

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/SB 1106

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on General Government); and Senator Flores

SUBJECT: International Trust Entities

DATE: March 2, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Knudson</u>	<u>BI</u>	<u>Favorable</u>
2.	<u>Betta/Johnson</u>	<u>DeLoach</u>	<u>AGG</u>	<u>Recommend: Fav/CS</u>
3.	<u>Betta/Johnson</u>	<u>Kynoch</u>	<u>AP</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1106 revises provisions relating to the regulation of international banking activity by the Office of Financial Regulation (OFR). The bill provides the following changes:

- The OFR will delay the enforcement of the licensure requirements under s. 663.04(4), F.S., relating to an organization or entity in Florida providing services to an international trust entity (ITE) that engages in the activities described in s. 663.0625, F.S. The delay in requirements is provided if the organization or entity meets certain regulatory requirements and provides assurances to the OFR. The moratorium would apply to the ITE, which is the off shore entity and the Florida organization or entity that is providing marketing and customer assistance on behalf of the ITE. The moratorium is repealed July 1, 2017.
- Defines the term, “international trust entity,” 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.
- Provides the moratorium does not affect the OFR’s authority to enforce other provisions of the Financial Institutions Codes.

The bill provides additional duties to the OFR which can be absorbed within existing resources.

The bill takes effect on October 1, 2016.

II. Present Situation:

International Financial Services Market

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, as described in the following example:¹

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.²

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 a fee. The trust company generally will be part of an organization that provides this service in multiple jurisdictions. The trust company does not promote, sell or accept any financial investments, money, or provide depository or custodial accounts. An international trust company representative office may operate as the Florida-based marketing office for the aforementioned fiduciary services provided by a foreign trust company.³ Because many of the families who establish foreign trusts travel to Miami, the ITCROs may 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.

State Regulation of International Banking Activities

The Office of Financial Regulation (OFR) is charged with regulating depository and non-depository financial institutions and financial service companies. One of the OFR's primary goals is to protect consumers from financial fraud 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.⁴

¹ Memorandum from McDonald Hopkins LLC on behalf of the Florida International Administrators Association, *International Trust Company Representative Offices*, (Mar. 8, 2015) (on file with Senate Committee on Banking and Insurance).

² *Id.*

³ *Id.*

⁴ 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.

International Banking Corporations

The OFR regulates international banking corporations⁵ that transact business in Florida. Such entities are subject to licensure by the OFR⁶ 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 jurisdictions, except to the extent that those foreign institutions seek to engage in the banking or trust business in Florida. If foreign institutions do so, they must obtain a Florida charter and comply with the provisions of ch. 663, F.S., and the applicable Financial Institution Codes.

An international banking corporation may operate through a variety of business models, all of which must be licensed.⁷ These models include international bank agencies,⁸ international representative offices,⁹ international trust company representative offices,¹⁰ international administrative offices,¹¹ and international branches.¹² The definition of “financial institution”¹³ includes international bank agency, an international banking corporation, international branch, international representative office, international administrative office, and international trust company representative office.

If an international banking corporation (IBC) wants to operate an 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 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;¹⁴

⁵ 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 Section 663.01(6), F.S.

⁶ Sections 663.04 and 663.05, F.S.

⁷ Section 663.06(1), F.S.

⁸ Section 663.061, F.S.

⁹ Section 663.062, F.S.

¹⁰ Section 663.0625, F.S.

¹¹ Section 663.063, F.S.

¹² Section 663.064, F.S.

¹³ Section 655.005(i), F.S.

¹⁴ Section 663.05(9), F.S. requires the OFR to establish general principles to evaluate the adequacy of supervision of an international banking corporation's foreign establishments. These principles must be based upon the need for cooperative supervisory efforts 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*.

- 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 that international banking corporations 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:

- Section 655.031, F.S., relating to administrative enforcement guidelines;
- Section 655.032, F.S., relating to investigations, subpoenas, hearings, and witnesses;
- Section 655.0321, F.S., relating to hearings, proceedings, related documents, and restricted access;
- Section 655.033, F.S., relating to cease and desist orders;
- Section 655.037, F.S., relating to removal by the office of an officer, director, committee member, employee, or other person;
- Section 655.041, F.S., relating to administrative fines and enforcement; and
- Section 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.

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.¹⁵ An international branch has the same rights and privileges as a federally licensed international branch.¹⁶

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.¹⁷ An administrative office

The rule provides that the term, “international banking corporation,” also includes foreign trust companies. The rule provides that the term, “comprehensive supervision,” includes the ability and willingness of the home country supervisor to provide the OFR early notice of any financial weakness being experienced by the international banking corporation, including its offices or subsidiaries. Further, it includes the ability of the home country supervisor to provide the OFR assurance of cooperation by both the international banking corporation and the home country supervisor.

¹⁵ Section 663.061, F.S.

¹⁶ Section 663.064, F.S.

¹⁷ Section 663.062, F.S.

may provide personnel administration, data processing or recordkeeping, and negotiate, approve, or service loans or extensions of credit and investments.¹⁸

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 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.¹⁹

The 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.²⁰

As of February 2016, there are no ITCROs licensed with the OFR; however, two international administrative offices, ten international bank agencies, six international representative offices, and six international bank branches are licensed with the OFR.²¹

2010 Legislation

In 2010, legislation²² was enacted to establish the OFR's oversight responsibilities of "offshore" international non-depository trust companies that wanted to maintain an ITCRO in Florida and 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.²³ The legislation defined the ITCRO entity and established the licensing and regulatory requirements for these entities under the OFR. This legislation was due, in part, to the exposure of the \$8 billion dollar Ponzi scheme perpetrated by Allen Stanford.

¹⁸ Section 663.063, F.S.

¹⁹ Section 663.01(9), F.S.

²⁰ Section 663.0625, F.S.

²¹ Office of Financial Regulation, *Financial Institution Search*, at <https://real.flofr.com/ConsumerServices/FinancialInstitutions/InstSrch.aspx> (last visited February 20, 2016).

²² Ch. 2010-9, Laws of Fla.

²³ Office of Financial Regulation, *2016 Agency Legislative Bill Analysis, SB 1106* (Jan. 19, 2016) (on file with the Senate Committee on Banking and Insurance).

Allen Stanford controlled an international group of privately held financial services companies under the umbrella organization Stanford Financial Group, which included Stanford Trust Company Limited (Stanford Trust), a non-depository trust company organized under the laws of Antigua and Barbuda. In late 1998, the Division of Banking within the Department of Banking and Finance²⁴ entered into a memorandum of understanding (MOU)²⁵ with the Stanford Trust. This MOU allowed the Stanford Trust to establish a trust representative office in Florida, and delineated permissible and impermissible activities.

In this particular 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. Stanford International Bank, LTD issued the certificates of deposit used to facilitate the scheme, which was also located in Antigua. The scheme is alleged to have involved over 30,000 clients in 136 countries on six continents.

The Financial Action Task Force

The Financial Action Task Force (FATF) is the global standard setting body for anti-money laundering and combating the financing of terrorism (AML/CFT).²⁶ The FATF identifies jurisdictions that have strategic deficiencies and works with them to address those deficiencies that pose a risk to the international financial system, thereby protecting the international financial system from money laundering and financing of terrorism risks and encouraging greater compliance with the AML/CFT standards.

III. Effect of Proposed Changes:

Sections 1 and 2 amend s. 663.01, F.S., and create s. 663.041, F.S., to impose a moratorium on the OFR's enforcement of ch. 663.04(4), F.S., with respect to the licensure of an organization or entity in Florida providing services to an international trust entity (ITE) that engages in the international trust company representative office (ITCRO) activities described in s. 663.0625, F.S., if certain conditions are met. Further, the moratorium includes any employee or person who manages or controls such an organization or entity that engages in the ITCRO activities. The moratorium is effective until June 30, 2017, for any Florida organization or entity and the ITE. An ITE is defined to mean 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.

²⁴ Predecessor of the Division of Financial Institutions of the Office of Financial Regulation. *See* ch. 2003-361, Laws of Fla.

²⁵ State of Florida, Department of Banking and Finance and Stanford Trust Company Limited, Memorandum of Agreement (Dec. 1998) (on file with Senate Committee on Banking and Insurance).

²⁶ Members of the FATF include 34 member jurisdictions (including the United States) and 2 regional organizations. *See* <http://www.fatf-gafi.org/home/> (last visited Jan. 20, 2016).

Eligibility Requirements for Moratorium

The moratorium on the enforcement of licensing requirements applies to any person who manages or controls or is employed by an organization or entity providing services to an ITE that engages in ITCRO activities that:

- Has been organized to conduct business in Florida before 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 the fiduciary appointment, executing the fiduciary documents that create the 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 before October 1, 2013;
- Name or names under which it conducts business in Florida;
- Address of its locations from which it conducts business and a detailed description of the activities being conducted at the locations;
- 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.

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 a 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.

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.

Section 3 repeals s. 663.041, F.S., and the amendments to s. 663.01, F.S., July 1, 2017.

Section 4 provides the bill will take effect on becoming a law.

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:**

None.

B. Private Sector Impact:

The impact of CS/SB 1106 is indeterminate. The bill provides a moratorium on the OFR enforcement of licensure requirements on Florida-based onshore entities engaging in marketing, and other ITCRO activities described under s. 663.0625, F.S., on behalf of ITEs until June 30, 2017. The moratorium would apply to the Florida-based entity and the ITE.²⁷ An estimated 12 to 15 organizations or entities may qualify for the moratorium.²⁸

²⁷ Email from M. Hinshelwood, Office of Financial Regulation (Feb. 24, 2016) (on file with the Senate Committee on Banking and Insurance).

²⁸ Telephone interview with J. Mongioli, Office of Financial Regulation (Feb. 19, 2016) (on file with the Senate Committee on Banking and Insurance). The Florida International Administrators Association provided the estimate to the OFR.

C. **Government Sector Impact:**

While the bill provides additional duties associated with the moratorium process for the OFR, no additional funds are needed to fulfill this workload.²⁹

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Statutes Affected:**

This bill substantially amends section 663.01 of the Florida Statutes.

This bill creates section 663.041 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 by Appropriations on March 1, 2016:

The committee substitute creates a moratorium on the OFR's enforcement of ch. 663, F.S., with respect to the licensure of an organization or entity in Florida providing services to an international trust entity that engages in ITCRO activities and the offshore international trust entity if certain conditions are met. The moratorium is repealed July 1, 2017.

The committee substitute removes provisions creating the Limited Purpose International Trust Company licensure and regulatory program within the OFR.

B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

²⁹ Email from J. Mongiovi, Office of Financial Regulation (Feb. 22, 2016) (on file with the Senate Banking and Insurance Committee).