

CHAPTER 2010-9

Senate Bill No. 1264

An act relating to international banking corporations; amending ss. 655.005 and 663.01, F.S.; revising certain definitions; amending s. 663.02, F.S.; expanding application of state banking laws to include certain international banking corporations; expanding legislative intent; prohibiting construction to authorize international banking corporation or trust companies to conduct trust business under certain circumstances; amending s. 663.04, F.S.; revising requirements for carrying on banking business to apply to certain additional financial institutions; imposing additional requirements; amending s. 663.05, F.S.; revising requirements for licensing international banking corporations; including requirements applicable to certain trust representative offices; deleting certain nonapplication provisions; amending s. 663.055, F.S.; increasing certain net capital account requirements; amending s. 663.06, F.S.; revising permissible activities requirements for licensed international banking corporations; amending s. 663.061, F.S.; revising a permissible activity requirement for international bank agencies; amending s. 663.062, F.S.; revising a permissible activity requirement for licensed international representative offices to apply to trust companies; creating s. 663.0625, F.S.; specifying permissible activities for international trust company representative offices; specifying requirements; amending s. 663.064, F.S.; revising application of provisions of law to establishing branches of international banking corporations; amending s. 663.065, F.S.; revising application of provisions of law to organize a state-chartered investment company; amending s. 663.11, F.S.; prohibiting international banking corporations from continuing to conduct licensed business in this state under certain circumstances; amending s. 663.12, F.S.; increasing a license application filing fee; imposing an annual assessment upon certain entities; amending s. 663.16, F.S.; revising definitions to conform to changes made by the act; amending s. 663.17, F.S.; expanding criteria under which the Office of Financial Regulation may take possession of certain business and property of certain international banking corporations; revising provisions to conform to changes made by the act; amending ss. 663.171 and 663.172, F.S.; revising provisions to conform to changes made by the act; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraphs (h) and (p) of subsection (1) of section 655.005, Florida Statutes, are amended to read:

655.005 Definitions.—

(1) As used in the financial institutions codes, unless the context otherwise requires, the term:

(h) “Financial institution” means a state or federal savings or thrift association, bank, savings bank, trust company, international bank agency, international banking ~~corporation organization~~, international branch, international representative office, international administrative office, international trust company representative office, or credit union, or an agreement corporation operating pursuant to s. 25 of the Federal Reserve Act, 12 U.S.C. ss. 601 et seq. or Edge Act corporation organized pursuant to s. 25(a) of the Federal Reserve Act, 12 U.S.C. ss. 611 et seq.

(p) “State financial institution” means a state-chartered or state-organized association, bank, investment company, trust company, international bank agency, international branch, international representative office, international administrative office, international trust company representative office, or credit union.

Section 2. Subsections (3), (6), and (8) of section 663.01, Florida Statutes, are amended, subsections (9) and (10) of that section are renumbered as subsections (10) and (11), respectively, and a new subsection (9) is added to that section, to read:

663.01 Definitions.—As used in this part, the term:

(3) “Foreign country” means a country other than the United States and includes any colony, dependency, or possession of such country notwithstanding any definitions in chapter 658, and any territory of the United States, including Guam, American Samoa, the Virgin Islands, and the Commonwealth of Puerto Rico.

(6) “International banking corporation” means a banking corporation organized and licensed under the laws of a foreign country, ~~or, if organized and licensed under the laws of the United States or any of the states of the United States of America, a banking corporation:~~

~~(a) Which is not a bank or bank holding company as defined in the federal Bank Holding Company Act, as amended, 12 U.S.C. ss. 1841-1850; and~~

~~(b) Which maintained, on July 1, 1981, as its only United States banking office, one state agency licensed by a state other than this state.~~

The term “international banking corporation” includes, without limitation, 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, including a corporation: the sole shareholders of which are one or more international banking corporations or holding companies which own or control one or more international banking corporations which are authorized to carry on a banking business, or a central bank or government agency of a foreign country and any affiliate or division thereof; which has the power to receive deposits from the general public in the country where it is chartered and organized; and which is under the supervision of the central bank or

other bank regulatory authority of such country. 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 financial institutions codes.

(8) “International representative office” means an office of an international banking corporation organized and licensed under the laws of a foreign country that is established or maintained in this state for the purpose of engaging in the activities described in s. 663.062, or any affiliate, subsidiary, or other person that engages whose ~~primary business is to engage~~ in such activities, on behalf of such international banking corporation, from an office located in this state.

(9) “International trust company representative office” means an office of an international banking corporation or trust company organized and licensed under the laws of a foreign country which office is established or maintained in this state for the purpose of engaging in nonfiduciary activities described in s. 663.0625, or 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 this state.

Section 3. Section 663.02, Florida Statutes, is amended to read:

663.02 Applicability of state banking laws.—

(1) International banking corporations having offices in this state shall be subject to all the provisions of the financial institutions codes and chapter 655 as though such international banking corporations were state banks or trust companies, except where it may appear, from the context or otherwise, that such provisions are clearly applicable only to banks or trust companies organized under the laws of this state or the United States. Without limiting the foregoing general provisions, it is the intent of the Legislature that the following provisions are shall be applicable to such banks or trust companies corporations: s. 655.031, relating to administrative enforcement guidelines; s. 655.032, relating to investigations, subpoenas, hearings, and witnesses; s. 655.0321, relating to hearings, proceedings, and related documents and restricted access thereto; s. 655.033, relating to cease and desist orders; s. 655.037, relating to removal by the office of an officer, director, committee member, employee, or other person; s. 655.041, relating to administrative fines and enforcement; s. 655.50, relating to control of money laundering; and s. 658.49, relating to loans by banks not exceeding \$50,000; and any provision of law for which the penalty is increased under s. 775.31 for facilitating or furthering terrorism. International banking corporations shall not have the powers conferred on domestic banks by the provisions of s. 658.60, relating to deposits of public funds. The provisions of chapter 687, relating to interest and usury, shall apply to all loans not subject to s. 658.49.

(2) Neither an international bank agency nor an international branch shall have any greater right under, or by virtue of, this section than is granted to banks organized under the laws of this state. Legal and financial

terms used herein shall be deemed to refer to equivalent terms used by the country in which the international banking corporation is organized. This chapter and the financial institutions codes may not be construed to authorize any international banking corporation or trust company to conduct trust business, as defined in s. 658.12, from an office in this state except for those activities specifically authorized by ss. 663.061(5) and 663.0625.

Section 4. Section 663.04, Florida Statutes, is amended to read:

663.04 Requirements for carrying on financial institution banking business.—~~An~~ No international banking corporation or trust company, or any affiliate, subsidiary, or other person or business entity acting as an agent for, on behalf of, or for the benefit of such international banking corporation or trust company who engages in such activities from an office located in this state, may not shall transact a banking or trust business, or maintain in this state any office for carrying on such business, or any part thereof, unless such corporation, trust company, affiliate, subsidiary, person, or business entity has:

(1) Has been authorized by its charter to carry on a banking or trust business and has complied with the laws of the jurisdiction in which it is chartered.

(2) Has furnished to the office such proof as to the nature and character of its business and as to its financial condition as the commission or office requires.

(3) Has filed with the office a certified copy of that information required to be supplied to the Department of State by those provisions of chapter 607 which are applicable to foreign corporations.

(4) Has received a license duly issued to it by the office.

(5) Has capital accounts no less than the minimums required per s. 663.055 and is not imminently insolvent or insolvent per s. 655.005(1).

(6)(a) Is not in bankruptcy, conservatorship, receivership, liquidation, or similar status under the laws of any country.

(b) Is not operating under the direct control of the government, regulatory, or supervisory authority of the jurisdiction of its incorporation through government intervention or any other extraordinary actions.

(c) Has not been in such status or control at any time within the 7 years preceding the date of application for a license.

Section 5. Section 663.05, Florida Statutes, is amended to read:

663.05 Application for license; approval or disapproval.—

(1) Every international banking corporation, before being licensed by the office to maintain any office in this state, shall subscribe and acknowledge, and submit to the office, an application which shall contain:

(a) The name of the international banking corporation.

(b) The proposed location by street and post office address and county where its business is to be transacted in this state and the name of the person who shall be in charge of the business and affairs of the office.

(c) The location where its initial registered office will be located in this state.

(d) The total amount of the capital accounts of the international banking corporation.

(e) A complete and detailed statement of its financial condition as of a date within 180 days prior to the date of such application, except that the office in its discretion may, when necessary or expedient, accept such statement of financial condition as of a date within 240 days prior to the date of such application. The office in its discretion may, when necessary or expedient, require an independent opinion audit or the equivalent satisfactory to the office.

(f) 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 arrested for, charged with, convicted of, or pled guilty or nolo contendere to, regardless of adjudication, 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, currency transaction reporting, facilitating or furthering terrorism, fraud, or otherwise related to the operation of a financial institution.

(2) The office shall disallow any illegally obtained currency, monetary instruments, funds, or other financial resources from the capitalization requirements of this section, and the existence of such illegally obtained resources shall be grounds for denial of the application for license.

(3) At the time an application is submitted to the office, the international banking corporation shall also submit a ~~duly authenticated copy of its articles of incorporation and a copy of its bylaws, or an equivalent thereof satisfactory to the office.~~ Such corporation shall also submit 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 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.~~

(4) Application shall be made on a form prescribed by the office ~~commission~~ and shall contain such information as the commission or office requires.

(5) The office may, in its discretion, approve or disapprove the application, but it shall not approve the application unless, in its opinion, the applicant meets each and every requirement of this part and any other applicable provision of the financial institutions codes. The office shall approve the application only if it has determined that the directors, executive officers, and principal shareholders of the international banking corporation are qualified by reason of their financial ability, reputation, and integrity and have sufficient banking and other business experience to indicate that they will manage and direct the affairs of the international banking corporation in a safe, sound, and lawful manner. In the processing of applications, the time limitations under the Administrative Procedure Act shall not apply as to approval or disapproval of the application.

(6) The office may shall not issue a license to an international banking corporation unless:

(a) It is chartered in a jurisdiction in which any bank or trust company having its principal place of business in this state may establish similar facilities or exercise similar powers; or

(b) Federal law permits the appropriate federal regulatory authority to issue a comparable license to the international banking corporation.

(7) The office may not issue a license ~~shall not be issued~~ to an international banking corporation for the purpose of operating:

(a) An international bank agency or an international branch in this state unless the ~~international banking~~ corporation:

1.(a) Holds an unrestricted license to receive deposits from the general public, as authorized for that international banking corporation, in the foreign country under the laws of which it is organized and chartered.

2.(b) Has been authorized by the foreign country's bank regulatory authority to establish the proposed international bank office.

3.(c) Is adequately supervised by the central bank or bank regulatory agency in the foreign country in which it is organized and chartered.

~~(8) A license shall not be issued to an international banking corporation for the purpose of operating~~

(b) An international representative office or an international administrative office in this state unless the ~~international banking~~ corporation:

1.(a) Has been authorized by the foreign country's bank regulatory authority to establish the proposed international bank office, ~~and~~

2.(b) Is adequately supervised by the central bank or bank regulatory agency in the foreign country in which it is organized and chartered.

(c) A trust representative office in this state unless the corporation:

1. Holds an unrestricted license to conduct trust business in the foreign country under the laws of which it is organized and chartered.

2. Has been authorized by the foreign country’s trust business regulatory authority to establish the proposed international trust representative office.

3. Is adequately supervised by the central bank or trust regulatory agency in the foreign country in which it is organized and chartered.

4. 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.

(8)(9) The commission shall establish, by rule, the general principles which shall determine the adequacy of supervision of an international banking corporation’s foreign establishments. These principles shall be 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. This subsection shall not require examination by the home-country regulatory authorities of any office of an international banking corporation in this state. The commission may also establish, by rule, other standards for approval of an application for a license as considered necessary to ensure the safe and sound operations of the international bank or trust representative office in this state.

~~(10) The requirements of subsection (7) shall not apply to any international banking corporation that held a license to operate an international bank agency in this state before July 1, 1992.~~

~~(11) The requirements of subsection (8) shall not apply to any international banking corporation that held a license to operate an international representative office or international administrative office in this state before July 1, 1992.~~

Section 6. Section 663.055, Florida Statutes, is amended to read:

663.055 Capital requirements.—

(1) To qualify for a license under the provisions of this part, an international banking corporation must have net total capital accounts, calculated according to United States generally accepted accounting principles and practices, of at least:

(a) ~~Forty Twenty-five~~ million dollars for the establishment of an international bank agency, an international branch, or an international administrative office; or

(b) ~~Twenty Ten~~ million dollars for the establishment of an international representative office or international trust representative office.

(2) Notwithstanding the provisions of paragraph (1)(a), the office may approve an application for a license to establish an international bank agency, an international branch, or an international administrative office if:

(a) The international banking corporation is licensed to receive deposits from the general public in the country where it is organized and licensed and to engage in such other activities as are usual in connection with the business of banking in such country;

(b) The office receives a certificate that is issued by the banking or supervisory authority of the country in which the international banking corporation is organized and licensed and states that the international banking corporation is duly organized and licensed and lawfully existing in good standing, and is empowered to conduct a banking business; and

(c) 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. However, in no event shall the office approve an application under this subsection for any international banking corporation with capital accounts of less than ~~\$20~~ \$10 million.

(3) The office may specify such other conditions as it determines appropriate, considering the public interest, the need to maintain a safe, sound, and competitive banking system, and the preservation of an environment conducive to the conduct of an international banking business in this state. In translating the capital accounts of an international banking corporation, the office may consider monetary corrections accounts that reflect results consistent with the requirements of generally accepted accounting principles in the United States.

(4) For the purpose of this part, the capital accounts of an international banking corporation shall be determined in accordance with rules adopted by the commission. In adopting such rules, the commission shall consider similar rules adopted by bank regulatory agencies in the United States and the need to provide reasonably consistent regulatory requirements for international banking corporations which will maintain the safe and sound condition of international banking corporations doing business in this state.

Section 7. Subsections (1), (2), and (3) of section 663.06, Florida Statutes, are amended to read:

663.06 Licenses; permissible activities.—

(1) An international banking corporation licensed to operate an office in this state may engage in the business authorized by this part at the office specified in such license for an indefinite period. An international banking corporation may operate more than one licensed office international bank agency, international branch, or international representative office, each at a different place of business, provided that each office shall be separately licensed. No license to operate an international bank office is transferable or assignable. However, the location of a licensed an international bank office may be changed after notification of the office. Every such license shall be, at all times, conspicuously displayed in the place of business specified therein.

(2) An international banking corporation which proposes to terminate the operations of a licensed office in this state its international bank agency, international branch, international representative office, or international administrative office shall surrender the its license to the office and comply with such procedures as the commission may prescribe by rule.

(3) ~~The An international bank agency, international branch, international representative office, or international administrative office~~ license for any international banking corporation office in this state may be suspended or revoked by the office, with or without examination, upon its determination that the international banking corporation or the licensed office does not meet all requirements for original licensing. Additionally, the office shall revoke the license of any licensed office that the office determines has been inactive for 6 months or longer. The commission may by rule prescribe additional conditions or standards under which the license of an international bank agency, international branch, international representative office, international trust company representative office, or international administrative office may be suspended or revoked.

Section 8. Subsection (3) of section 663.061, Florida Statutes, is amended to read:

663.061 International bank agencies; permissible activities.—

(3) Notwithstanding any provision of this chapter or chapter 658 to the contrary, an international banking corporation licensed under this part to operate an international bank agency may, if authorized by rule of the commission or office order, 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 commission and office shall, when adopting such rules or issuing such orders, consider the public interest and convenience and the need to maintain a safe, sound, and competitive state banking system. Unless otherwise provided by statute, an international bank agency may not exercise any powers that a federal agency is not authorized to exercise.

Section 9. Section 663.062, Florida Statutes, is amended to read:

663.062 International representative offices; permissible activities.—An international representative office may promote or assist the deposit-taking, lending, or other financial or banking activities of an international banking corporation. An international representative office may serve as a liaison in Florida between an international banking corporation and its existing and potential customers. Representatives and employees based at such office may solicit business for the international banking corporation and its subsidiaries and affiliates, 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, but a representative office may not conduct any banking or trust business in this state.

Section 10. Section 663.0625, Florida Statutes, is created to read:

663.0625 International trust company representative offices; permissible activities; requirements.—An international trust company representative office may conduct any nonfiduciary activities that are ancillary to the fiduciary business of its international banking corporation or trust company, but may not act as a fiduciary. Permissible activities include 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 their accounts; serving as a liaison in this state between the international banking corporation or trust company and its existing or potential customers; and engaging in any other activities approved by the office or under rules of the commission. Representatives and employees at such office may not act as a fiduciary, including, but not limited to, accepting the fiduciary appointment, executing the fiduciary documents that create the fiduciary relationship, or making discretionary decisions regarding the investment or distribution of fiduciary accounts.

Section 11. Section 663.064, Florida Statutes, is amended to read:

663.064 International branches; permissible activities; requirements.—An international banking corporation that meets the requirements of ss. ~~658.26~~, 663.04, and 663.05 may, with the approval of the office, establish one or more branches in this state ~~to the extent permitted to banks from other states~~. An international branch shall have the same rights and privileges as a federally licensed international branch. The operations of an international branch shall be conducted pursuant to requirements determined by the office as necessary to ensure compliance with the provisions of the financial institutions codes, including requirements for the maintenance of accounts and records separate from those of the international banking corporation of which it is a branch. ~~An application to establish an international branch shall be made pursuant to s. 658.26.~~

Section 12. Subsection (3) of section 663.065, Florida Statutes, is amended to read:

663.065 State-chartered investment companies; formation; permissible activities; restrictions.—

(3) An application for approval to organize a state-chartered investment company shall be subject to the provisions of chapter ~~658~~ 655 relating to the organization of de novo financial institutions and to rules adopted by the commission as necessary to ensure that the proposed state-chartered investment company will be operated in a safe and lawful manner, except that the applicant is not required to become a member of the Federal Reserve System or the Federal Deposit Insurance Corporation. State-chartered investment companies shall be subject to the examination and supervision of the office and are subject to the financial institutions codes to the same extent as international banking corporations pursuant to s. 663.02.

Section 13. Section 663.11, Florida Statutes, is amended to read:

663.11 Termination of international banking corporation's charter or authority Dissolution.—~~In the event~~ An international banking corporation ~~that which~~ is licensed to maintain an office in this state may not continue to conduct its licensed business in this state if the international banking corporation is dissolved, or its authority or existence is otherwise terminated or canceled in the jurisdiction of its incorporation, is in bankruptcy, conservatorship, receivership, liquidation, or similar status under the laws of any country, or is operating under the direct control of the government or the regulatory or supervisory authority of the jurisdiction of its incorporation through government intervention or any other extraordinary actions. A certificate of the official who is responsible for records of banking corporations of the jurisdiction of incorporation of such international banking corporation, attesting to the occurrence of any such event, or a certified copy of an order or decree of a court of such jurisdiction, directing the dissolution of such international banking corporation, the termination of its existence, or the cancellation of its authority, or declaring its status in bankruptcy, conservatorship, receivership, liquidation, or similar proceedings, or other reliable documentation that the international banking corporation is operating under the direct control of its government or a regulatory or supervisory authority, shall be delivered by the international banking corporation or its surviving officers and directors to the office. The filing of the certificate, order, documentation, or decree shall have the same effect as the revocation of the license of such international banking corporation as provided in s. 663.06.

Section 14. Paragraph (e) of subsection (1) and subsection (2) of section 663.12, Florida Statutes, are amended to read:

663.12 Fees; assessments; fines.—

(1) Each application for a license under the provisions of this part shall be accompanied by a nonrefundable filing fee payable to the office in the following amount:

(e) ~~Five~~ Two thousand dollars annually for establishing operating an international trust company representative office ~~or international administrative office.~~

(2) Each international bank agency, international branch, and state-chartered investment company shall pay to the office a semiannual assessment, payable on or before January 31 and July 31 of each year, in an amount determined by rule by the commission and calculated in a manner so as to recover the costs of the office incurred in connection with the supervision of international banking activities licensed under this part. These rules shall provide for uniform rates of assessment for all licenses of the same type, shall provide for declining rates of assessment in relation to the total assets of the licensee held in the state, but shall not, in any event, provide for rates of assessment which exceed the rate applicable to state banks pursuant to s. 658.73, unless the rate of assessment would result in a semiannual assessment of less than \$1,000. For the purposes of this subsection, the total assets of an international bank agency, international branch, or state-chartered investment company shall include amounts due the agency or branch or state investment company from other offices, branches, or subsidiaries of the international banking corporations or other corporations of which the agency, branch, or state-chartered investment company is a part or from entities related to that international banking corporation. Each international representative office, international administrative office, or international trust company representative office shall pay to the office an annual assessment in the amount of \$2,000, payable on or before January 31 of each year.

Section 15. Subsections (1), (4), (5), (11), and (12) of section 663.16, Florida Statutes, are amended to read:

663.16 Definitions; ss. 663.17-663.181.—As used in ss. 663.17-663.181, the term:

(1) “Business and property in this state” includes, but is not limited to, all property of the international banking corporation, real, personal, or mixed, whether tangible or intangible:

(a) Wherever situated, constituting a part of the business of the Florida licensed office agency and appearing on its books as such.

(b) Situated within this state whether or not constituting part of the business of the Florida licensed office agency or so appearing on its books.

(4) Except where the context otherwise requires, “international banking corporation” or “corporation” has the same meaning as that provided in s. 663.01 and includes means any licensed office of an international banking corporation ~~bank agency or branch~~ operating in this state.

(5) “Officer” means the agent or other person in charge of an international banking corporation licensed office.

(11) “Licensed office Branch or agency net obligations” means, with respect to a qualified financial contract, the amount, if any, that would have been owed by the international banking corporation to a party after netting only those transactions entered into by the licensed office branch or agency and such party under such qualified financial contract.

(12) “Licensed office Branch or agency net payments entitlement” means, with respect to a qualified financial contract, the amount, if any, that would have been owed by a party to the international banking corporation after netting only those transactions entered into by the licensed office branch or agency and such party under such qualified financial contract.

Section 16. Section 663.17, Florida Statutes, is amended to read:

663.17 Liquidation; possession of business and property; inventory of assets; wages; depositing collected assets; appointing agents; appointment of judges.—

(1) The office may, at its discretion, take possession of the business and property in this state of any international banking corporation that has been licensed to operate in this state upon finding that the corporation, or any of the corporation’s licensed offices international bank agency operating in this state has violated any law, has neglected or refused to comply with the terms of a duly issued order of the office, is insolvent or imminently insolvent, or is transacting business in an unsound, unsafe, or unauthorized manner such that the corporation is threatened with imminent insolvency, or that the corporation is dissolved, its authority or existence is otherwise terminated or canceled in the jurisdiction of its incorporation, it is in bankruptcy, conservatorship, receivership, liquidation, or similar status under the laws of any country, or it is operating under the direct control of the government or the regulatory or supervisory authority of the jurisdiction of its incorporation through government intervention or any other extraordinary actions in liquidation at its domicile or elsewhere. Title to such business and property shall vest by operation of law in the office upon taking possession. Thereafter, the office shall liquidate or otherwise deal with such business and property in accordance with the provisions of this part, chapter 658, and any other provision relating to the liquidation of banking corporations. The office may deal with such business and property and prosecute and defend any and all actions relating to the liquidation. Only the claims of creditors of the international banking corporation arising out of transactions those creditors had with the international banking corporation, or any of the corporation’s licensed offices international bank agency or agencies located in this state, shall be accepted by the office for payment out of the business and property which it has taken possession of in this state. Acceptance or rejection of such claims by the office shall not prejudice any creditor’s rights to otherwise share in other assets of the international banking corporation. The following claims shall not be accepted by the office for payment out of the business and property in the office’s possession in this state:

(a) Claims which would not represent an enforceable legal obligation against an international banking corporation, or any of the corporation's licensed offices located in this state, if such office was bank agency if such agency were a separate and independent legal entity.

(b) Amounts due and other liabilities to other offices, agencies, and branches of and affiliates of such international banking corporation.

(2) Whenever all accepted claims, together with interest on such claims, and the expenses of the liquidation have been paid in full or properly provided for, the office, upon the order of a court of competent jurisdiction, shall transfer the remaining assets to the principal office of such international banking corporation, or to the duly appointed domiciliary liquidator or receiver of such corporation. Dividends and other amounts that remain unclaimed or unpaid and are in the possession of the office for 6 months after such transfer shall be deposited by the office as provided by law.

(3) When the office takes possession of the property and business of any international banking corporation, including any of the corporation's licensed offices located in this state, the office shall:

(a) Give notice of such fact to all corporations, unincorporated associations, partnerships, governmental entities, and other entities and individuals known by the office to hold any assets of such corporation. No corporation, unincorporated association, partnership, governmental entity, or other entity or individual having notice or knowledge that the office has taken possession of such property and business of a international banking corporation shall have a lien or charge for any payment, advance, or clearance thereafter made against any of the assets of such corporation for liability thereafter incurred.

(b) Upon written demand of the office, any corporation, unincorporated association, partnership, governmental entity, or other entity or individual holding assets of such corporation shall deliver such assets to the office and shall be discharged from liability with respect to any claim upon such assets; provided, such demand shall not affect the right of a secured creditor with a perfected security interest, or other valid lien or security interest enforceable against third parties, to retain collateral, including any right of such secured creditor under any security agreement related to a qualified financial contract to retain collateral and apply such collateral in accordance with the provisions of the financial institutions codes.

(c) Nothing in paragraphs (a) and (b) shall affect any right of setoff permitted under applicable law; provided, in connection with the liquidation of a licensed office an international bank agency of any other international banking corporation pursuant to this part, no entity or individual may set off the business and property in this state of an international banking corporation being liquidated under this subsection, against the liabilities of such corporation other than those that arise out of transactions engaged in by such entity or individual with such licensed office international bank

agency. For purposes of this paragraph, liabilities shall be deemed to include, in the case of qualified financial contracts, the lesser of the two amounts calculated with respect to any such qualified financial contract pursuant to s. 663.172(3), and this paragraph shall not be deemed to authorize setoff except as otherwise permissible under applicable law.

(4) Any licensed office of an international banking corporation of which the office has taken possession or which is operating under restrictions imposed by duly constituted authority may be permitted to resume business subject to the office's discretion and any conditions that the office may impose.

(5) After the office takes possession of and determines to liquidate the property and business of any licensed office of an international banking corporation, the office shall make an inventory, in duplicate, of the assets of such licensed office corporation. One copy of such inventory shall be filed with the office and one copy shall be filed with a court of competent jurisdiction in the county in which the licensed office principal office of such corporation is located.

(6) Notwithstanding s. 658.84, all wages actually owing to the employees of an international banking corporation for services rendered within 3 months prior to the date possession was taken by the office, and not exceeding \$10,000 ~~\$2,000~~ to each employee, shall be paid prior to the payment of any other debt or claim, and, in the discretion of the office, may be paid as soon as practicable after taking possession, except that at all times the office shall reserve such funds as will, in the office's opinion, be sufficient for the expenses of administration.

(7) The office is authorized, upon taking possession of any licensed office of an international banking corporation, to liquidate the affairs of such licensed office corporation and to do all acts and to make such expenditures as in the office's judgment are necessary to conserve the assets and business of the corporation. The office shall proceed to collect the debts due to the corporation. The office may, upon an order of a court of competent jurisdiction, sell, assign, compromise, or otherwise dispose of all bad or doubtful debts held by, and compromise claims against, such corporation, other than deposit claims, provided, whenever the principal amount of any such debt or claim owed by or owing to such corporation does not exceed \$50,000, the office may sell, assign, compromise, or otherwise dispose of such debt or claim upon such terms as the office may deem to be in the best interests of such corporation wherever situated. When the real property of an international banking corporation, to be disposed of pursuant to this subsection, is located in a county in this state other than a county in which an application to the court for leave to dispose is made, the office shall file a certified copy of the order of such court authorizing such disposal in the office of the clerk of the county in which such real property is located.

(8) Moneys collected by the office in liquidating a licensed office of an international banking corporation shall be:

(a) Deposited on demand, time or otherwise, in one or more banks, associations, or trust companies organized under the laws of this state and, in the case of insolvency or voluntary or involuntary liquidation of the depositary, such deposits shall be entitled to priority of payment equally with any other priority given under the financial institutions codes;

(b) Deposited on demand, time or otherwise, in one or more national banks with a principal office located in this state and with total assets exceeding \$1 billion; or

(c) Invested in obligations of the United States, or obligation for which the full faith and credit of the United States is pledged to provide for the payment of interest and principal.

(9) The office may appoint one or more persons as agent or agents to assist in the liquidation of the business and affairs of any international banking corporation, ~~or any of the corporation's licensed offices located in this state,~~ in the office's possession. The office shall ~~serve a copy of the file~~ a certificate of such appointment ~~to the international banking corporation in the headquarters of the office~~ and shall file a certified copy of such certificate with a court of competent jurisdiction in the county in which the ~~licensed principal~~ office of such corporation is located in this state. The office may employ such counsel and expert assistants under such titles that the office shall assign to them, and may retain such officers or employees of such corporation as the office deems necessary in the liquidation and distribution of the corporation's assets. The office may require such security as it may deem proper from the agents and assistants appointed pursuant to the provisions of this subsection.

(10) When the office has taken possession of and is liquidating the business and property in this state of any international banking corporation under the provisions of this part, the office shall be entitled to the appointment of a single judge to supervise the liquidation in the judicial circuit in which the ~~licensed principal~~ office of such corporation is located. Such judge shall have the power to order expedited or simplified procedures or order a reference whenever necessary to resolve a matter in such liquidation.

(11) The compensation of agents and any other employees appointed by the office to assist in the liquidation of an international ~~banking corporation,~~ ~~or any of the corporation's licensed offices located in this state~~ bank agency, the distribution of its assets, or the expenses of supervision, shall be paid out of the assets of the ~~corporation~~ agency in the hands of the office. Expenses of liquidation and approved claims for fees and assessments due the office shall be given first priority among unsecured creditors.

Section 17. Section 663.171, Florida Statutes, is amended to read:

663.171 Liquidation; repudiation of contracts.—

(1) Except as otherwise provided in this section, when the office has taken possession of the business and property in this state of an international banking corporation, or any of the corporation's licensed offices located in this state, the office may assume or repudiate any contract, including an unexpired lease, of the corporation:

(a) To which such corporation is a party.

(b) The performance of which the office, in its discretion, determines to be burdensome.

(c) The repudiation of which the office, in its discretion, determines will promote the orderly administration of the corporation's affairs.

(2) After the expiration of 90 days after the date the office takes possession of the business and property of an international banking corporation, or any of the corporation's licensed offices located in this state, any party to a contract with such corporation may demand in writing that the office assume or repudiate such contract. If the office has not assumed or repudiated the contract within 15 calendar days after the date of receipt of such demand, the affected party may bring an action in a court of competent jurisdiction in the county in which the licensed principal office of the corporation is located to obtain an order requiring the office to assume or repudiate the contract. If the office has not assumed or repudiated the contract by at least 1 month before the last date for filing claims against the corporation, such contract shall be deemed repudiated.

(3) Notwithstanding subsection (2), with respect to an unexpired lease of the corporation for rental of real property under which the corporation was a lessee, if the office remains in possession of the leasehold, the office shall not be required to assume or repudiate such lease and may continue in possession of such leasehold for the remainder of the term of the lease in accordance with the terms of the lease; provided, if the office later repudiates the lease before the end of the lease term, any amounts that may be due the lessor with respect to such lease shall be calculated as provided by law.

(4) Notwithstanding any other provision of this section relating to liquidating an international banking corporation, or any of the corporation's licensed offices located in this state, the office shall not assume or repudiate any qualified financial contract that the international banking corporation ~~bank agency~~ entered into which is subject to a multibranch or multiagency netting agreement or arrangement that provides for netting present or future payment obligations or payment entitlements, including termination or closeout values relating to the obligations or entitlements, among the parties to the contract and agreement or arrangement and the office may, but shall not be required to, assume or repudiate any other qualified financial contract an international banking corporation ~~bank agency~~ entered into; provided, upon the repudiation of any qualified financial contract or the termination or liquidation of any qualified financial contract in accordance

with its terms, the liability of the office under such qualified financial contract shall be determined in accordance with s. 663.172.

Section 18. Section 663.172, Florida Statutes, is amended to read:

663.172 Liability on repudiation or termination of contracts.—

(1) Except as otherwise provided in this section, upon the repudiation or termination of any contract pursuant to s. 663.171, the liability of the office shall be limited to the actual direct compensatory damages of the parties to the contract, determined as of the date the office took possession of the business and property of the international banking corporation or the corporation's licensed offices located in this state. The office shall not be liable for any future wages other than severance payments, to the extent such payments are reasonable standards, or for payments for future service, costs of cover, or any consequential, punitive, or exemplary damages, damages for lost profits or lost opportunity, or damages for pain and suffering.

(2) Except as otherwise provided in this section, the liability of the office, upon the repudiation of any qualified financial contract or in connection with the termination or liquidation of any qualified financial contract in accordance with the terms of such contract, shall be limited as provided in subsection (1), except compensatory damages shall be deemed to include normal and reasonable costs of cover or other reasonable measures of damages used among participants in the market for qualified financial contract claims, calculated as of the date of repudiation or the date of the termination of such qualified financial contract in accordance with the terms of the contract. Upon the repudiation of any qualified financial contract or in connection with the termination or liquidation of any qualified financial contract in accordance with the terms of such contract, the office shall be entitled to damages and such damages shall be paid to the office upon written demand from the office to the other party or parties to the contract.

(3) In the case of the liquidation of the business and property of an international banking corporation, or any of the corporation's licensed offices located in this state, ~~bank agency of an international banking corporation~~ by the office, with respect to qualified financial contracts subject to netting agreements or arrangements that provide for netting present or future payment obligations or payment entitlements, including termination or closeout values relating to the obligations or entitlements, among the parties to the contracts and agreements or arrangements, the liability of the office to any party to any such qualified financial contract upon the repudiation or in any connection with the termination or liquidation of such qualified financial contract in accordance with the terms of such contract shall be limited to the lesser of:

(a) The global net payment obligation; or

(b) The licensed office ~~branch-to-agency or agency-to-agency~~ net payment obligation.

(4) The liability of the office to a party under this section shall be reduced by any amount otherwise paid or received by the party with respect to the global net payment obligation pursuant to such qualified financial contract which, if added to the liability of the office under subsection (1), would exceed the global net payment obligation. The liability of the office under this section to a party to a qualified financial contract also shall be reduced by the fair market value or the amount of any proceeds of collateral that secures and has been applied to satisfy the obligations of the international banking corporation to the party pursuant to such qualified financial contract. If netting under the applicable netting agreement or arrangement results in a licensed office ~~branch-to-agency~~ net payment entitlement, notwithstanding any provision in any such contract that purports to effect a forfeiture of such entitlement, the office may make written demand for and shall be entitled to receive from the party to such contract an amount not to exceed the lesser of the global net payment entitlement or the licensed office ~~branch-to-agency~~ net payment entitlement.

(5) The liability of a party under this section shall be reduced by any amount otherwise paid to or received by the office or any other liquidator or receiver of the international banking corporation or licensed office with respect to the global net payment entitlement pursuant to such qualified financial contract which, if added to the liability of the party under this section, would exceed the global net payments entitlement. The liability of a party under this section to the office pursuant to such qualified financial contract also shall be reduced by the fair market value of the amount of any proceeds of the collateral that secures and has been applied to satisfy the obligations of the party to the international banking corporation pursuant to such qualified financial contract.

Section 19. This act shall take effect July 1, 2010.

Approved by the Governor April 15, 2010.

Filed in Office Secretary of State April 15, 2010.