acquire, merge, or consolidate with another international trust entity that currently has an office in Florida, the transaction in the home country is permitted to occur prior to the OFR receiving an application for the resulting entity to have an office in Florida. Currently, as soon as the transaction occurs, the license for the Florida office is terminated. This change permits continuity of operations of the Florida office despite a merger, acquisition, or consolidation of the international banking corporation, and ensures parity between the Florida offices of an international banking corporation and ITCROs.

Section 31 transfers and renumbers s. 663.0625, F.S., to s. 663.409, F.S. This section transfers and clarifies the existing ITCRO permissible activities from part I and provides that a licensed ITCRO may engage in any activities permissible for a limited service affiliate under part IV.

Section 32 creates s. 663.410, F.S. This section requires a licensed ITCRO to certify to the OFR the amount of its capital accounts, both prior to opening an ITCRO and on an annual basis thereafter by the specified date. This section is consistent with s. 663.08, F.S., which requires international banking corporations licensed to operate a Florida office must provide the same certification. This section maintains parity between international trust entities operating ITCROs in Florida and international banking corporations operating offices in Florida.

Section 33 creates s. 663.411, F.S. This section requires an international trust entity that operates an office in Florida to maintain certain reports and records. Failure to comply with this provision is grounds for suspension or revocation of any license under part III.

Section 36 creates s. 663.414, F.S. This section authorizes the commission to adopt rules for the administration of part III. This section provides an exemption to the applicability of ss. 120.54(3)(b) and 120.541, F.S., which requires a statement of regulatory costs, due to difficulty in obtaining economic data. An identical exemption exists in s. 663.13, F.S. This provision ensures parity between ITCROs and the Florida offices of an international banking corporation.

Regulation of Limited Service Affiliates of International Trust Entities

Sections 38 through 50 create part IV of ch. 663, F.S. The Division of Law Revision and Information is directed to create part IV of ch. 663, F.S., consisting of ss. 663.530 - 663.540, F.S. Part IV establishes the regulatory framework for qualified limited service affiliates (QLSA) of international trust entities. Unlike an ITCRO, whose license for operation is issued to an international trust entity, a qualified limited service affiliate is a stand-alone entity whose qualification by the OFR is independent of any affiliated international trust entities. While an ITCRO may only provide services for the international trust entity licensed to operate that office, a qualified limited service affiliate may provide services for any number of affiliated international trust entities. Since a qualified limited service affiliate is a stand-alone entity and is not subject to any other regulations, the permissible activities are more limited than that of an ITCRO.

Section 39 creates s. 663.530, F.S. This section creates definitions for part IV and defines the term “limited service affiliate” 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. A “qualified limited service affiliate” is a person or entity that is qualified by the OFR under part IV to perform permissible activities outlined in s. 663.531, F.S., for the benefit of an international trust entity.

Section 40 creates s. 663.531, F.S., and specifies the permissible activities of QLSA. Permissible activities include marketing and liaison activities, advertising and marketing at trade events, and transmitting documents between affiliated international trust entities and their clients. This section further:

- Provides descriptions of impermissible activities and includes acting as a fiduciary, advertising to the public, and otherwise engaging in banking or trust business;
- Prescribes guidance for permissible website usage and mandatory disclosure; and,
- Authorizes the OFR to enforce the chapter through the remedies and penalties available to it through the financial institutions codes.

Section 41 creates s. 663.532, F.S., to provide no later than March 1, 2018, a person or entity that previously qualified under the moratorium in s. 663.041, F.S., must seek qualification as a QLSA or cease doing business in Florida. Notwithstanding the expiration of the moratorium, a person or entity that previously qualified under such moratorium may remain open and

operational but must refrain from engaging in new lines of business in Florida until qualified as a QLSA. This section is effective upon this act becoming a law.

Section 42 as created by this act, s. 663.532, F.S., is amended to provide the requirements and process for qualification as qualified limited service affiliates. A proposed QLSA must submit a written notice containing specified information regarding the proposed QLSA. This information includes services and activities of the applicant on behalf of the international trust entity (ITE), disclosures about officers, directors, and other parties who will be part of the operations of the proposed qualified limited service affiliate, and disclosures about the ITEs that the proposed qualified limited service affiliate will be providing services for in Florida. Once OFR deems the notice complete, the OFR has 120 days to qualify the limited services affiliates or issue a denial with notice of ch. 120, F.S., rights for denied limited service affiliates. This section authorizes the OFR to suspend, revoke, or deny a qualification in certain circumstances. A person or entity in operation as of January 1, 2018, which meets the definition of a LSA under the moratorium must file a written notice with the OFR seeking qualification as a qualified LSA on or before March 31, 2018, or cease doing business in Florida.

Section 43 creates s. 663.5325, F.S. This section provides for civil action subpoena enforcement. A QLSA is not required to produce certain books and records pertaining to a customer of an affiliated ITE, 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 QLSA. This section does not apply to subpoenas issued by or on behalf of a federal, state, or local government law enforcement agency, administrative or regulatory agency, legislative body or grand jury and does not limit the power of the OFR to access all books and records under regulatory and supervisory powers under the financial institution codes. Parts I and III have the same provision applicable to international banking corporations and ITCROs, respectively.

Section 44 creates s. 663.533, F.S. This section provides applicability of the financial institutions codes to the regulation of the QLSA. This creates parity with the regulation of Florida offices of international banking corporations and international trust company representative offices, which are subject to the financial institutions codes in Sections 5 and 23 of the bill, respectively.

Section 45 creates s. 663.534, F.S., and requires QLSAs to report any changes in the information provided to the OFR during the initial qualification or renewal process.

Section 46 creates s. 633.535, F.S., and requires a disclosure that must accompany any marketing or advertising materials disseminated by a qualified 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 qualified limited service affiliate. Further, the OFR does not provide safety and soundness oversight of the QLSA. The disclosure also notifies those in receipt of the marketing or advertising materials that the qualified limited service affiliate may not act as a fiduciary. The disclosure delineates impermissible activities and puts the consumer on notice of which activities are impermissible.

Section 47 creates s. 663.536, F.S., to require a qualified limited service affiliate to maintain specified records of their activities at trade, industry, or professional events.

Section 48 creates s. 663.537, F.S. This section authorizes the OFR to examine and investigate a limited service affiliate before or after qualification to ensure compliance with the financial institutions codes.

Section 49 creates s. 663.538, F.S. This section establishes grounds for the suspension, revocation, or voluntary surrender of a qualification and authorizes the commission to adopt rules. A qualified limited service affiliate seeking to surrender its qualification 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 qualified limited service affiliate who proposes to surrender their qualification to ensure the winding down of operations.

Section 50 creates s. 663.539, F.S. This section requires qualification renewal every two years. At renewal, a QLSA must provide any information as required by the commission. Further, a QLSA must provide a statement under penalty of perjury that the information for the purposes of renewal is true and correct.

Section 51 reenacts subsection (4) of section 663.16, F.S., to incorporate an amendment to s. 663.01, F.S.

Section 52 provides, except as otherwise expressly provided in this act and except for this section, which takes effect upon becoming a law, 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 offices of international trust entities under part III. International banking corporations are already subject to such fees under part I.

B. Private Sector Impact:

The bill modernizes and streamlines the regulatory framework of international financial services under ch. 663, F.S., thereby reducing regulatory burden and ensuring Florida remains competitive with other states.

C. Government Sector Impact:

The bill has an indeterminate increase in revenues relating to new regulatory fees and fines. While the Office of Financial Regulation (OFR) may have additional workload, OFR states that it can maintain regulatory oversight with current staffing levels.²⁰

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 655.005, 655.059, 663.01, 663.02, 663.021, 663.04, 663.05, 663.055, 663.06, 663.061, 663.062, 663.063, 663.064, 663.09, 663.11, 663.12, 663.17, and 663.0625.

This bill creates the following sections of the Florida Statutes: 663.001, 663.0601, 663.4001, 663.401, 663.402, 663.403, 663.404, 663.405, 663.406, 663.407, 663.408, 663.4081, 663.410, 663.411, 663.412, 663.413, 663.414, 663.415, 663.530, 663.531, 663.532, 663.533, 663.534, 663.535, 663.537, 663.538, and 663.539.

This bill reenacts section 663.16 of the Florida Statutes.

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

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

CS/CS by Appropriations on April 13, 2017:

The committee substitute provides specific conditions that must be met for the Office of Financial Regulation (OFR) to permit a licensed office to remain open for business as issues affecting the home country institutions are resolved. The committee substitute also revises definitions; clarifies the qualification process for limited service affiliates; eliminates associated registration and renewal fees, and removes examination fees for qualified limited service affiliates.

²⁰ Office of Financial Regulation, *2017 Legislative Bill Analysis of SB 736* (on file with Senate Committee on Banking and Insurance).

CS by Banking and Insurance on March 6, 2017:

The CS clarifies the registration process for limited service affiliates (LSAs) and the Office of Financial Regulation's authority to take action against LSAs. Further, the LSA is not required to produce certain books and records pertaining to a customer of an affiliated international trust entity (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 are not in the possession or control of the affiliated LSA with exceptions.

B. Amendments:

None.