

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 1078

INTRODUCER: Banking and Insurance Committee and Senator Garcia

SUBJECT: International Financial Institutions

DATE: April 12, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Knudson</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Sanders</u>	<u>Hansen</u>	<u>AP</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1078 extends until July 1, 2018, the moratorium on the Office of Financial Regulation's (OFR) enforcement with respect to the licensure of an entity in Florida providing services to an international trust entity (ITE) that engages in international trust company representative office (ITCRO) activities described in section 663.0625, Florida Statutes, if it meets certain conditions. The Legislature imposed the moratorium during the 2016 Legislative Session. The moratorium expires June 30, 2017, and applies to the ITE, which is the offshore entity and the Florida entity that is providing marketing and customer assistance on behalf of the ITE. An "international trust entity," is any international trust company, international business, international business organization, or affiliated or subsidiary entities that are licensed, chartered, or similarly permitted to conduct trust business in a foreign country or countries under the laws of which it is organized and supervised.

The bill has an indeterminate impact on state revenues and expenditures.

The bill takes effect upon becoming a law.

II. Present Situation:

Regulation of the International Financial Services Market

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

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

International Banking Corporations

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

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

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

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

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

⁴ Sections 663.04 and 663.05, F.S.

⁵ Section 663.06(1), F.S.

⁶ Section 655.005(i), F.S.

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

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

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

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

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

International Bank Agencies and International Branches.

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

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

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

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

¹¹ Section 663.061, F.S.

¹² Section 663.064, F.S.

International Representative Offices and International Administrative Offices.

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

International Trust Company Representative Offices.

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

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

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

¹³ Section 663.062, F.S.

¹⁴ Section 663.063, F.S.

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

¹⁶ Section 663.01(9), F.S.

¹⁷ Section 663.0625, F.S.

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 10 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 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.

III. Effect of Proposed Changes:

The bill extends until July 1, 2018, the moratorium on the OFR's enforcement with respect to the licensure of an entity in Florida providing services to an international trust entity (ITE) that engages in international trust company representative office (ITCRO) activities described in s. 663.0625, F.S., if it complied with the requirements of s. 631.041(4), F.S., and, before July 1, 2017, provided written notice to the OFR of its intent to continue operations in Florida.

The bill is effective upon becoming 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:

None.

C. Government Sector Impact:

This bill has an indeterminate impact on state revenues and expenditures.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 663.01 and 663.041.

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 Banking and Insurance on March 27, 2017:**

The bill deletes the entirety of the filed bill and instead extends until July 1, 2018, the moratorium on the OFR's enforcement with respect to the licensure of an entity in Florida providing services to an international trust entity (ITE) that engages in international trust company representative office (ITCRO) activities described in s. 663.0625, F.S., if it meets certain conditions.

B. Amendments:

None.