

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 Banking and Insurance Committee

BILL: SB 1264

INTRODUCER: Senator Richter

SUBJECT: International Banking Corporations

DATE: February 15, 2010 REVISED: 02/17/10

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Messer	Burgess	BI	Favorable
2.				
3.				
4.				
5.				
6.				

I. Summary:

The Office of Financial Regulation (OFR) is the state agency charged with regulating depository and non-depository financial institutions and financial service companies. This bill will grant the OFR regulatory authority over international trust company representative offices (ITCROs), an entity that the OFR does not currently have the statutory authority to regulate. The provisions of this bill require ITCROs within the state to meet minimum licensure requirements, submit to ongoing safety and soundness requirements, and be subject to the examination and enforcement authority of the OFR. Further, this bill will allow the OFR to consider the solvency of international banks in their home countries when granting or revoking licenses.

The impetus for providing this additional regulatory authority is to prevent future Ponzi schemes resembling the one allegedly executed in recent years by Allen Stanford.¹

This bill substantially amends sections: 655.005, 663.01, 663.02, 663.04, 663.05, 663.055, 663.06, 663.061, 663.062, 663.064, 663.065, 663.11, 663.12, 663.16, 663.17, 663.171, and 663.172 of the Florida Statutes and creates section 663.0625 of the Florida Statutes.

¹ Allen Stanford is currently under investigation for criminally operating an \$8 billion Ponzi scheme that devastated thousands of investors, many of whom were Florida residents.

II. Present Situation:

The Office of Financial Regulation

The Office of Financial Regulation (OFR) is the state agency 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.² To achieve this goal, the Florida Statutes provide the OFR with regulatory authority over the following entities:

- Chapter 655: Financial Institutions generally
- Chapter 657: Credit Unions
- Chapter 658: Banks and Trust Companies
- Chapter 660: Trust Business
- Chapter 663: International Banking
- Chapter 665: Associations
- Chapter 667: Savings Banks

Despite this extensive list of entities regulated by the OFR, the OFR does not currently have regulatory authority over international trust company representative offices (ITCROs). These ITCROs serve as marketing and customer service arms of international trust companies. Only one such company has ever operated in Florida, the Stanford Trust Company Limited (Stanford Trust). The Stanford Trust is currently under investigation for involvement in an \$8 billion Ponzi scheme; this event highlights the need for regulation and oversight of ITCROs by the OFR.

Additionally, the regulatory authority that the OFR does have over international banks with a presence in Florida is inadequate regarding the OFR's ability to consider adverse changes to the international bank in its home country. Current law provides for termination of the license upon the termination of the international bank's charter, dissolution, or liquidation. However, the law is silent as to whether the OFR may consider other extraordinary foreign government actions, such as placing the bank into conservatorship or receivership, bankruptcy, nationalization of the bank, or similar actions, as a basis for the revocation or suspension of the Florida license.

This apparent gap in the current statutory framework was highlighted by Banco Industrial de Venezuela ("BIV"), a Venezuelan bank with operations in Florida. In May 2009, the Venezuelan government took control of BIV in what was essentially a conservatorship or receivership action. Although BIV appears to be insolvent (with liabilities exceeding assets by approximately \$500 million)³ the company still has ongoing operations in Florida. BIV is currently the subject of an administrative action by the OFR for failure to meet the minimum capital requirements required under current law for licensure of its agency office. Strengthening the OFR's power to take action against a licensed office of an international banking corporation that is the subject of government action in its home country will be useful if the OFR is faced in the future with another situation similar to BIV.

² See <http://www.flofr.com/>.

³ See Bandell, Brian, *State wants Venezuelan bank closed*, San Francisco Business Times, January 22, 2010.

International Trust Company Representative Offices (ITCROs)

An international banking corporation can acquire or establish freestanding banks or bank holding companies in the United States; these banks are regulated and supervised as domestic institutions by the OFR. Oftentimes, however, it is more cost effective for international banking corporations to operate their domestic arms through other business models, such as through an international representative office (IRO). An IRO may be established to promote banking activities of an international bank, as well as serve as a liaison in Florida between the international bank and its customers. Representatives and employees based at such offices may solicit business, answer questions for customers, receive applications for credit and other banking services, and transmit documents on behalf of customers; however, a representative office may not conduct any banking business⁴ in this state.⁵ As of January 1, 2010, there were 10 international representative offices licensed with the OFR. The minimum capital requirement to establish an IRO is currently \$10 million.⁶

Florida statute defines “International representative office” as:

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 person whose primary business is to engage in such activities, on behalf of such international banking corporation, from an office located in this state.⁷

This definition does not encompass domestic offices of the affiliates and subsidiaries of an international banking corporation. Currently, only domestic offices of the international banking corporation fall within the purview of the definition. Additionally, this definition fails to encompass representative offices of foreign trusts; nor does ch. 663, F.S. define the term “trust representative office.” Because a foreign trust company may not fall under the definition of an “international banking corporation,” and because representative offices oftentimes do not engage in “banking business” within the state, the current statutory framework in ch. 663, F.S., fails to provide regulatory authority over *trust* representative offices of international trusts, known as ITCROs.

Need for Regulation of International Trust Company Representative Office

International banking corporations seeking to establish international trust company representative offices in Florida are currently unlicensed and therefore are not required to meet the licensure requirements that other financial institutions in the state must meet. These requirements typically include: ongoing safety and soundness requirements, ongoing examination and enforcement authority action by the OFR, compliance with federal and state anti-money laundering and anti-terrorism laws (e.g. filing of currency transaction reports,

⁴ Section 663.01(1), F.S., defines “Banking business” to mean “receiving deposits, paying of checks or other instruments, making loans, or any other activity authorized in this chapter for an international banking corporation or its offices.

⁵ Section 663.062, F.S.

⁶ Section 663.055, F.S.

⁷ Section 663.01(8), F.S.

suspicious activity, and international transportation of currency or monetary instruments) and other common financial regulatory measures.

Only one such company has ever operated in Florida, the Stanford Trust Company Limited (Stanford Trust). The Stanford Trust was operated by Allen Stanford, a former Texas billionaire, who controlled an international group of privately held financial services companies under the umbrella organization "Stanford Financial Group." In 2009, Mr. Stanford was charged by the U.S. Securities and Exchange Commission with operating an \$8 billion Ponzi scheme involving overvalued certificates of deposit (CD) issued by Stanford International Bank, LTD, located in Antigua. These CDs were marketed by representative offices in the U.S., some of which were located in Florida. The scheme is alleged to have involved over 30,000 clients in 136 countries on six continents. Mr. Stanford was subsequently arrested by federal authorities and remains in jail.

Presently, the OFR, along with federal regulatory and law enforcement agencies, has a pending investigation into the operations of Stanford Trust's Miami trust company representative office. The trust company representative office, however, is no longer in operation due to the recent civil and criminal charges that have been brought against Allen Stanford by *federal* authorities. This investigation has revealed that there is a need to provide the OFR with regulatory authority over ITCROs that operate in Florida in order to prevent future schemes similar to those that were allegedly perpetrated by the Stanford Trust.

III. Effect of Proposed Changes:

This bill provides for the regulation of ITCROs. International Banking Corporations desiring to establish international trust company representative offices in this state will be required to meet minimum licensure requirements, ongoing safety and soundness requirements, and will be subject to the examination and enforcement authority of the OFR including state anti-money laundering and anti-terrorism laws.

An international banking corporation will not be approved to operate an ITCRO 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;
- 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.

ITCROs are not banks and will not be authorized to accept deposits or make loans. The activities of a licensed ITCRO will be 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 Commission.

ITCROs will be subject to examination under ch. 655, F.S., and the OFR's general enforcement powers under that chapter, which include, but are not limited to, issuing subpoenas, issuing cease and desist orders, seeking injunctions, etc.

The bill also contains other regulatory provisions that will strengthen Florida's International Banking Laws. These provisions include:

- An increase in capital requirements for all types of international banking licenses issued by the OFR;
- Clarified safety and soundness requirements;
- Clear statutory authority for the OFR to revoke inactive licenses; and
- An extension of the OFR's authority to regulate international banking corporations based on the activities of the corporation's affiliates and subsidiaries.

Section by Section Analysis

Section 1 amends s. 655.005, F.S., to add the term "international trust company representative office" to the definition of "financial institution" and "state financial institution." This change will subject international trust company representative offices to the OFR's subpoena powers, regular examinations, and the general enforcement powers of the OFR under ch. 655, F.S.

Section 2 amends the definitions in s. 663.01, F.S., as follows:

- The definition of "international representative office" is expanded to include the affiliates and subsidiaries of an international banking corporation.
- The definition of an "international banking corporation" is expanded to include "a foreign trust company, or any similar business entity, including a foreign bank with fiduciary powers, that conducts trust business as defined in the financial institutions codes."
- The term "international trust company representative office" is added to the definitions section as is defined as "an office of an international banking corporation or trust company organized and licensed under the laws of a foreign country that is established or maintained in this state for the purpose of engaging in non-fiduciary activities. . . on behalf of such international banking corporation or trust company, from an office located in this state."

Section 3 amends s. 663.02, F.S., to provide that international trust corporations are subject to regulation by the OFR as though they were state trust companies, except where the context

clearly dictates that the law is only intended to apply to domestic companies. This section also clarifies that the laws relating to terrorist financing and anti-money laundering set forth in s. 655.50, F.S., apply to international banking corporations.

Section 4 amends s. 663.04, F.S., to add trust companies and affiliates and subsidiaries of banking corporations to the entities subject the section's requirements; currently, this section only applies to international banking corporations. This section also imposes additional restrictions and requirements on all of the entities subject to this section. This section will now require that an entity subject to the section may not transact business in Florida unless it: has capital accounts no less than the minimum required by s. 663.055, F.S.; is not "insolvent" as defined in s. 655.005(1), F.S.; is not in bankruptcy, conservatorship, or liquidation and has not been in any such status for the 7 years preceding the application date; and is not operating under the control of any government and has not been in such status for the 7 years preceding the application date.

Section 5 amends s. 663.05, F.S., to require disclosure on licensure applications of any offense involving terrorist financing or fraud. Additionally, licensure disclosures are expanded to require disclosure of any felony arrest involving a director, executive officer, or principal shareholder. Currently, only *convictions* or pleas of guilty or nolo contendere must be disclosed. Some concern has been expressed over whether expanding the required disclosures for licensure to include arrests might be too intrusive. The OFR has informed the Professional Staff of the Senate Banking and Insurance Committee that this addition is required because it allows the OFR to look into the details surrounding an arrest and determine whether there is cause for denying licensure. Even though charges may be dismissed, the OFR could determine based on the underlying facts of the arrest that the person is not trustworthy or would not otherwise meet the requirements of the banking code.

This section also removes the requirement that an authenticated copy of the articles of incorporation and the bylaws of an international banking corporation be submitted to the OFR. Current law provides that an applicant must submit a certificate issued by the banking or supervisory authority of the country in which the applicant is chartered stating that the applicant is duly organized, licensed, and in good standing. The OFR has informed the Professional Staff of the Senate Banking and Insurance Committee that the latter documentation alone is sufficient to determine whether the applicant is duly organized, licensed, and in good standing.

The bill sets forth licensure requirements for international banking corporations that seek to operate ITCROs in Florida. An international banking corporation is not eligible for licensure of such office 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; and
- Meets all requirements under the Financial Institutions Codes for the operation of a trust company or trust department as if it were a state-chartered trust company or bank authorized to exercise fiduciary powers.

Section 6 amends s. 663.055, F.S., raising and establishing capital requirements for licensure in the state; the capital requirements in this section are as follows:

- Capital requirements for the establishment of an international bank agency, an international branch, or an international administrative office are raised from the current \$25 million to \$40 million.⁸
- Capital requirements for the establishment of an international representative office are raised from the current \$10 million to \$20 million.
- The bill sets a new capital requirement for the establishment of an "international trust company representative office" at \$20 million. Because this is an entity that is not currently addressed in statute, no capital requirement currently exists.

This section also creates a requirement that capital requirements must be calculated in terms of net value through applying the Generally Accepted Accounting Principles.

Section 7 amends s. 663.06, F.S., to require that the OFR revoke the license of any licensed office that the OFR determines has been inactive for six months or more.

Section 8 amends s. 663.061, F.S., to provide the OFR the authority to allow an international banking corporation to make any loan or investment or exercise any power which it could exercise if it were operating in this state as a federal agency under federal law. This section also requires that the OFR consider certain public policy concerns when exercising this authority, including the need for a safe state banking system.

Section 9 amends s. 663.062, F.S., to add "trust business" to the list of prohibited conduct that an international representative office may engage in within the state.

Section 10 creates s. 663.0625, F.S. This new section provides that an ITCRO may conduct non-fiduciary activities that are ancillary to the fiduciary business of its international banking corporation or trust company but may not act as a fiduciary. Further, the section sets forth the activities and conduct that ITCROs are permitted to engage in. Permissible activities include:

- Contacting existing or potential customers in order to advertise, market, and solicit fiduciary business on behalf of an international banking corporation or trust company;
- Answering questions, and providing information about matters related to customers' 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 office or rules of the commission.

This section prohibits representatives and employees at ITCROs from acting as a fiduciary, which encompasses, but is not limited to, accepting a fiduciary appointment, executing fiduciary

⁸ Section 663.055(2), F.S., provides an alternative from the above requirement if other specified conditions are met.

documents that create a fiduciary relationship, and making discretionary decisions regarding the investment or distribution of fiduciary accounts.

Section 11 amends s. 663.064, F.S., to change the conditions necessary for an international banking corporation to establish a branch in Florida. Currently, an international banking corporation may establish one or more branches in this state subject to the condition that it is only "to the extent permitted to banks from other states." This section of the bill removes that condition. This section also removes the requirement that s. 658.26, F.S., governs when making an application to establish an international branch.

Section 12 makes a technical amendment to s. 663.065, F.S., to correct a cross reference.

Section 13 amends s. 663.11, F.S., to provide that an international banking corporation may not conduct licensed business in this state if the corporation 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, regulatory, or supervisory authority of the jurisdiction of its incorporation through government intervention or any other extraordinary actions.

Section 14 amends s. 663.12, F.S., to provide that the fee for establishing an "international trust company representative office" is \$5,000 and the annual assessment is \$2,000.

Section 15 amends s. 663.16, F.S., to make technical changes by providing clarification and conforming language changes.

Section 16 amends s. 663.17, F.S., which grants OFR the power to take control of certain entities that are in liquidation. This section clarifies and expands the application of s. 663.17, F.S., to all licensed offices of an international banking corporation. Currently, the section on its face applies only to "international bank agencies." This creates a situation where OFR is powerless to take possession of a domestic office of an international banking corporation that is in liquidation if that domestic office is licensed as a representative office, administrative office, international branch, or any license other than an "international bank agency."⁹

This section also adds language to clarify when the OFR may take possession of the business and property of an international banking corporation. Currently, the OFR may take possession of the business and property of an international banking corporation when the corporation is "in liquidation."¹⁰ This clarification more specifically defines what the phrase "in liquidation" means with respect to this section.

Section 17 amends s. 663.171, F.S., to make technical changes by providing clarification and conforming language changes.

Section 18 amends s. 663.172, F.S., to make technical changes by providing clarification and conforming language changes.

⁹ "International bank agency" is a defined term in s. 663.01(5), F.S.

¹⁰ Section 663.17(1), F.S.

Section 19 provides an effective date of July 1, 2010.

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:

Businesses that register as an ITCRO will be required to pay a registration fee of \$5,000 to the OFR and an additional annual assessment of \$2,000.

B. Private Sector Impact:

The increased capital requirements will make licensure more difficult for international banks who wish to do business in Florida. However, Banco Industrial de Venezuela, C.A (BIV) is the only bank that the OFR is aware of that will no longer be eligible for licensure under the increased capital requirements. It is also noteworthy that the OFR has already filed an administrative action to revoke BIV's license to engage in banking business within the state for matters unrelated to this bill. Because BIV is the only bank that will fail to meet the new licensure requirements and because BIV likely would not retain its license irrespective of this bill, the net private sector impact is likely non-existent.

C. Government Sector Impact:

The bill creates a new license type for "International Trust Company Representative Offices"; this license type will carry a registration fee of \$5,000 and the annual assessment will be \$2,000. This is the same fee structure that is currently applicable to "international representative offices" under s. 663.12(1)(d),(e), F.S. Because there has been only one ITCRO that has ever conducted business in Florida, the OFR anticipates no additional fiscal impact.

VI. Technical Deficiencies:

On lines 143-144 "such banks or corporations" should be expanded to also include "trust companies" in order to conform to the amended provision on lines 137-138. With this change,

lines 143-144 will apply to international banking corporations and trusts. This amendment seems to more properly address the stated intent of the bill.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

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