

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #:	CS/CS/HB 435	FINAL HOUSE FLOOR ACTION:		
SUBJECT/SHORT TITLE	International Financial Institutions	117	Y's 0	N's
SPONSOR(S):	Commerce Committee; Insurance & Banking Subcommittee; Raulerson and others	GOVERNOR'S ACTION:		Approved
COMPANION BILLS:	CS/CS/HB 437, CS/CS/SB 736			

SUMMARY ANALYSIS

CS/CS/HB 437 passed the House on April 26, 2017, and subsequently passed the Senate on May 3, 2017.

The bill revises regulations relating to licensed offices of international banking corporations (IBCs) and "offshore" international non-depository trust companies (international trust entities). The bill relocates the regulation of international trust company representative offices (ITCROs) in part I of ch. 663, F.S., to a newly-created part III, the provisions of which were copied from current part I, including amendments to part I that are proposed in the bill. The bill makes the following changes to the regulation of licensed offices of IBCs and international trust entities:

- Amends the capital requirements to allow for a risk-based calculation.
- Permits the Office of Financial Regulation (OFR) to allow the continuing operation of licensed offices during certain statuses or events, such as bankruptcy or a government bailout, that occur at the home-country institution.
- Provides for an abbreviated application process by which an IBC or international trust entity may establish additional locations in Florida.
- Provides for the establishment of time limitations on the OFR's approval or disapproval of applications.
- Amends the scope of reciprocity to reduce a barrier to licensure.
- Streamlines the application process in the event of the acquisition, merger, or consolidation of IBCs or international trust entities.
- Expands an international bank agency's investment management services to include domestic investments.
- Provides rulemaking authority to specify permissible deposits for international branches.
- Relaxes the requirements for maintaining books and records in English.
- Provides flexibility for a home-country supervisor to conduct off-site examinations.

The bill creates part IV of ch. 663, F.S., to provide a regulatory framework for a new entity called a qualified limited service affiliate (of international trust entities), which is a person or entity that is qualified to perform specified permissible activities related to or for the benefit of one or more affiliated international trust entities but which is a separate legal entity from the international trust entity. The permissible activities of a qualified limited service affiliate are more limited than those of an ITCRO. Additionally, the bill contains a minimum capital requirement of \$1 million to establish an ITCRO, but no minimum capital is required for a qualified limited service affiliate.

The bill does not have a fiscal impact on local government and appears to have an insignificant negative fiscal impact on state government. The bill may have a positive impact on the private sector.

The bill was approved by the Governor on June 9, 2017, ch. 2017-83, L.O.F., and will become effective on January 1, 2018, except as otherwise provided.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0435z1.IBS

DATE: June 12, 2017

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

The Office of Financial Regulation (OFR) regulates banks, credit unions, other financial institutions, finance companies, and the securities industry.¹ The OFR's Division of Financial Institutions charters, licenses, and regulates various entities that engage in financial institution business in Florida, in accordance with the financial institutions codes and the rules promulgated thereunder.² The OFR also ensures that Florida-chartered financial institutions comply with state and applicable federal requirements for safety and soundness.

One type of financial institution regulated by the OFR is an international banking corporation (IBC) that transacts business in Florida. An IBC is "a banking corporation organized and licensed under the laws of a foreign 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."³ Conceptually, the current definition of IBC encompasses two fairly distinct types of entities:

- Foreign depository institutions that engage in banking activities and may have trust powers that were granted to it by the country where the foreign institution is organized, and
- "Offshore" international non-depository trust companies or similar business entities.

The OFR does not regulate an IBC, i.e., the home-country institution, except to the extent that an IBC seeks to establish an office in Florida.

International banking is regulated under ch. 663, F.S., which currently has two parts: part I relates to IBCs, and part II relates to international development banks. Prior to the 2016 Legislative Session, the OFR committed to working with the Florida International Bankers Association (FIBA), an industry representative, to review and modernize the part of ch. 663, F.S., relating to IBCs with the goal of supporting a bill for the 2017 Legislative Session.⁴ The OFR's Division of Financial Institutions collaborated with FIBA to workshop various amendments proposed in the bill.⁵

During the 2016 Legislative Session, HB 1383 was filed proposing to amend Florida's regulation of marketing and liaison offices of "offshore" international non-depository trust companies. HB 1383 was intended to address industry concerns regarding the regulation of international trust company representative offices (ITCROs), which became law in 2010.⁶ According to the Florida International Administrators Association (FIAA), an industry representative, the 2010 legislation created regulatory ambiguity for international trust companies and their Florida-based marketing offices, ITCROs, potentially subjecting them to the \$20 million capital requirements for operating "what is essentially a marketing and liaison office in Florida."⁷ The agency analysis of HB 1383 indicated policy, regulatory, technical, and implementation concerns.⁸ As amended and passed, HB 1383 created a moratorium, until June 30, 2017, on the OFR's enforcement of ITCRO licensing requirements with respect to organizations or entities providing services to an "international trust entity" engaging in ITCRO

¹ s. 20.121(3)(a)2., F.S.

² chs. 655, 657, 658, 660, 662, 663, 665, and 667, F.S.; chs. 69U-100 through 69U-162, F.A.C.

³ s. 663.01(6), F.S.

⁴ Office of Financial Regulation, Agency Analysis of 2017 House Bill 435 (Feb. 2, 2017).

⁵ *Id.* The bill does not include any changes to part II of ch. 663, F.S.

⁶ ch. 2010-9, Laws of Fla.

⁷ Memorandum from McDonald Hopkins LLC (Mar. 8, 2015).

⁸ Office of Financial Regulation, Agency Analysis of 2016 House Bill 1383 (Jan. 19, 2016).

activities, if such person who manages, controls, or is employed by such organization or entity meets certain requirements and provides written assurances to the OFR.⁹ Based upon the information gathered as a result of the moratorium and workshops with industry, the OFR developed, as part of its modernization of ch. 663, F.S., a regulatory framework for a new kind of entity called a qualified limited service affiliate (of international trust entities).¹⁰ The bill has industry support.¹¹

State Regulation of International Banking Offices

IBCs include foreign depository institutions that engage in banking activities and may have trust powers that were granted to it by the country where the foreign institution is organized. This type of IBC may operate through a variety of business models, which must be licensed by the OFR¹² and include the following:

- International representative offices - Permissible activities include:¹³
 - Promoting or assisting the deposit-taking, lending, or other financial or banking activities of an IBC;
 - Serving as a liaison in Florida between an IBC and its existing and potential customers;
 - Soliciting business for the IBC and its subsidiaries and affiliates;
 - Providing information to customers concerning their accounts;
 - Answering questions;
 - Receiving applications for extensions of credit and other banking services;
 - Transmitting documents on behalf of customers; and
 - Making arrangements for customers to transact business on their accounts.However, a representative office may not conduct any banking or trust business in Florida.¹⁴
- International administrative offices - Permissible activities include:¹⁵
 - Administering personnel and operations;
 - Engaging in data processing or recordkeeping activities; and
 - Negotiating, approving, or servicing loans or extensions of credit and investments.Additionally, this type of office may engage in any activities permissible for an international representative office.¹⁶
- International bank agencies - Permissible activities include:
 - Making loans, extensions of credit, or investments;
 - Acting as custodian;
 - Furnishing investment management and investment advisory services to nonresident persons whose principal places of business or domicile are outside the United States and to resident entities or persons with respect to international or foreign investments;
 - Receiving specified types of deposits; and
 - With prior authorization from the OFR, accepting appointments as trustee by nonresident persons and exercising trust powers with respect to such fiduciary accounts.¹⁷Additionally, this type of office may engage in any activities permissible for an international administrative office.¹⁸

⁹ ch. 2016-192, Laws of Fla.

¹⁰ Office of Financial Regulation, Agency Analysis of 2017 House Bill 435 (Feb. 2, 2017).

¹¹ Florida International Administrators Association, Inc., Letter of Support for House Bills 435/437 to Modernize the Florida International Banking Code and to Promote the Growth of International Financial Services in Florida (Feb. 2, 2017).

¹² ss. 663.04 and 663.05, F.S.

¹³ s. 663.062, F.S.

¹⁴ *Id.*

¹⁵ s. 663.063, F.S.

¹⁶ s. 663.06(5)(c), F.S.

¹⁷ s. 663.061, F.S.; Rule 69U-140.008, F.A.C.

¹⁸ s. 663.06(5)(b), F.S.

- International branches - An international branch has the same rights and privileges as a federally licensed international branch.¹⁹ Additionally, this type of office may engage in any activities permissible for an international bank agency.²⁰

If an IBC desires to maintain any of the above offices in this state, the IBC is required to meet minimum licensure requirements, and its offices in Florida are subject to the examination and enforcement authority of the OFR. The OFR may not issue a license to an IBC for one of the above offices unless the IBC:

- In the case of an international bank agency or branch, holds an unrestricted license to receive deposits from the general public in the foreign country under the laws of which the IBC is organized and chartered;
- Has been authorized by the foreign country's bank regulatory authority to establish the proposed international bank office;
- Is adequately supervised by the central bank or bank regulatory agency in the foreign country in which the IBC is organized and chartered; and
- Meets a minimum capital requirement of
 - \$20 million for the establishment of an international representative office.
 - \$40 million (or between \$20 million and \$40 million if certain conditions are met) for the establishment of an international agency, international branch, or international administrative office.²¹

In banking regulation, the capital requirement is important because:

- Capital absorbs losses and allows institutions to continue operating as going concerns during periods when operating losses or other adverse financial results are experienced.
- Capital promotes public confidence by providing a measure of assurance that an institution will continue to provide financial services even when losses have been incurred, thereby helping to maintain confidence in the banking system and minimize liquidity concerns.
- Along with minimum capital ratio standards, capital restricts excessive asset growth by requiring that asset growth be funded by a commensurate amount of additional capital.
- Capital protects depositors and any deposit insurance fund by placing owners at significant risk of loss if the institution fails, which in turn helps to minimize the potential for moral hazard and promotes safe and sound banking practices.²²

There are currently 2 international administrative offices, 8 international bank agencies, 6 international representative offices, and 6 international bank branches licensed with the OFR.²³

State Regulation of International Trust Company Representative Offices

IBCs also include "offshore" international non-depository trust companies or similar business entities. Currently, an ITCRO is the only type of office through which an international trust company or similar business entity may directly operate in Florida. An ITCRO is an office of an IBC or trust company organized and licensed under the laws of a foreign country which office is established or maintained in Florida for engaging in *non-fiduciary activities* described in s. 663.0625, F.S. An ITCRO also includes

¹⁹ s. 663.064, F.S.

²⁰ s. 663.06(5)(a), F.S.

²¹ s. 663.05(7)(a) & (b), F.S.; s. 663.055(1) & (2), F.S.

²² Federal Deposit Insurance Corporation, RISK MANAGEMENT MANUAL OF EXAMINATION POLICIES 2.1-2 (Apr. 2015), available at <https://www.fdic.gov/regulations/safety/manual/section2-1.pdf>.

²³ OFFICE OF FINANCIAL REGULATION, *Financial Institution Search*, at <https://real.flofr.com/ConsumerServices/FinancialInstitutions/InstSrch.aspx> (search conducted Apr. 17, 2017).

any affiliate, subsidiary, or other person that engages in such activities on behalf of such IBC or trust company from an office located in Florida.²⁴

ITCROs are not banks and may not accept deposits, make loans, or act as a fiduciary. The activities of a licensed ITCRO are limited to engaging in non-fiduciary activities that are ancillary to the trust business of the IBC or trust company.²⁵ The permissible activities for an ITCRO include:

- Advertising, marketing, and soliciting for fiduciary business on behalf of an IBC 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 IBC or trust company and its existing or potential customers (e.g., forwarding requests for distribution or changes in investment objectives, or forwarding forms and funds received from the customer); and
- Such other activities as may be approved by the OFR or rules of the Financial Services Commission (Commission).²⁶

An ITCRO's representatives and employees may not act as a fiduciary, which means they may not do such things as accept the fiduciary appointment, execute the fiduciary documents that create the fiduciary relationship, or make discretionary decisions regarding the investment or distribution of fiduciary accounts.²⁷

If an IBC or trust company desires to maintain an ITCRO in this state, the IBC or trust company is required to meet minimum licensure requirements, and its ITCRO in Florida is subject to the examination and enforcement authority of the OFR. The OFR may not issue a license to an IBC or trust company for an ITCRO unless the IBC or trust company:

- Holds an unrestricted license to conduct trust business in the foreign country under the laws of which the IBC or trust company is organized and chartered;
- Has been authorized by the foreign country's trust business regulatory authority to establish the proposed ITCRO;
- Is adequately supervised by the central bank or trust regulatory agency in the foreign country in which the IBC or trust company 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 were a state chartered trust company or bank authorized to exercise fiduciary powers; and
- Meets a minimum capital requirement of \$20 million.²⁸

To date, no ITCROs have been licensed with the OFR.²⁹

History of ITCRO Regulation in Florida

The regulatory structure for an ITCRO became law in 2010 in order to establish the OFR's oversight responsibilities for "offshore" international non-depository trust companies that wish to establish a marketing and liaison type of office in Florida.³⁰ The legislation defined the ITCRO entity and established the licensing and regulatory requirements for these entities. The legislation was due, in

²⁴ s. 663.01(9), F.S.

²⁵ s. 663.0625, F.S.

²⁶ No such additional activities have been approved by the OFR or promulgated by rule.

²⁷ s. 663.0625, F.S.

²⁸ s. 663.05(7)(c), F.S.; s. 663.055(1)(b), F.S.

²⁹ OFFICE OF FINANCIAL REGULATION, *Financial Institution Search*, at

<https://real.flofr.com/ConsumerServices/FinancialInstitutions/InstSrch.aspx> (search conducted Mar. 1, 2017).

³⁰ ch. 2010-9, Laws of Fla.

part, to the exposure of the \$7 billion dollar Ponzi scheme perpetrated by former Texas billionaire Robert Allen Stanford (Stanford).

Since the late 1990s, Stanford controlled an international group of privately-held financial services companies under the umbrella organization Stanford Financial Group, which included Stanford Trust Company Limited, a non-depository trust company organized under the laws of Antigua and Barbuda. In the Ponzi scheme, certificates of deposits that promised above market rate returns were sold to customers of the Stanford Financial Group through offices in the United States and abroad with the sales of new accounts being used to fund payments on older certificates and fund Stanford's business operations and lifestyle. Because Florida law did not address representative offices of international non-depository trust companies at that time, Mr. Stanford was able to facilitate his scheme in Florida through the establishment of a representative office of Stanford Trust Company Limited in Miami, Florida. In late 1998, the Division of Banking of the Department of Banking and Finance (the OFR's predecessor agency) entered into a memorandum of understanding (MOU)³¹ with the Stanford Trust Company Limited (Stanford Trust), an offshore trust company organized under the laws of Antigua and Barbuda. This MOU allowed the Stanford Trust to establish a trust representative office in Florida, and delineated permissible and impermissible activities.

The OFR, along with federal regulatory and law enforcement agencies, coordinated an investigation into the operations of Stanford Trust's Miami trust company representative offices. 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. In 2012, Mr. Stanford was federally prosecuted and convicted of multiple counts of mail and wire fraud, obstruction, and conspiracy (including conspiracy to commit money laundering). He was sentenced to 110 years in prison for orchestrating a 20-year investment fraud scheme in which he misappropriated over \$7 billion from Stanford International Bank.

In addition to attempting to address and prevent the type of scheme perpetrated by Mr. Stanford, the OFR also sought the legislation in 2010 to address issues posed by shadow banking activities conducted by unregulated entities in Florida that present a high risk of allowing money laundering, terrorist financing, and other illicit activities to go undetected. The 2010 legislation sought to address those issues and brought ITCROs under the already established regulatory oversight capabilities of the OFR. The OFR already had the statutory responsibility for the licensing and oversight of international banking corporations that may or may not have trust powers and that wished to establish representative offices, administrative offices, branches, and agencies in Florida. By specifically providing for the licensure of representative offices of international non-depository trust companies, the OFR was better positioned to provide for regulatory oversight of offshore trust companies and related operations in Florida.

Effect of the Bill

The bill revises regulations relating to licensed offices of IBCs and licensed offices of "offshore" international non-depository trust companies (international trust entities). The bill relocates the regulation of ITCROs in part I of ch. 663, F.S., to a newly-created part III in order to separate the regulations related to licensed offices of an international trust entity, i.e., ITCROs, from the regulations related to licensed offices of IBCs, i.e., international representative offices, international administrative offices, international bank agencies, and international branches. The provisions under the newly created part III were copied from current part I, including amendments to part I that are proposed in the

³¹ Florida Department of Banking and Finance and Stanford Trust Company Limited, Memorandum of Agreement (Dec. 1998).

bill, and the language was tailored to apply to trust business. The bill also creates part IV of ch. 663, F.S., to provide a regulatory framework for a new kind of entity called a qualified limited service affiliate (of international trust entities). The bill does not amend part II of ch. 663, F.S.

Modernization of Regulation of Licensed Offices of IBCs and International Trust Entities (Parts I and III of Ch. 663, F.S.)

The bill makes the following revisions to the regulation of licensed offices of IBCs under part I and licensed offices of international trust entities under the newly-created part III of ch. 663, F.S.:

- **Amends capital requirements** (sections 7, 9, 25, & 28)
Modern methodologies for calculating a financial institution's capital requirement take a risk-based approach that is sensitive to the varying levels and types of risk inherent in the activities of a particular financial institution. Currently, ch. 663, F.S., provides a "one-size-fits-all" approach to capital requirements. The bill would allow the OFR to establish by rule the criteria, including capital ratio standards, for determining the sufficiency of an IBC's or international trust entity's capital. The contents of the rule will align the capital requirements in ch. 663, F.S., with modern, risk-based methodologies.
- **Provides regulatory flexibility upon the occurrence of certain types of status or control events at the home-country institution** (sections 7, 17, 25, & 34)
Currently, if an IBC or international trust entity is placed in bankruptcy, conservatorship, receivership, or liquidation, or is operating under the direct control of its home government or regulator due to government intervention or other extraordinary actions, there are two consequences:
 - 1) An IBC or international trust entity may not obtain a license to establish an office in Florida unless it has not been in such status or control at any time within the seven years preceding the date of application for a license.
 - 2) An IBC or international trust entity that has a licensed office in Florida may no longer transact any banking or trust business or maintain any office in Florida to carry on financial institution business, i.e., its license to operate in Florida would be automatically terminated.

The most recent financial crisis resulted in financial institutions experiencing bankruptcy and government intervention in the form of bailouts, either of which would have the consequences noted above. The bill provides regulatory flexibility such that the disqualifying period for new licensure is shortened to three years. For already licensed offices, the bill provides that the OFR may permit such office to remain open for business as issues affecting the home-country institution are addressed.

- **Provides for an abbreviated application process by which an IBC or international trust entity may establish additional locations in Florida** (sections 8 & 27)
Currently, an IBC or international trust entity is required to undergo a full licensing process for each new location in Florida. The bill creates an abbreviated application process for an IBC to establish additional international branches, international bank agencies, international administrative offices, or international representative offices, if the IBC has operated a licensed office in Florida in a safe and sound manner for at least three years and it is otherwise eligible to establish an additional office. However, this abbreviated application process does not allow an IBC to file an abbreviated application for any license type whose permissible activities are broader than those in which the IBC is currently authorized to engage. For example, an IBC that operates an international administrative office would not be permitted to file an abbreviated application for the establishment of an international branch.

Similarly, the bill creates an abbreviated application process for international trust entities to establish additional ITCROs if the international trust entity has operated an ITCRO in Florida in a safe and sound manner for at least three years and is otherwise eligible to establish an additional office.

- **Provides for the establishment of time limitations on the OFR's approval or disapproval of applications** (sections 8 & 27)
Currently, the law provides that “[i]n the processing of applications, the time limitations under the Administrative Procedure Act shall not apply as to approval or disapproval of the application.” Chapter 663, F.S., does not otherwise provide time limitations on the OFR's approval or disapproval of applications for licensure. The bill provides rulemaking authority for the establishment of such time periods for any application filed on or after January 1, 2018.
- **Amends the scope of reciprocity to reduce a barrier to licensure** (sections 8 & 27)
Currently, the OFR is not permitted to grant a license to an IBC or international trust entity unless:
 - 1) The laws of its home country would permit a Florida-based bank or trust company to establish a similar type of operation in the home country of the IBC or international trust entity; or
 - 2) Federal law permits the appropriate federal regulatory authority to issue a comparable license to the IBC or international trust entity.

An applicant must provide documentation to prove that reciprocity exists according to the above standards. The first prong has led to some confusion and potential ambiguity because the laws of other countries typically do not contemplate reciprocity with a particular state of the United States. The bill amends the first prong of reciprocity above such that reciprocity is dependent upon whether a financial institution based anywhere in the United States, not just in Florida, could establish a similar type of operation in the applicant's home country.

- **Provides for an after-the-fact application process in the event of the acquisition, merger, or consolidation of IBCs or international trust entities** (sections 11 & 30)
Currently, upon the occurrence of an acquisition, merger, or consolidation of the home country-institution, that institution's license for its office in Florida is terminated. Modeled after a federal regulation,³² and subject to certain requirements, the after-the-fact application process that the bill creates allows the transaction in the home country to occur prior to the OFR receiving an application for the resulting entity to have an office in Florida. This process will permit continuity of operations of the Florida office despite a merger, acquisition, or consolidation of the home-country institution.
- **Permits an international bank agency to furnish investment management services with respect to domestic investments** (section 12)
Currently, an international bank agency may furnish investment management to nonresident entities or persons whose principal places of business or domicile are outside the United States and to resident entities or persons with respect to international or foreign investments. The bill expands the scope of investments to also include domestic investments.
- **Provides for the enumeration of permissible deposits for international branches** (section 15)
Currently, the statute relating to permissible activities for international branches simply provides that “[a]n international branch shall have the same rights and privileges as a federally licensed

³² 12 C.F.R. § 211.24(6).

international branch.”³³ The statute does not provide an enumerated list of permissible deposits. In order to clarify for industry the types of permissible deposits, the bill provides rulemaking authority for the creation of such an enumerated list of permissible deposits for an international branch.

- **Amends provisions related to the maintenance of books and records in English** (sections 16 & 33)
Currently, a licensed office must keep correct and complete books and records of account of the business operations transacted by the licensed office. All policies and procedures governing the operations of such office, as well as any existing general ledger or subsidiary accounts, must be maintained in English. The OFR may require that a document which it deems necessary for regulatory and supervisory purposes be translated into English at the licensee’s expense. Additionally, a licensed office must keep current copies of the charter and bylaws of the licensee, relative to the operations of the Florida office, and minutes of the proceedings of its directors, officers, or committees relative to the business of the Florida office. The law does not specify whether such charter, bylaws, and minutes may be maintained in a language other than English.

The bill relaxes the standards as to which documents must be maintained in English. Only policies and procedures *relating specifically* to the operations of the Florida office must be maintained in the English language. Any policies and procedures of the licensee which are not specific to the operations of the Florida office may be maintained in a language other than English. The bill specifies that the charter, bylaws, and minutes may be maintained in a language other than English. The OFR maintains its authority to require that a document which it deems necessary for regulatory and supervisory purposes be translated into English at the licensee’s expense.

Creation of a Qualified Limited Service Affiliate (of International Trust Entities) (Part IV of Ch. 663, F.S.)

As a result of the collaboration between the OFR and industry, the qualified limited service affiliate (of international trust entities) is created to meet the needs and business models of industry participants.

An international trust entity is an international trust company or organization, or any similar business entity, 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 where such entity is organized and supervised. A qualified limited service affiliate is a person or entity that is qualified to perform specified permissible activities related to or for the benefit of one or more affiliated international trust entities.

Such permissible activities include:

- 1) Marketing and liaison services related to or for the benefit of the affiliated international trust entities, directed exclusively at professionals and current or prospective nonresident clients of an affiliated international trust entity;
- 2) Advertising and marketing at trade, industry, or professional events;
- 3) Transmission of documents between the international trust entity and its current or prospective clients or a designee of such clients; and
- 4) Transmission of information about the trust or trust holdings of current clients between current clients or their designees and the international trust entity.

A qualified limited service affiliate is prohibited from engaging in the following activities:

- 1) Advertising and marketing related to or for the benefit of the international trust entity which are directed to the general public;

³³ s. 663.064, F.S.

- 2) Acting 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;
- 3) Accepting custody of any trust property or any other good, asset, or thing of value on behalf of the affiliated international trust entity, its subsidiaries or affiliates, or subsidiaries and affiliates of the qualified limited service affiliate;
- 4) Soliciting business within this state from the general public related to or for the benefit of an affiliated international trust entity;
- 5) Adding a director, an executive officer, a principal shareholder, a manager, a managing member, or an equivalent position to the qualified limited service affiliate without prior written notification to the OFR;
- 6) Commencing services for an international trust entity without complying with applicable requirements;
- 7) Providing services for any international trust entity that is in bankruptcy, conservatorship, receivership, liquidation, or a similar status under the laws of any country; or
- 8) Otherwise conducting banking or trust business.

A qualified limited service affiliate differs from an ITCRO primarily in terms of the following:

	ITCRO (of an International Trust Entity)	Qualified Limited Service Affiliate (of International Trust Entities)
Identity of the applicant	The license to establish an ITCRO is granted to an international trust entity.	A qualified limited service affiliate is a separate legal entity from an international trust entity.
Scope of permissible activities	The permissible activities of an ITCRO are broader than those of a qualified limited service affiliate in that an ITCRO may advertise or market to the general public on behalf of the international trust entity and may solicit business for the international trust entity from the general public.	The permissible activities of a qualified limited service affiliate are more limited than those of an ITCRO in that a qualified limited service affiliate may not advertise or market to the general public for the benefit of an international trust entity and may not solicit business from the general public for the benefit of an international trust entity.
Number of international trust entities to which the office in Florida may provide services	An ITCRO may only provide services for the international trust entity licensed to operate the ITCRO.	A qualified limited service affiliate may provide services for any number of affiliated international trust entities.
Capital requirement	The bill provides that the capital requirement for an ITCRO will be determined according to a risk-based approach, but must be at least \$1 million.	There is no minimum amount of capital required for a qualified limited service affiliate.
Duration of licensure or qualification	An ITCRO license exists for an indefinite period of time.	The qualification as a qualified limited service affiliate must be renewed every two years.

An entity that qualified for the moratorium under s. 663.041, F.S., must seek qualification as a qualified limited service affiliate by March 31, 2018, or cease doing business in this state. Despite the moratorium's expiration on June 30, 2017, an entity that has qualified under the moratorium may remain open and in operation, but must refrain from engaging in new lines of business in this state until qualified as a qualified limited service affiliate.

In order to qualify as a qualified limited service affiliate, a proposed qualified limited service affiliate must file a written notice that includes the name under which the proposed qualified limited service affiliate will conduct business in this state; a copy of the articles of incorporation or articles of organization, or the equivalent, of the proposed qualified limited service affiliate; the physical address where the proposed qualified limited service affiliate will conduct business; the mailing address of the proposed qualified limited service affiliate; the name and biographical information of each director, executive officer, manager, managing member, or equivalent position of the proposed qualified limited service affiliate; the number of officers and employees of the proposed qualified limited service affiliate; a detailed list and description of the activities to be conducted by the proposed qualified limited service affiliate; background information for certain individuals; information related to each international trust entity for which the proposed qualified limited service affiliate will provide services; and other information as the office reasonably requires.

Upon the filing of a completed qualification notice, the OFR must make investigation of the character, reputation, business experience, and business qualifications of the proposed qualified limited service affiliate's proposed directors, executive officers, principal shareholder, managers, managing members, or equivalent positions. The OFR may approve the qualification only if it has determined that such persons are qualified by reason of their ability, reputation, and integrity and have sufficient experience to manage and direct the affairs of the qualified limited service affiliate in a lawful manner and in accordance with the requirements for obtaining and maintaining a qualification as a qualified limited service affiliate. When evaluating a qualification notice, the OFR may consider factors reasonably related to an offense or related to a violation, fine, or penalty, such as mitigating factors, history of multiple violations, severity of the offense, and showings of rehabilitation.

A material false statement made in the qualified limited service affiliate's written notice constitutes an immediate and serious danger to the public health, safety, and welfare. If a qualified limited service affiliate made a material false statement in the written notice, the OFR must summarily suspend the qualification; must enter a final order revoking the qualification; and may issue a fine or issue an order of suspension, removal, or prohibition to a financial institution-affiliated party of the qualified limited service affiliate. The bill also requires that a qualified limited service affiliate report to the OFR, within 15 days of the occurrence, any changes to the information previously relied upon by the OFR when qualifying a qualified limited service affiliate or renewing its qualification.

A qualified limited service affiliate is not required to produce, pursuant to a subpoena in a civil action, a book or record pertaining to a customer of an affiliated international trust entity that is located outside the United States or its territories in response to a subpoena if the book or record is maintained outside of the United States or its territories and is not in the possession, custody, or control of the qualified limited service affiliate. However, this protection does not apply to a subpoena issued by or on behalf of a federal, state, or local government law enforcement agency, administrative or regulatory agency, legislative body, or grand jury and does not limit the power of the OFR to access all books and records in the exercise of the OFR's regulatory and supervisory powers under the financial institutions codes.

A qualified limited service affiliate's marketing documents and advertisements must contain the following disclosure:

The Florida Office of Financial Regulation DOES NOT provide safety and soundness oversight of this company, does not provide any opinion as to any affiliated companies or products, and does not provide the oversight of this company's affiliated international trust entities or the jurisdictions within which they operate. This company may not act as a fiduciary and may not accept the fiduciary appointment, execute or transmit fiduciary documents, take possession of any assets, create a fiduciary relationship, make discretionary decisions regarding the investment or distribution of fiduciary accounts, provide banking services, or promote or sell investments.

Additionally, the website of the qualified limited service affiliate or an international trust entity must include the following disclosure:

Certain described services are not offered to the general public in Florida, but are marketed by ...(insert name of qualified limited service affiliate)... exclusively to professionals and current or prospective non-U.S. resident clients of the affiliated international trust entity or entities.

The bill specifies provisions in the financial institutions codes that are applicable to a qualified limited service affiliate. However, the list of applicable financial institutions codes does not prohibit the OFR from investigating or examining an entity to ensure that it is not in violation of applicable provisions of the financial institutions codes. The OFR may examine or investigate a qualified limited service affiliate any time it deems necessary to determine compliance with applicable financial institutions codes or rules promulgated thereunder, and the office may conduct an examination either before or after qualification of any person that submits the notice for qualification in order to confirm information in the notice as well as to confirm the activities of the person seeking qualification. The OFR must examine a qualified limited service affiliate at least once every 18 months.

A qualified limited service affiliate is subject to certain recordkeeping requirements relating to the trade, industry, or professional events in which it participates. The qualified limited service affiliate must maintain, for at least two years following the event, a record of its participation in the event, which record must contain the following:

- 1) The date, time, and location of the event;
- 2) To the extent known or available, a list of participants in the event, including other vendors, presenters, attendees, and targeted attendees;
- 3) The nature and purpose of the event;
- 4) The qualified limited service affiliate's purpose for participating in the event; and
- 5) Samples of materials or, when samples are unavailable, descriptions of materials provided by the qualified limited service affiliate to attendees and other participants.

The bill provides rulemaking authority in order to establish a procedure for a qualified limited service affiliate's voluntary surrender of qualification. A qualified limited service affiliate must provide the OFR at least 60 days' advance notice of its intention to surrender its qualification and terminate operations. The OFR may then conduct an examination to confirm the winding down of operations. A qualified limited service affiliate's operations are deemed terminated effective upon the later of the expiration of 60 days from the date of the filing of the notice of voluntary surrender or upon the date provided in the notice of voluntary surrender, unless the office provides written notice specifying the grounds for denial of such proposed termination. The OFR may not deny a request to terminate a qualification unless it learns of the existence of any outstanding claim or claims against the qualified limited service affiliate, it

finds that the requirements to terminate operations have not been satisfied, or there is an immediate and serious danger to the public health, safety, and welfare if the termination occurred.

A qualified limited service affiliate's qualification may be suspended or revoked, with or without examination, upon the OFR's determination that the qualified limited service affiliate does not meet all requirements for original or renewal qualification.

A qualified limited service affiliate must renew its qualification every two years. The qualification renewal must include a declaration under penalty of perjury, signed by the executive officer or managing member of the qualified limited service affiliate, declaring that the information submitted for the purposes of renewal is true and correct to the best of his or her knowledge, and confirming or providing all of the following:

- 1) That the qualified limited service affiliate is in compliance with part IV of ch. 663, F.S.
- 2) The physical location of the principal place of business of the qualified limited service affiliate.
- 3) The telephone number of the qualified limited service affiliate.
- 4) A list of the qualified limited service affiliate's current directors, executive officers, principal shareholder, managers, managing members, or equivalent positions.
- 5) Any updates or changes in information which were not previously provided either in the initial qualification or in subsequent qualification renewals or which were not previously disclosed to the OFR.

If a qualified limited service affiliate fails to renew its qualification, then it may be subject to a fine and penalty, but the qualified limited service affiliate is given 30 days after expiration of its qualification to either renew its qualification or surrender its qualification in accordance with a procedure to be prescribed by rule.

Amendment of the Home-Country Supervisor's Access to Books and Records (Section 655.059, F.S.) (Section 2 of the Bill)

A home-country supervisor is the governmental entity in the IBC's or international trust entity's home country with responsibility for the supervision and regulation of the safety and soundness of the IBC or international trust entity. The ongoing supervision of an IBC's or international trust entity's licensed locations in Florida necessitates the sharing of information with the home-country supervisor. Currently, the home-country supervisor must travel to Florida to review and examine documents at the licensee's location. The bill provides flexibility for a home-country supervisor to conduct off-site examinations, which will allow for the exchange of documents through secure channels over the Internet, eliminating the need for costly and unnecessary travel. The OFR maintains its current responsibility for oversight regarding the review of documents by a home-country supervisor.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The OFR has stated that it would incur insignificant costs associated with rulemaking and that the agency believes it can accomplish regulatory oversight with current staffing levels. Although the bill

will have an impact on the agency's information technology, the OFR explained that the current vendor contract will absorb such cost.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

In a letter of support for the bill, one industry representative expressed the belief that the bill "will promote the continued expansion of Florida as the financial capital of the Americas, making it ever more convenient for high net worth individuals from around the world and their businesses to visit, invest and expand here."³⁴

D. FISCAL COMMENTS:

None.

³⁴ Florida International Administrators Association, Inc., Letter of Support for House Bills 435/437 to Modernize the Florida International Banking Code and to Promote the Growth of International Financial Services in Florida (Feb. 2, 2017).