

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #:	CS/CS/CS HB 1383	FINAL HOUSE FLOOR ACTION:	
SPONSOR(S):	Regulatory Affairs Committee; Government Operations Appropriations Subcommittee; Insurance & Banking Subcommittee; Moraitis	116 Y's	0 N's
COMPANION BILLS:	HB 1385; CS/SB 1106	GOVERNOR'S ACTION:	Approved

SUMMARY ANALYSIS

CS/CS/CS/HB 1383 passed the House on March 9, 2016, as CS/SB 1106.

The Office of Financial Regulation (OFR) charters and regulates entities that engage in financial institution business in Florida, in accordance with the Florida Financial Institutions Codes (Codes), and ensures Florida-chartered financial institutions' compliance with state and federal requirements for safety and soundness, as well as federal Bank Secrecy Act and anti-money laundering laws. In addition, the OFR regulates international banking corporations (IBCs) that transact business in Florida.

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. An IBC may operate through a variety of business models, all of which must be licensed, and include international trust company representative offices (ITCROs). If an IBC wants to maintain any of these offices in this state, the IBC is required to meet licensure requirements, ongoing safety and soundness requirements, and is subject to the examination and enforcement authority of the OFR including state and federal anti-money laundering and anti-terrorism laws. In 2010, the OFR pursued legislation to strengthen oversight of international banking entities operating in Florida. Specifically, the 2010 legislation requires licensure (through the IBC) of ITCROs which are organized and licensed under the laws of a foreign country, but are established or maintained in Florida for engaging in non-fiduciary activities that are ancillary to the trust business of the international banking corporation, such as advertising, marketing, communicating with customers, and providing customer account service information for the IBC. ITCROs are not banks and may not accept deposits or make loans.

The bill creates a moratorium, until July 1, 2017, on the OFR's enforcement of ITCRO licensing requirements with respect to organizations or entities providing services to an "international trust entity" engaging in ITCRO activities, if such person who manages, controls, or is employed by such organization or entity meets certain requirements and provides written assurances to the OFR. The moratorium does not affect the OFR's authority to otherwise enforce applicable provisions of the Codes or to prevent the unlawful conduct of banking or trust business in Florida, fraud, and violations of anti-money laundering and anti-terrorism laws. The bill repeals the moratorium on July 1, 2017.

The bill has an indeterminate fiscal impact on the state. The bill has no impact on local governments and an indeterminate impact on the private sector.

The bill was approved by the Governor on April 6, 2016, ch. 2016-192, L.O.F., and became effective on that date.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background: State Oversight of Financial Institutions

The Florida Office of Financial Regulation (OFR) charters and regulates entities that engage in financial institution business in Florida, in accordance with the Florida Financial Institutions Codes (Codes) and the Florida Financial Institutions Rules. The specific chapters under the Codes are:

- Chapter 655, F.S. – Financial Institutions Generally
- Chapter 657, F.S. – Credit Unions
- Chapter 658, F.S. – Banks and Trust Companies
- Chapter 660, F.S. – Trust Business
- Chapter 663, F.S. – International Banking
- Chapter 665, F.S. – Associations
- Chapter 665, F.S. – Savings Banks

The OFR does not regulate federally chartered financial institutions and financial institutions that are chartered and regulated in other states. In addition, the OFR does not regulate institutions that are chartered and regulated by foreign institutions, *except to the extent* those foreign institutions seek to engage in the business of banking or trust business in Florida, pursuant to ch. 633, F.S.

Current Situation on International Banking Regulation

International Banking Corporations (IBCs)

The OFR regulates IBCs¹ that transact business in Florida. Such entities are subject to licensure by the OFR² to transact business in Florida. 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 that are chartered and regulated by foreign institutions, except to the extent that those foreign institutions seek to engage in the business of banking or trust business in Florida, which requires a Florida charter and compliance with the provisions of ch. 663, F.S., and the applicable provisions of the Codes.

An IBC may operate through a variety of business models, all of which must be licensed,³ and include: international bank agencies;⁴ international representative offices;⁵ international trust company representative offices;⁶ international administrative offices;⁷ and international branches.⁸ The definition of “financial institution” includes the following: international bank agency; international banking corporation; international branch; international representative office; international administrative office; and international trust company representative office.⁹

¹ 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.

² ss. 663.04 and 663.05, F.S.

³ s. 663.06(1), F.S.

⁴ s. 663.061, F.S.

⁵ s. 663.062, F.S.

⁶ s. 663.0625, F.S.

⁷ s. 663.063, F.S.

⁸ s. 663.064, F.S.

⁹ s. 655.005(1)(i), F.S.

If an IBC wants to maintain any office in this state, including an international trust company representative office, the IBC is required to meet minimum licensure requirements, ongoing safety and soundness requirements, and is subject to the examination and enforcement authority of the OFR including state anti-money laundering and anti-terrorism laws. The OFR may not issue a license to an IBC 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 supervised¹⁰ by the central bank or trust regulatory agency in the foreign country in which it is organized and chartered;
- 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., provides in general that IBCs having offices in Florida are subject to the provisions of ch. 655, F.S., as though such corporations were state banks or trust companies. 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. 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.

“Adequate Supervision” of IBCs

A core aspect of the OFR’s regulation of international banking entities is that the IBC is “adequately supervised” by the central bank or trust regulatory agency in the foreign country in which it is organized and chartered. In 1993, the OFR’s predecessor agency, the Department of Banking & Finance, promulgated a rule regarding principles of adequate supervision of an IBC’s foreign establishments.¹¹ Currently, the statutory authority for an adequate supervision rule is found in s. 663.05(8), F.S., which requires the principles to be based upon the “need for cooperative supervisory efforts and consistent regulatory guidelines,” and must address capital adequacy, asset quality, management, earnings, liquidity, internal controls, audits, and foreign exchange operations and positions of the IBC. However, this statutory authority does not require examination by the home-country regulatory authorities of any offices of the IBC in this state. The rule also provides that an IBC is “adequately supervised” if it is subject to “consolidated supervision” or “comprehensive supervision,” which generally describes the robustness of the home country’s supervision.

¹⁰ Rule 69U-140.003, F.A.C., sets forth principles of adequate supervision of an IBC’s foreign establishments, and is “based upon the need for cooperative supervisory efforts and consistent regulatory guidelines and shall 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.” s. 663.05(8), F.S.

¹¹ Rule 69U-140.003, F.A.C.

Financial Action Task Force (FATF)

The OFR's adequate supervision rule does not explicitly consider the designations by the FATF. In 1989, a Group of Seven (G7) summit established the FATF to examine and develop measures to combat money laundering. In 2001, the FATF expanded its mandate to incorporate efforts to combat terrorist financing. The FATF is an intergovernmental body by the ministers of its member jurisdictions, which currently totals 37 countries and includes the United States which became a member of the FATF in 1990. The FATF Secretariat, which is housed at the Organisation for Economic Co-operation and Development (OECD) in Paris, provides administrative support to the FATF.¹²

The objectives of the FATF are to set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system, such as the proliferation of weapons of mass destruction. The FATF is therefore a "policy-making body" which works to generate the necessary political will to bring about national legislative and regulatory reforms in these areas.

They form the basis for a coordinated response to these threats to the integrity of the financial system and help ensure a level playing field. The FATF monitors the progress of its members in implementing necessary measures, reviews money laundering and terrorist financing techniques and counter-measures, and promotes the adoption and implementation of appropriate measures globally. In collaboration with other international stakeholders, the FATF works to identify national-level vulnerabilities with the aim of protecting the international financial system from misuse.¹³

The FATF also identifies jurisdictions with strategic deficiencies in their anti-money laundering and financing of terrorism and proliferation measures. Jurisdictions subject to a FATF call on its members to apply counter-measures to protect the international financial system from the ongoing and substantial money laundering and terrorist financing risks emanating from these jurisdictions. In its most recent Public Statement (sometimes referred to as the FATF blacklist), the FATF identified Iran and North Korea.¹⁴ The FATF also identified the following jurisdictions as having strategic deficiencies: Afghanistan, Bosnia and Herzegovina, Guyana, Iraq, Lao PDR, Myanmar, Papua New Guinea, Syria, Uganda, Vanuatu, and Yemen.¹⁵

International Bank Agencies and International Branches

International bank agencies and international branches are permitted to conduct activities similar to those of a domestic bank. An international bank agency may make and service loans, act as a custodian, furnish investment advice, conduct foreign exchange activities and trade in securities and commercial paper.¹⁶ An international branch has the same rights and privileges as a federally licensed international branch.¹⁷

¹² The OECD's primary mission is to improve and promote economic policies among its members; as such, the OECD's focus is harmful tax practices, principally targeting the activities of tax havens.

¹³ FINANCIAL ACTION TASK FORCE, *About: Who We Are and What We Do*, at: <http://www.fatf-gafi.org/about/whoweare/> (last visited Feb. 29, 2016).

¹⁴ FINANCIAL ACTION TASK FORCE, *FATF Public Statement – 19 February 2016*, at: <http://www.fatf-gafi.org/publications/high-riskandnon-cooperativejurisdictions/documents/public-statement-february-2016.html> (last visited Feb. 29, 2016).

¹⁵ FINANCIAL ACTION TASK FORCE, *Improving Global AML/CFT Compliance: on-going process – 19 February 2016*, at: <http://www.fatf-gafi.org/publications/high-riskandnon-cooperativejurisdictions/documents/fatf-compliance-february-2016.html> (last visited Feb. 29, 2016).

¹⁶ s. 663.061, F.S.

¹⁷ s. 663.064, F.S.

International Representative Offices and International Administrative Offices

International representative offices and international administrative offices perform activities that are more limited. An international representative office may solicit business, provide information to customers concerning their accounts, answer questions, receive applications for extensions of credit and other banking services, transmit documents on behalf of customers, and make arrangements for customers to transact business on their accounts.¹⁸ An administrative office may provide personnel administration, data processing or recordkeeping, and negotiate, approve, or service loans or extensions of credit and investments.¹⁹

International Trust Company Representative Offices (ITCROs)

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 non-fiduciary activities described in s. 663.0625, F.S. 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.²⁰

ITCROs are not banks 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:

- Advertising, marketing, and soliciting for fiduciary business on behalf of an international banking corporation or trust company;
- Contacting existing or potential customers;
- 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 (e.g., forwarding requests for distribution or changes in investment objectives, or forwarding forms and funds received from the customer); and
- Such other activities as may be approved by the OFR or rules of the Financial Services Commission.²¹

International Financial Services

A longstanding niche market within the international financial services market is the provision of fiduciary (trustee) services required for the implementation of estate, tax and asset protection planning. These services traditionally have comprised the administration (documentation preparation, accounting, compliance, and accounting) for a trust and its underlying investments. Services such as banking, asset management, and tax advice are provided by third parties.²² Industry representatives provided the following example:

Example: A family from Latin America purchasing a residence in Florida has a banking relationship with a Florida-based bank and is advised by Florida counsel. To avoid exposure to U.S. estate tax, the family will be advised to own the property through a non-U.S. company, as the shares in the non-U.S. company are not subject to U.S. estate tax. To provide for the family's long-term planning (local and foreign tax laws and political and security risks), the family may be advised to place the shares in the company's foreign trust.²³

¹⁸ s. 663.062, F.S.

¹⁹ s. 663.063, F.S.

²⁰ s. 663.01(9), F.S.

²¹ s. 663.0625, F.S.

²² Memorandum from McDonald Hopkins LLC, *International Trust Company Representative Offices* (Mar. 8, 2015), on file with Insurance & Banking Subcommittee staff.

²³ *Id.*

According to the Florida International Administrators Association (FIAA), in the above example, responsibility for the administration of the trust and the underlying company is given to a trust company, which provides this service for an agreed upon fee. The trust company generally will be part of an organization that provides this service in multiple jurisdictions. The trust company, which acts as a trustee, is licensed and regulated in the jurisdiction in which it is domiciled. The trust company does not promote, sell, or accept any financial investments, money, or provide depository or custodial accounts.

The Florida-based marketing office for the aforementioned fiduciary services provided by a foreign trust company is an ITCRO. Industry advocates state that the primary function of the ITCRO of the foreign trust company and the organization of which it is a member is to market the trust company's services to lawyers, accountants, and financial advisors - not the general public.²⁴ Because many of the families who establish foreign trusts travel to Miami, the ITCROs provide a convenient way for these families to monitor the services of the international trust company without having to travel to the jurisdiction where the trust company has its operations. Thus, advocates of the bill assert that ITCROs represent an important part of Miami's role as the financial capital of the Americas and contribute in an important way to the state's economy.²⁵ FIAA seeks to create a limited purpose ITCRO (LPITCRO) regulatory framework that would be subject to registration; clarify that the administrative and compliance services do not involve discretionary investment, distribution of funds and do not constitute the activities of a financial institution; and should be exempt from licensure and capital requirements that apply to financial institutions.

Robert Allen Stanford & 2010 International Banking Legislation

In 2010, the Florida Legislature amended ch. 663, F.S., to establish the OFR's oversight responsibilities for "offshore" international non-depository trust companies that wish to establish an ITCRO in Florida.²⁶ The legislation defined the ITCRO entity and established the licensing and regulatory requirements for these entities. The legislation was due, in part, to the exposure of the \$7 billion dollar Ponzi scheme perpetrated by former Texas billionaire Robert Allen Stanford.

Since the late 1990s, Stanford controlled an international group of privately-held financial services companies under the umbrella organization Stanford Financial Group, which included Stanford Trust Company Limited, a non-depository trust company organized under the laws of Antigua and Barbuda. In the Ponzi scheme, certificates of deposits that promised above market rate returns were sold to customers of the Stanford Financial Group through offices in the United States and abroad with the sales of new accounts being used to fund payments on older certificates and fund Stanford's business operations and lifestyle. 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 of Stanford Trust Company Limited in Miami, Florida. In late 1998, the Division of Banking of the Department of Banking and Finance (the OFR's predecessor agency) entered into a memorandum of understanding (MOU)²⁷ with the Stanford Trust Company Limited (Stanford Trust), an offshore trust company organized under the laws of Antigua and Barbuda. This MOU allowed the Stanford Trust to establish a trust representative office in Florida, and delineated permissible and impermissible activities.

The OFR, along with federal regulatory and law enforcement agencies, coordinated an investigation into the operations of Stanford Trust's Miami trust company representative offices. In 2009, Mr. Stanford was charged by the U.S. Securities and Exchange Commission for operating an \$8 billion Ponzi scheme involving overvalued certificates of deposit (CD) issued by Stanford International Bank,

²⁴ *Id.*

²⁵ *Id.*

²⁶ Ch. 2010-9, Laws of Fla.

²⁷ Florida Department of Banking and Finance and Stanford Trust Company Limited, Memorandum of Agreement (Dec. 1998), on file with Insurance & Banking Subcommittee staff.

LTD, located in Antigua. These CDs were marketed by representative offices in the U.S., some of which were located in Florida. The scheme is alleged to have involved over 30,000 clients in 136 countries on six continents. In 2012, Mr. Stanford was federally prosecuted and convicted of multiple counts of mail and wire fraud, obstruction, and conspiracy (including conspiracy to commit money laundering). He was sentenced to 110 years in prison for orchestrating a 20-year investment fraud scheme in which he misappropriated over \$7 billion from Stanford International Bank. Only recently did federal authorities and the U.S. receiver reach a settlement agreement to expedite the distribution of assets back to victims of Stanford's Ponzi scheme.²⁸

In addition to attempting to address and prevent the type of scheme perpetrated by Mr. Stanford, the OFR also sought the legislation in 2010 to address issues posed by shadow banking activities conducted by unregulated entities in Florida that present a high risk of allowing money laundering, terrorist financing, and other illicit activities to go undetected. The 2010 legislation sought to address those issues and brought ITCROs under the already established regulatory oversight capabilities of the OFR. The OFR has the statutory responsibility for the licensing and oversight of international banking corporations that may or may not have trust powers and wish to establish representative offices, administrative offices, branches, and agencies in Florida. By specifically providing for the licensure of representative offices of international non-depository trust companies, the OFR was better positioned to provide for regulatory oversight of offshore trust companies and related operations in Florida. The 2010 ITCRO legislation also authorized the Financial Services Commission to adopt rules regarding other licensing standards that are considered necessary to ensure the safe and sound operations of ITCROs in this state.²⁹

To date, no ITCROs are licensed with the OFR, although 2 international administrative offices, 10 international bank agencies, 6 international representative offices, and 6 international bank branches are currently licensed with the OFR.³⁰

Limited Purpose International Trust Company Representative Offices (LPITCROs) Proposal

Industry representatives have indicated that the 2010 legislation created regulatory ambiguity for international trust companies and their Florida-based marketing offices, ITCROs, potentially subjecting them to the \$20 million capital requirements for operating "what is essentially a marketing and liaison office in Florida."³¹ FIAA seeks to clarify that ITCROs that do not promote, sell, or accept any financial investments, money, or provide depository or custodial accounts and are not "financial institutions"; therefore, they should be exempt from its licensure and capital requirements, but still subject to appropriate registration and supervision by the OFR. HB 1383, as originally filed, amends ch. 663, F.S., to create a new entity known as a limited purpose international trust company representative office.

Under current law, an offshore entity that proposes the establishment of an ITCRO is required to obtain a license under ch. 663, F.S. The bill, as originally filed, would require only the onshore LPITCRO to be registered with the OFR. As a result, the operations and controlling shareholders of the offshore non-depository trust company would be unknown while allowing key regulatory oversight parameters such as capital requirements to be minimized, exposing unascertainable risk to consumers doing business in Florida. The current process for regulation of international entities establishing representative offices in Florida provides for the identification and understanding of the offshore/international entity, not simply the registration of the representative office in Florida. The OFR has expressed numerous policy, other

²⁸ U.S. DEPARTMENT OF JUSTICE, *Pending Criminal Division Cases: U.S. v. Robert Allen Stanford et al.*, at <http://www.justice.gov/criminal-vns/case/stanfordr> (last visited Feb. 3, 2016).

²⁹ s. 5, ch. 2010-9, Laws of Fla. To date, no rules have been adopted to implement ITCRO licensing standards or to adopt application forms for ITCROs.

³⁰ OFFICE OF FINANCIAL REGULATION, *Financial Institution Search*, at <https://real.flofr.com/ConsumerServices/FinancialInstitutions/InstSrch.aspx> (search conducted Jan. 28, 2016).

³¹ Memorandum from McDonald Hopkins LLC (Mar. 8, 2015), on file with Insurance & Banking Subcommittee staff.

regulatory, technical, and implementation concerns about the proposed LPITCRO regulatory framework.³²

Effect of the Bill on ITCROs

Section 2 of the bill amends s. 663.01, F.S., to create a definition of “international trust entity” (ITE) to mean an international trust company, an international business, an international business organization, or an affiliated or subsidiary entity 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. This subsection is repealed July 1, 2017.

Section 3 of the bill creates a new section of ch. 663, F.S., to impose a moratorium on the OFR’s enforcement of ch. 663, F.S. until June 30, 2017, with respect to any ITCRO or any person who manages or controls or is employed by such ITCRO, if such person:

- Has been organized to conduct business in Florida since October 1, 2013;
- Has not been fined or sanctioned as a result of any complaint with the OFR or any other state or federal regulatory agency;
- Has not been convicted of a felony or ordered to pay a fine or penalty in any proceeding initiated by any local, state, foreign law enforcement or international agency within ten years before the effective date of the moratorium;
- Has not had any of its directors, executive directors, principal shareholders, or managers or employees arrested for, charged with, convicted of, or pled guilty or nolo contendere to, regardless of adjudication, any offense that is punishable by imprisonment for one year or more, or to any offense involving money laundering, tax evasion, fraud, or that is otherwise related to the operation of a financial institution within ten years before the effective date of this section;
- Does not provide any services to any ITE that is in in bankruptcy, conservatorship, receivership, liquidation, or similar status under the laws of any country;
- Does not provide banking services or promote or sell investments or accept custody of assets;
- Does not act as a fiduciary, including but not limited to, accepting a fiduciary appointment, executing the fiduciary documents that create a fiduciary relationship, make discretionary decisions regarding the investment or distribution of fiduciary accounts; and
- Conducts those activities permissible for an ITCRO, as described in s. 663.0625, F.S.

Application Process for the Moratorium

An organization or entity that requests to qualify for this moratorium must notify the OFR in writing by July 1, 2016, and provide:

- Written proof the business has been organized and doing business in Florida since October 1, 2013;
- Name or names under which it conducts business in Florida;
- Address of the locations from which it conducts business and a detailed description of the activities being conducted at the locations; and
- Name of each ITE, the country it is organized, and its officers and directors for which the organization or entity provides services in Florida.

The organization or entity must also provide assurance about each of these ITEs including that the ITE:

- Has authority to engage in trust business;
- Is in good standing and lawfully exists under the laws of the jurisdiction it is authorized;
- Is not in bankruptcy, or similar status; and
- Is not operating under the direct control of the government or other regulatory authority within seven years before the date of the moratorium notification to the OFR.

³² Office of Financial Regulation, 2016 Agency Analysis of House Bill 1383, pp. 12-22 (Jan. 19, 2016).

The organization or entity must include with the required information a declaration under penalty of perjury signed by the executive officer or managing member that the information provided to the OFR is true and correct to the best of his or her knowledge.

The OFR's Role and Authority: Processing Requests for Moratorium

In processing the request to qualify for the moratorium, the OFR must confirm the following information provided by an organization, entity or the ITE:

- Each ITE is adequately supervised by the appropriate regulatory authority that has similar responsibilities in the foreign country in which it is organized, chartered or licensed, or has similar authorization by operation of law. An ITE with foreign establishments is considered to be adequately supervised if it is subject to consolidated supervision. Consolidated supervision is supervision which enables the appropriate regulatory authority, or equivalent or other similarly sanctioned body, organization, governmental entity or recognized authority that has similar responsibilities of the home country, to evaluate the safety and soundness of the ITE operations. Further, the bill provides additional requirements relating to adequate supervision.
- An ITE (including its officers or subsidiaries) is considered adequately supervised if it is subject to comprehensive supervision. The bill provides that comprehensive supervision is supervision that ensures the supervisory processes and procedures are designed to inform the home country supervisor about the ITE's financial condition, including capital position; asset management and asset administration; internal controls and audit; compliance with existing laws and regulations; and the capability of management. The bill provides additional requirements relating to comprehensive supervision.
- The jurisdiction of the ITE or its offices, subsidiaries, or any affiliates that are directly involved in or facilitate the financial services functions, banking, or fiduciary activities of the ITE, is not listed on the Financial Action Task Force Public Statement or on its list of jurisdictions with deficiencies in anti-money laundering or counterterrorism.

Upon receipt of a moratorium request, the OFR will review the information and request any additional information to complete the request for the moratorium within 30 days after receipt. The organization or entity must provide the additional information within 45 days after the receipt of the notice from the OFR. If the OFR does not request the additional information within 30 days after receipt, the moratorium request is deemed complete as of the date it was received. Within 20 days after receipt of any additional information requested, the OFR must deem the request complete or provide notification to the organization or entity that the information provided does not satisfy the OFR's request.

Within 90 days after receipt of a completed notification, the OFR must confirm with the organization or entity if they are or are not a party to the moratorium. If the OFR fails to notify the organization or entity within the 90 days whether the organization or entity is a party to the moratorium, then the organization or entity is considered a party to the moratorium.

OFR's Enforcement Authority

During the moratorium period, the OFR may conduct an onsite visitation of an organization or entity operating in Florida to confirm information provided to the OFR in deeming the organization or entity qualified for the moratorium. If the OFR finds that the organization or entity made a material misstatement in its request to qualify for the moratorium, the OFR must issue an immediate final order suspending the qualification of the organization or entity. The bill provides that the moratorium does not affect the OFR's authority to otherwise enforce the Financial Institutions Codes.

The bill provides that s. 663.041, F.S., and the amendments to s. 663.01, F.S., made by the bill, are repealed on July 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate but positive impact. Based on information from the bill's proponents, it is estimated that 12 to 15 entities will apply for the moratorium.³³

D. FISCAL COMMENTS:

None.

³³ Email from Jamie Mongiovi, Director of Communications & Governmental Relations, RE: Amendment to SB 1106 (Feb. 22, 2016).