

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 707

International Banking Corporations

SPONSOR(S): Grady

TIED BILLS:

IDEN./SIM. BILLS: SB 1264

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Insurance, Business & Financial Affairs Policy Committee	12 Y, 0 N	Barnum	Cooper
2)	Policy Council		Liepshutz	Cicccone
3)	General Government Policy Council			
4)				
5)				

SUMMARY ANALYSIS

The Office of Financial Regulation (OFR) has authority to regulate entities conducting banking or trust business in Florida. An international banking corporation or other foreign institution that engages in banking activities, must be licensed by the OFR before transacting business in Florida. Although an international banking corporation may operate through a variety of business models, each of which must be separately licensed, a particular business model not addressed in Florida Statutes, and thus not subject to OFR regulation, is an "international trust company representative office."

To date, only one international trust company representative office has operated in Florida. Stanford Trust Company Limited's representative office is no longer in operation due to federal charges brought against Robert Allen Stanford for operating an \$8 billion Ponzi scheme.

HB 707 defines an international trust company representative office and provides for its regulation by the OFR. An international trust company representative office will be subject to:

- Licensing and examination.
- Audit and record keeping requirements.
- Injunctions and subpoenas.
- Administrative action and fines.
- Voluntary and involuntary dissolution.

The bill stipulates that international trust company representative offices will not be authorized to accept deposits or make loans. Activities will be limited to those which are ancillary to the trust business and of a nonfiduciary nature such as marketing, soliciting business, answering questions, or providing account information.

The bill provides for a \$5,000 filing fee and \$2,000 annual assessment for an international trust company representative office, which is consistent with the existing requirement for an international representative office or international administrative office.

The bill expands the requirements to conduct financial institution business by an international banking corporation. It provides statutory authority for the OFR to regulate and take action against an international banking corporation based on the activities of its affiliates or subsidiaries.

The bill provides for the first increase in over 18 years to the minimum capital account requirement for international financial entities.

The bill does not appear to have a state or local government fiscal impact.

The bill provides for an effective date of July 1, 2010.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background:**

Chapters 655 through 667, Florida Statutes comprise the financial institution codes.<sup>1</sup> These provide general regulatory powers to be exercised by the Financial Services Commission<sup>2</sup> and the Office of Financial Regulation (OFR). The OFR is responsible for administering Florida's financial institution codes.

The specific chapters are:

- Chapter 655, relating to financial institutions generally
- Chapter 657, relating to credit unions
- Chapter 658, relating to banks and trust companies
- Chapter 660, relating to trust business
- Chapter 663, relating to international banking corporations
- Chapter 665, relating to associations
- Chapter 667, relating to savings banks

While OFR has authority to regulate entities conducting banking or trust business in Florida, there are certain exceptions. These include:

- Banks chartered and regulated by other states.
- National banks, which are regulated by the Office of the Comptroller of the Currency.
- Federal thrifts, which are regulated by the Office of Thrift Supervision.
- Federal credit unions, which are regulated by the National Credit Union Administration.
- Institutions chartered and regulated by foreign countries, unless those institutions seek to "engage in the business of banking" or "engage in trust business" in Florida.

An international banking corporation, such as a foreign commercial bank, foreign merchant bank, or other foreign institution that engages in banking activities, must be licensed by OFR<sup>3</sup> to transact business in Florida. An international banking corporation may operate through a variety of business models, all of which must be separately licensed.<sup>4</sup> These authorized business models, include international bank

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<sup>1</sup> s. 655.005(1)(j), F.S.

<sup>2</sup> The Financial Services Commission is composed of the Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture.

<sup>3</sup> ss. 663.04 and 663.05, F.S.

<sup>4</sup> s. 663.06(1), F.S.

agencies<sup>5</sup>, international representative offices<sup>6</sup>, international administrative offices<sup>7</sup>, and international branches<sup>8</sup>.

A business model which is not included within the definition of “financial institution”, “state financial institution”, or “international banking corporation” is an “international trust company representative office”. An international trust company representative office conducts marketing, advertising, and customer relations activities on behalf of the international trust company, but does not render investment advice or act as a trustee. Florida’s financial institution codes are silent regarding regulation of these entities. Therefore, unlike other international banking businesses operating in Florida, these offices are not subject to regulation by the OFR.

To date, only one international trust company representative office has operated in Florida. In 1998, Stanford Trust Company Limited (Stanford Trust), an international trust company domiciled in Antigua, contacted the Florida Department of Banking and Finance<sup>9</sup>, about establishing an international trust company representative office. A Memorandum of Agreement<sup>10</sup> was entered into with Stanford Trust which specified terms for operation of the trust company representative office. The agreement specified permissible and prohibited business activities which were equivalent to those permitted for trust company representative offices of out-of-state domestic trust companies. Therefore, it was not considered to be engaging in banking or trust business in Florida subject to state regulation.

The Stanford Trust representative office is no longer in operation due to civil and criminal charges that have been brought against Robert Allen Stanford by federal authorities. In 2009, Mr. Stanford was charged by the U.S. Securities and Exchange Commission with operating an \$8 billion Ponzi scheme involving certificates of deposit issued by Stanford International Bank, LTD, located in Antigua.<sup>11</sup> Mr. Stanford was subsequently arrested by federal authorities and remains in jail. OFR has an ongoing investigation into the operations of Stanford Trust’s representative office in South Florida.

### **Current Situation:**

The Office of Financial Regulations (OFR) licenses international banking corporation entities, including international bank agencies, international representative offices, international administrative offices, and international branches transacting business in Florida. Among other things, the license application must include:

- The name of the international banking corporation.
- The name of the person in charge of the business and affairs of the office.
- The total amount of the capital accounts of the international banking corporation.
- A complete and detailed statement of its financial condition as of a date within 180 days prior to the date of such application.
- A listing of any occasion within the preceding 10-year period in which either the international banking corporation or any of its directors, executive officers, or principal shareholders has been convicted of, or pled guilty or nolo contendere to, any offense with respect to which the penalties include the possibility of imprisonment for 1 year or more, or to any offense involving money laundering or otherwise related to the operation of a financial institution.
- An authenticated copy of its articles of incorporation and a copy of its bylaws, or an equivalent.
- A certificate issued by the banking or supervisory authority of the country in which the international banking corporation is chartered stating that the international banking corporation is duly organized

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<sup>5</sup> s. 663.061, F.S.

<sup>6</sup> s. 663.062, F.S.

<sup>7</sup> s. 663.063, F.S.

<sup>8</sup> s. 663.064, F.S.

<sup>9</sup> The predecessor to the Office of Financial Regulation.

<sup>10</sup> Memorandum of Agreement executed December 14, 1998 on file with the Insurance, Business and Financial Affairs Policy Committee.

<sup>11</sup> Securities and Exchange Commission Press Release 2009-26 on file with the Insurance, Business and Financial Affairs Policy Committee.

and licensed and lawfully existing in good standing and listing any instance in which the international banking corporation has been convicted of, or pled guilty or nolo contendere to, a violation of any currency transaction reporting or money laundering law which may exist in that country.

International bank agencies and international branches are permitted to conduct activities similar to those of a domestic bank. They may make and service loans, act as a custodian, furnish investment advice, conduct foreign exchange activities and trade in securities and commercial paper. For licensure, the normal minimum capital account requirement is \$25 million; however, under certain circumstances<sup>12</sup>, a \$10 million minimum could apply. As of January 1, 2010, there were 19 international bank agencies and 6 international branches licensed.<sup>13</sup>

International representative offices and international administrative offices are permitted more limited activities. 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. An administrative office may provide personnel administration, data processing or recordkeeping, and negotiate, approve, or service loans or extensions of credit and investments. For licensure, the normal minimum capital account requirement is \$10 million for an international representative office and \$25 million for an international administrative office. As of January 1, 2010, there were 10 international representative offices and 4 international administrative offices licensed.<sup>14</sup>

The Office of Financial Regulation (OFR) is authorized revoke a license if a home country has dissolved, terminated, or cancelled the international banking corporations' authority to operate in the home jurisdiction. The financial institution codes are silent regarding OFR's authority to revoke inactive licenses.

OFR may take possession of the business and property in this state of any international banking corporation that:

- Has violated any law.
- Has neglected or refused to comply with an order issued by the OFR.
- Is insolvent or imminently insolvent.
- Is transacting business in an unsound, unsafe, or unauthorized manner such that the corporation is threatened with imminent insolvency.
- Is in liquidation at its domicile or elsewhere.

The financial institution codes are silent regarding OFR's authority to regulate or take action against an international banking corporation based on the activities of its affiliates<sup>15</sup> or subsidiaries<sup>16</sup>.

### **Effect of Bill:**

HB 707 adds the term "international trust company representative office" to the definition of "financial institution" and "state financial institution." This will result in an international trust company representative office being subject to Office of Financial Regulation (OFR) subpoena powers, regular examinations, and the general enforcement powers of the OFR contained in ch. 655, F.S.

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<sup>12</sup> s. 663.055(2)(c), F.S. The international banking corporation has been in the business of banking for at least 10 years and is ranked by the banking or supervisory authority of the country in which it is organized and licensed as one of the five largest banks in that country in terms of domestic deposits, as of the date of its most recent statement of financial condition.

<sup>13</sup> Office of Financial Regulation Bill Analysis dated January 22, 2010 on file with the Insurance, Business and Financial Affairs Policy Committee.

<sup>14</sup> Id.

<sup>15</sup> s. 655.005(1)(a), F.S. "Affiliate" means any financial institution holding company pursuant to federal law or any subsidiary or service corporation of such a holding company.

<sup>16</sup> s. 655.005(1)(q), F.S. "Subsidiary" means any organization permitted by the office which is controlled by a financial institution.

The bill amends the definition of an "international banking corporation" to include "a foreign trust company, or any similar business entity, including a foreign bank with fiduciary powers, that conducts trust business as defined in the financial institutions codes."<sup>17</sup>

In addition, the bill amends the definition of "international representative office" to include the affiliates and subsidiaries of an international banking corporation. Currently, only offices of the international banking corporation fall within the purview of the definition. The bill expands the definition to include offices of the affiliates or subsidiaries of the international banking corporation.

The bill defines an international trust company representative office,<sup>18,19</sup> and provides for its regulation. An international banking corporation desiring to establish international trust company representative office in this state will be required to:

- Hold an unrestricted license to conduct trust business in the foreign country under the laws of which it is organized and chartered.
- Be authorized by the foreign country's trust business regulatory authority to establish the proposed international trust company representative office.
- Be adequately supervised by the central bank or trust regulatory agency in the foreign country in which it is organized and chartered.
- Meet all requirements under Florida's 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, including being subject to:
  - Licensing, examination and regulation by the OFR.
  - Administrative action and fines.
  - Anti-money laundering provisions.
  - Outside audit requirements.
  - Record keeping requirements.
  - Injunctions and subpoenas.
  - Voluntary and involuntary dissolution.
- Meet a minimum capital account requirement of \$20 million.

The bill stipulates that international trust company representative offices will not be authorized to accept deposits or make loans. Representatives and employees at such offices will be prohibited from acting as a fiduciary, which includes, but is not limited to, accepting a fiduciary appointment, executing fiduciary documents that create a fiduciary relationship, or making discretionary decisions regarding the investment or distribution of fiduciary accounts. Activities will be limited to engaging in 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;
- 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.

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<sup>17</sup> s. 658.12(20), F.S. "Trust business" means the business of acting as a fiduciary when such business is conducted by a bank, state or federal association, or a trust company, and also when conducted by any other business organization as its sole or principal business.

<sup>18</sup> "An office of an international banking corporation or trust company organized and licensed under the laws of a foreign country that is established or maintained in this state for the purpose of engaging in non-fiduciary activities described in s. 663.0625, or any affiliate, subsidiary, or other person who engages in such activities, on behalf of such international banking corporation or trust company, from an office located in this state."

<sup>19</sup> The definition is consistent with 12 CFR s. 9.2(k), which defines a "trust representative office" as it relates to a national bank, in part, as follows: "Trust representative office" means an office of a national bank, other than a main office, branch, or trust office, at which the bank performs activities ancillary to its fiduciary business, **but does not engage in any of the activities specified in § 9.7(d)**. Examples of ancillary activities include advertising, marketing, and soliciting for fiduciary business; contacting existing or potential customers, answering questions, and providing information about matters related to their accounts; acting as a liaison between the trust office and the customer. . . . (emphasis supplied). The activities which are specified in § 9.7(d) and which are prohibited include: accepting a fiduciary appointment, executing documents that create the fiduciary relationship, and making discretionary decisions regarding the investment or distribution of fiduciary assets.

- Such other activities as may be approved by the OFR or rules of the Financial Services Commission.

The bill provides that the filing fee to establish an international trust company representative office is \$5,000 followed by an annual assessment is \$2,000.

The bill increases the minimum capital account requirements for international bank agencies, international branches, and international administrative offices from \$25 million to \$40 million. Under certain circumstances,<sup>20</sup> a \$20 million minimum could apply. The minimum capital account requirement for an international representative office is increased from \$10 million to \$20 million.

The bill expands the requirements for carrying on financial institution business to include capital account minimums, and requires that the organization is not:

- Insolvent or imminently insolvent.
- In bankruptcy, conservatorship, liquidation, or similar status.
- Is not operating under the direct control of the government, regulatory, or supervisory authority of the jurisdiction of its incorporation.
- Has not been in such status or control at anytime within the 7 years preceding the date of application of the license.

Furthermore, it requires disclosure of any felony arrest or charge involving any director, executive officer, or principal shareholder,<sup>21</sup> and disclosure of any financial offense involving facilitating or furthering terrorism or fraud.

The bill provides statutory authority for the OFR to regulate and take action against an international banking corporation based on the activities of its affiliates or subsidiaries. The bill provides that the OFR may take possession of the business and property in this state of any international banking corporation or licensed office upon a finding that the corporation is dissolved or otherwise terminated in the jurisdiction of its incorporation, is in bankruptcy or similar status under the laws of any country, or is operating through government intervention or any other extraordinary actions. It requires the OFR to revoke a license if it determines that a licensed office has been substantially inactive for six months or greater.

The bill removes the requirement that an authenticated copy of the articles of incorporation and the bylaws of an international banking corporation be submitted to the OFR. The remaining provisions of current law<sup>22</sup> are sufficient to determine whether the applicant is duly organized, licensed and in good standing.

The bill authorizes the OFR, by order, to allow an international banking corporation to make any loan or investment or exercise any power which it could make or exercise if it were operating in this state as a federal agency under federal law. The bill retains current law authority for the Financial Services Commission to take this same action by rule.<sup>23</sup>

## B. SECTION DIRECTORY:

Section 1. Amends s. 655.005, F.S., by revising and expanding definitions.

Section 2. Amends s. 663.01, F.S., by revising and expanding definitions.

Section 3. Amends s. 663.02, F.S., by expanding and clarifying the applicability of state banking laws.

<sup>20</sup> s. 663.055(2)(c), F.S. The international banking corporation has been in the business of banking for at least 10 years and is ranked by the banking or supervisory authority of the country in which it is organized and licensed as one of the five largest banks in that country in terms of domestic deposits, as of the date of its most recent statement of financial condition.

<sup>21</sup> This language is consistent with FDIC Form 3064-0006, *Interagency Biographical and Financial Report*, which is incorporated by reference in 69U-100.03852 and 69U-105.202, *Florida Administrative Code*, as Form OFR-U-10.

<sup>22</sup> An applicant must submit a certificate issued by the banking or supervisory authority of the country in which the applicant is chartered stating that the applicant is duly organized, licensed, and in good standing.

<sup>23</sup> s. 663.061(3), F.S.

- Section 4. Amends s. 663.04, F.S., by expanding the requirements for carrying on financial institution business.
- Section 5. Amends s. 663.05, F.S., by revising and expanding licensure requirements.
- Section 6. Amends s. 663.055, F.S., by increasing capital accounts requirements.
- Section 7. Amends s. 663.06, F.S., by revising and clarifying permissible activities.
- Section 8. Amends s. 663.061, F.S., by revising permissible activities.
- Section 9. Amends s. 663.062, F.S., by revising permissible activities.
- Section 10. Creates s. 663.0625, F.S., providing for international trust company representative offices, permissible activities, and requirements.
- Section 11. Amends s. 663.064, F.S., by revising requirements and permissible activities.
- Section 12. Amends s. 663.065, F.S., by correcting a cross-reference.
- Section 13. Amends s. 663.11, F.S., by revising requirements for continuing to conduct business.
- Section 14. Amends s. 663.12, F.S., by providing international trust company representative office licensing and fee requirements.
- Section 15. Amends s. 663.16, F.S., by conforming language.
- Section 16. Amends s. 663.17, F.S., by clarifying application and conforming language.
- Section 17. Amends s. 663.171, F.S., by conforming language.
- Section 18. Amends s. 663.172, F.S., by conforming language.
- Section 19. Provides for a July 1, 2010 effective date.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

- 1. Revenues:  
None or negligible.<sup>24</sup>
- 2. Expenditures:  
None.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

- 1. Revenues:  
None.
- 2. Expenditures:

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<sup>24</sup> With a \$5,000 initial application fee and a \$2,000 annual assessment, and with only one entity to date ever having expressed an interest in this business model, it is doubtful there will be any revenue.

None.

#### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

#### D. FISCAL COMMENTS:

HB 707 creates a new license type. The filing fee for establishing an "international trust company representative office" will be \$5,000 and the annual assessment will be \$2,000. The same fee structure currently applies to an international representative office or international administrative office.

The bill increases capital account requirements for licensure of international banking corporations. The requirements have not been raised in the past 18 years. In 2001 the Legislature raised capital requirements for new banks,<sup>25</sup> and raised those requirements again in 2008.<sup>26</sup> Currently, all Florida-licensed international banking corporations, with one exception, meet the new capital requirements.<sup>27</sup>

To date, only one international trust company representative office<sup>28</sup> has expressed any interest in conducting business in Florida. At this time, no additional staffing has been requested by OFR to administer the new license type.<sup>29</sup>

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

The bill expands existing rule-making authority to include international trust company representative offices.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

### IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

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<sup>25</sup> Chapter 2001-243, Laws of Florida

<sup>26</sup> Chapter 2008-75, Laws of Florida

<sup>27</sup> Banco Industrial de Venezuela (BIV) is not in compliance with the current statutory requirement . The OFR served BIV with an Administrative Complaint on October 26, 2009, seeking to revoke BIV's license to operate its Miami Agency. BIV petitioned for a DOAH hearing. The hearing is currently scheduled for March 22-26, 2010, in Miami. DOAH Docket # 09-006714.

<sup>28</sup> Stanford Trust

<sup>29</sup> Office of Financial Regulation Bill Analysis dated January 22, 2010 on file with the Insurance, Business and Financial Affairs Policy Committee.