

CHAPTER 2016-192

Committee Substitute for Senate Bill No. 1106

An act relating to international trust entities; amending s. 663.01, F.S.; defining the term “international trust entity”; creating s. 663.041, F.S.; providing for a moratorium for a specified timeframe on enforcement by the Office of Financial Regulation of certain licensure requirements for certain organizations and entities providing services to international trust companies; providing conditions to apply the moratorium to specified persons of the organization or entity; providing for construction; specifying requirements for a letter to the office to request qualification as a party to the moratorium; requiring the office to confirm specified findings when processing a request; specifying circumstances for establishing adequate supervision; providing procedures and timeframes for the office’s processing of requests and the office’s requests for additional information; providing timeframes for the office to confirm with the organization or entity whether it has been confirmed as a party to the moratorium; requiring the office to issue a notice of denial if it determines that an organization or entity is not a party to the moratorium; providing that a denied organization or entity may request a certain hearing to contest the denial; providing for construction if certain timeframes are not met; authorizing the office to conduct an onsite visitation of an organization or entity for a specified purpose until a specified time; requiring the office to issue an immediate final order disqualifying an organization or entity if it finds that such organization or entity made a material false statement in its request; providing for construction; providing for future repeal; providing an effective date.

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

Section 1. Present subsections (10) and (11) of section 663.01, Florida Statutes, are renumbered as subsections (11) and (12), respectively, and a new subsection (10) is added to that section, to read:

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

(10) “International trust entity” means an international trust company, an international business, an international business organization, or an affiliated or subsidiary entity that is licensed, chartered, or similarly permitted to conduct trust business in a foreign country or countries under the laws of which it is organized and supervised.

Section 2. Section 663.041, Florida Statutes, is created to read:

663.041 Moratorium on the office’s enforcement of licensing requirements for an international trust entity or related entities.—

(1) Until June 30, 2017, the office shall delay the enforcement of the requirement under s. 663.04(4) relating to licensure of an organization or entity in this state providing services to an international trust entity that engages in the activities described in s. 663.0625. This delay applies to any person who manages or controls or is employed by such organization or entity that:

(a) Has been organized to conduct business in this state before October 1, 2013;

(b) Has not been fined or sanctioned as a result of any complaint to the office or to any other state or federal regulatory agency;

(c) Has not been convicted of a felony or ordered to pay a fine or penalty in any proceeding initiated by any federal, state, foreign, or local law enforcement agency or international agency within the 10 years before the effective date of this section;

(d) Has not had any of its directors, executive officers, principal shareholders, managers, or employees arrested for, charged with, convicted of, or plead guilty or nolo contendere to, regardless of adjudication, any offense that is punishable by imprisonment for 1 year or more, or to any offense that involves money laundering, currency transaction reporting, tax evasion, facilitating or furthering terrorism, fraud, or that is otherwise related to the operation of a financial institution, within the 10 years before the effective date of this section;

(e) Does not provide services for any international trust entity that is in bankruptcy, conservatorship, receivership, liquidation, or a similar status under the laws of any country;

(f) Does not provide banking services or promote or sell investments or accept custody of assets;

(g) Does not act as a fiduciary, which includes, but is 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; and

(h) Conducts those activities permissible for an international trust company representative office as described in s. 663.0625.

(2) This moratorium does not prevent the office from otherwise enforcing the financial institutions codes.

(3) An organization or entity that requests to qualify for this moratorium shall notify the office in writing by letter on official letterhead via United States Postal Service or commercial mail delivery service by July 1, 2016, and shall provide the following:

(a) Written proof that it has been organized to do business in this state before October 1, 2013;

(b) The name or names under which it conducts business in this state;

(c) The addresses of its locations from which it conducts business;

(d) A detailed list and description of the activities being conducted at the locations from which it conducts business. The detailed description must include the types of consumers that utilize those activities and an explanation of how those activities serve the business purpose of an international trust entity.

(e) As to each international trust entity the organization or entity provides services for in this state, the following:

1. The name of the international trust entity;

2. A list of the current officers and directors of the international trust entity;

3. The country or countries where the international trust entity is organized;

4. The supervisory or regulatory authority, or equivalent or other similarly sanctioned body, organization, governmental entity, or recognized authority that has licensing, chartering, oversight, or similar responsibilities over the international trust entity;

5. Proof that the international trust entity has been authorized by a charter, license, or similar authorization by operation of law in its home country jurisdiction to engage in trust business;

6. Proof that the international trust entity lawfully exists and is in good standing under the laws of the jurisdiction where it is chartered, licensed, organized, or lawfully existing. The organization or entity shall submit a certificate of good standing or equivalent document issued by the supervisory or regulatory authority, or equivalent or other similarly sanctioned body, organization, governmental entity, or recognized authority that has similar responsibilities, of the country where the international trust entity is licensed, chartered, or has similar authorization by operation of law and is duly organized and lawfully exists;

7. A statement that the international trust entity is not in bankruptcy, conservatorship, receivership, liquidation, or in a similar status under the laws of any country; and

8. Proof that the international trust entity 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, and confirmation that it has not been in such a

status or under such control at any time within the 7 years before the date of notification to the office.

(f) A declaration under penalty of perjury signed by an executive officer or managing member of the organization or entity, declaring that the information provided to the office is true and correct to the best of his or her knowledge.

(4) In processing the request to qualify for the moratorium, the office shall confirm the following:

(a) That the international trust entity is adequately supervised by the appropriate regulatory authority, or equivalent or other similarly sanctioned body, organization, governmental entity, or recognized authority that has similar responsibilities in the foreign country where it is organized, chartered, or licensed, or has similar authorization by operation of law; and

(b) That the jurisdiction of the international trust entity or its offices, subsidiaries, or any affiliates that are directly involved in or facilitate the financial services functions, banking, or fiduciary activities of the international trust entity, 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.

(5) For purposes of establishing adequate supervision under paragraph (4)(a):

(a) An international trust entity with foreign establishments is considered adequately supervised if it is subject to consolidated supervision. As used in this paragraph, "consolidated supervision" means supervision that 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 (home country supervisor) to evaluate:

1. The safety and soundness of the international trust entity's operations located within the home country supervisor's primary jurisdiction; and

2. The safety and soundness of the operations performed by the international trust entity's offices, subsidiaries, or any affiliates that are directly involved in or facilitate the financial services functions, banking, or fiduciary activities of the international trust entity, wherever located.

(b) An international trust entity with no foreign establishments is considered adequately supervised if the home country supervisor can evaluate the safety and soundness of the international trust entity's operations through its offices or subsidiaries located in the home country. For purposes of this paragraph, the home country supervisor is deemed to be able to evaluate the safety and soundness of the international trust entity if the home country supervisor has the authority to collect and maintain information on the following regulatory components:

1. The technical competence and administrative ability of the management of the international trust entity;

2. The adequacy of the operational, accounting, and internal control systems of the international trust entity, particularly the international trust entity's ability to monitor and supervise the activities of its offices or subsidiaries wherever located;

3. The adequacy of asset management and asset administration policies and procedures;

4. The capital adequacy of the international trust entity, its offices or subsidiaries as specified by any capital adequacy guidelines in the home country;

5. The earnings of the international trust entity; and

6. The external and internal auditors' reports as well as any management comment letters or any documented corrective action by management.

(c) As used in paragraphs (4)(a), (5)(a), and (5)(b), adequate supervision does not require supervision of companies that control the international trust entity or supervision of companies under common control with the international trust entity but that are not in the international trust entity's chain of control. However, in cases where a holding company is the only controlling element in a trust business group, holding company supervision by a home country supervisor shall be required when it is needed to ensure consolidated supervision of all trust business entities in the group.

(d) If a holding company is not supervised, adequate supervision is deemed to exist if the home country supervisor regulates transactions between the international trust entity and controlling persons or entities under common control.

(e) An international trust entity and its offices or subsidiaries is deemed to be adequately supervised if it is subject to comprehensive supervision. For purposes of this paragraph, comprehensive supervision:

1. Means supervision that ensures that the supervisory processes and procedures are designed to inform the home country supervisor about the international trust entity's financial condition, including capital position; asset management and asset administration; internal controls and audit; compliance with existing laws and regulations; and capability of management.

2. Does not require the home country supervisor to conduct onsite examinations of the international trust entity or its offices or subsidiaries. However, at a minimum, it requires that the home country supervisor:

a. Is able to determine that the international trust entity and its offices and subsidiaries have adequate procedures for monitoring and controlling its domestic and foreign operations;

b. Is authorized to obtain information, by examination, audits or by other means, on the domestic and foreign operations of the international trust entity, including its offices and subsidiaries, and the authority to demand financial reports which permit analysis of the consolidated condition of the international trust entity;

c. Is able to obtain information on the dealings and relationships between the international trust entity and its offices and subsidiaries, wherever located; and

d. Is authorized by the home country's laws to ensure the safety and soundness of the international trust entity and its offices and subsidiaries.

3. Includes the ability and willingness of the home country supervisor to provide the office early notice of any weaknesses being experienced by the international trust entities, including its offices or subsidiaries wherever located.

4. Includes the ability of the home country supervisor to provide the office assurance of cooperation by both the international trust entity and the home country supervisor.

(6) The office shall process requests made for inclusion under the moratorium as follows:

(a) Upon receipt of any request, the office shall review the information contained therein, and request any additional information to complete the request to qualify for the moratorium within 30 days after receipt. The organization or entity shall provide the requested additional information within 45 days after the receipt of the notice from the office. If the office does not make such request within 30 days after receipt, the request to qualify for the moratorium is deemed complete as of the date it was received.

(b) Within 20 days after receipt of any additional information requested, the office shall deem the request to qualify for the moratorium complete or provide notification to the organization or entity that the information provided does not satisfy the office's request or requests.

(c) Within 90 days after receipt of a completed request to qualify for the moratorium, the office shall confirm with the organization or entity that they are or are not a party to the moratorium.

1. If the office determines that an organization or entity is not a party to the moratorium, the office shall issue a notice of denial informing the organization or entity of its determination. An organization or entity receiving a notice of denial may request a hearing under chapter 120 to contest the denial.

2. If the office fails to notify the organization or entity within such time whether or not the organization or entity is a party to the moratorium, then the organization or entity is considered a party to the moratorium by operation of law.

(d) During the period of the moratorium, the office may conduct an onsite visitation of an organization or entity to confirm information provided to the office in deeming the organization or entity qualified for the moratorium. If the office finds that the organization or entity made a material false statement in its request to qualify for the moratorium, the office shall issue an immediate final order suspending the organization’s or entity’s qualification and disqualifying the organization or entity from participating in the moratorium. A material false statement made in the request to qualify for the moratorium constitutes an immediate and serious danger to the public health, safety, and welfare.

Section 3. Section 663.041, Florida Statutes, and the amendments to section 663.01, Florida Statutes, made by this act, are repealed on July 1, 2017.

Section 4. This act shall take effect upon becoming a law.

Approved by the Governor April 6, 2016.

Filed in Office Secretary of State April 6, 2016.