

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCS for HB 1383 Limited Purpose International Trust Company Representative Offices

**SPONSOR(S):** Insurance & Banking Subcommittee

**TIED BILLS:** HB 1385 **IDEN./SIM. BILLS:** SB 1106

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Insurance & Banking Subcommittee		Bauer	Luczynski

### SUMMARY ANALYSIS

The Office of Financial Regulation (OFR)'s Division of Financial Institutions charters and regulates entities that engage in financial institution business in Florida, in accordance with the Florida Financial Institutions Codes (Codes), and ensures Florida-chartered financial institutions' compliance with state and federal requirements for safety and soundness. In addition, the OFR regulates international banking corporations that transact business in Florida. International banking entities enable depository institutions in the United States to offer deposit and loan services to foreign residents and institutions, and are subject to the jurisdiction of the Board of Governors of the Federal Reserve. An international banking corporation (IBC) may operate through a variety of business models, all of which must be licensed, and include international bank agencies, international representative offices, international trust company representative offices (ITCROs), international administrative offices, and international branches. If an IBC wants to maintain any of these offices in this state, the IBC is required to meet licensure requirements, ongoing safety and soundness requirements, and is subject to the examination and enforcement authority of the OFR including state and federal anti-money laundering and anti-terrorism laws.

Following the Allen Stanford Ponzi scheme, the OFR pursued legislation in 2010 to close a regulatory gap in the international banking statutes and to strengthen oversight of international banking entities operating in Florida. Specifically, the 2010 legislation requires licensure (through the IBC) of international trust company representative offices (ITCROs) which are organized and licensed under the laws of a foreign country, but are established or maintained in Florida for engaging in non-fiduciary activities. ITCROs are not banks and may not accept deposits or make loans. The activities of a licensed ITCRO are limited to engaging in the following non-fiduciary activities that are ancillary to the trust business of the international banking corporation, such as advertising, marketing, communicating with customers, and providing customer account service information for the IBC.

According to industry representatives, the 2010 legislation created regulatory ambiguity for international trust companies and their Florida-based marketing offices like ITCROs, potentially subjecting them to the \$20 million capital requirements for operating marketing and liaison offices in Florida. As a result, industry representatives have proposed a new limited purpose ITCRO (LPITCRO) regulatory framework. However, the OFR has numerous policy, regulatory, technical, and implementation concerns about the proposed LPITCRO regulatory framework.

The proposed committee substitute (PCS) represents a compromise proposal from industry representatives. The PCS creates a new section of ch. 663, F.S., to impose a moratorium on the OFR's enforcement of ch. 663, F.S., with respect to any ITCRO or any person who manages or controls or is employed by such ITCRO, if such person meets certain requirements and provides written assurances to the OFR. The moratorium does not affect the OFR's authority to otherwise enforce applicable provisions of the Codes or to prevent the unlawful conduct of banking or trust business in Florida, fraud, and violations of anti-money laundering and anti-terrorism laws. The PCS also directs the OFR to deliver a report to the Financial Services Commission, the Speaker of the House, and the President of the Senate by September 1, 2016, regarding state and federal ITCRO laws and to list jurisdictions raising supervisory concerns for the OFR.

The PCS has no impact on local governments, has an indeterminate impact on the private sector, and a negative impact on state expenditures. The OFR indicates that the report requirement will necessitate 8 FTEs since the OFR would have to review international trust laws of over 250 states, jurisdictions, and countries, and increased staff time to track the ITCRO entities seeking to qualify for the moratorium under the PCS.

The PCS is effective upon becoming law.

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

**STORAGE NAME:** pcs1383.IBS

**DATE:** 1/30/2016

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

##### **International Financial Services**

A longstanding niche market within the international financial services market is the provision of fiduciary (trustee) services required for the implementation of estate, tax and asset protection planning. These services traditionally have comprised the administration (documentation preparation, accounting, compliance, and accounting) for a trust and its underlying investments. Services such as banking, asset management, and tax advice are provided by third parties.<sup>1</sup> Industry representatives provided the following example:

Example: A family from Latin America purchasing a residence in Florida has a banking relationship with a Florida-based bank and is advised by Florida counsel. To avoid exposure to U.S. estate tax, the family will be advised to own the property through a non-U.S. company, as the shares in the non-U.S. company are not subject to U.S. estate tax. To provide for the family's long-term planning (local and foreign tax laws and political and security risks), the family may be advised to place the shares in the company's foreign trust.<sup>2</sup>

According to the Florida International Administrators Association (FIAA), in the above example, responsibility for the administration of the trust and the underlying company is given to a trust company, which provides this service for an agreed fee. The trust company generally will be part of an organization that provides this service in multiple jurisdictions. The trust company, which acts as a trustee, is licensed and regulated in the jurisdiction in which it is domiciled. The trust company does not promote, sell, or accept any financial investments, money, or provide depository or custodial accounts.

The Florida-based marketing office for the aforementioned fiduciary services provided by a foreign trust company is an international trust company representative office (ITCRO). Industry advocates state that the primary function of the ITCRO of the foreign trust company and the organization of which it is a member is to market the trust company's services to lawyers, accountants, and financial advisors - not the general public.<sup>3</sup> Because many of the families who establish foreign trusts travel to Miami, the ITCROs provide a convenient way for these families to monitor the services of the international trust company without having to travel to the jurisdiction where the trust company has its operations. Thus, advocates of the bill assert that ITCROs represent an important part of Miami's role as the financial capital of the Americas and contribute in an important way to the state's economy.<sup>4</sup> FIAA seeks to create a limited purpose ITCRO (LPITCRO) regulatory framework that would be subject to registration; clarify that the administrative and compliance services do not involve discretionary investment, distribution of funds and do not constitute the activities of a financial institution; and should be exempt from licensure and capital requirements that apply to financial institutions.

##### **State Regulation of International Banking Activities**

The Office of Financial Regulation (OFR) is charged with regulating depository and non-depository financial institutions and financial services companies. The OFR's Division of Financial Institutions charters and regulates entities that engage in financial institution business in Florida, in accordance with the Florida Financial Institutions Codes (Codes) and the Florida Financial Institutions Rules,<sup>5</sup> and

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<sup>1</sup> Memorandum from McDonald Hopkins LLC, *International Trust Company Representative Offices*, (Mar. 8, 2015), on file with Insurance & Banking Subcommittee staff.

<sup>2</sup> Id.

<sup>3</sup> Id.

<sup>4</sup> Id.

<sup>5</sup> Chs. 655, 657, 658, 660, 663, 665, and 667, F.S.; ch. 69U-100 through 69U-150, F.A.C.

ensures Florida-chartered financial institutions' compliance with state and federal requirements for safety and soundness.

## International Banking Corporations

The OFR regulates international banking corporations<sup>6</sup> that transact business in Florida. Such entities are subject to licensure by the OFR<sup>7</sup> to transact business in Florida. International banking entities enable depository institutions in the United States to offer deposit and loan services to foreign residents and institutions, and are subject to the jurisdiction of the Board of Governors of the Federal Reserve. The OFR does not regulate institutions that are chartered and regulated by foreign institutions, except to the extent that those foreign institutions seek to engage in the business of banking or trust business in Florida, which requires a Florida charter and compliance with the provisions of ch. 663, F.S., and the applicable provisions of the Codes.

An international banking corporation may operate through a variety of business models, all of which must be licensed,<sup>8</sup> and include international bank agencies,<sup>9</sup> international representative offices,<sup>10</sup> international trust company representative offices,<sup>11</sup> international administrative offices,<sup>12</sup> and international branches.<sup>13</sup> The definition of "financial institution" includes international bank agency, an international banking corporation, international branch, international representative office, international administrative office, and international trust company representative office.<sup>14</sup>

If an international banking corporation (IBC) wants to maintain any office in this state, including an international trust company representative office, the IBC is required to meet minimum licensure requirements, ongoing safety and soundness requirements, and is subject to the examination and enforcement authority of the OFR including state anti-money laundering and anti-terrorism laws. The OFR may not issue a license to an international banking corporation unless it:

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

Section 663.02, F.S., provides in general that international banking corporations having offices in Florida are subject to the provisions of ch. 655, F.S., as though such corporations were state banks or trust companies. Further, s. 663.02, F.S., provides that neither an international bank agency nor an international branch shall have any greater right under, or by virtue of s. 663.02, F.S., than is granted to banks organized under the laws of this state. Section 663.02, F.S., provides that it is the intent of the Legislature that the following provisions apply to such entities:

- s. 655.031, F.S., relating to administrative enforcement guidelines;
- s. 655.032, F.S., relating to investigations, subpoenas, hearings, and witnesses;

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<sup>6</sup> An international banking corporation, such as 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. The term also includes foreign trust companies, or any similar business entities, including, but not limited to, foreign banks with fiduciary powers, that conduct trust business as defined in the codes. See s. 663.01(6), F.S.

<sup>7</sup> ss. 663.04 and 663.05, F.S.

<sup>8</sup> s. 663.06(1), F.S.

<sup>9</sup> s. 663.061, F.S.

<sup>10</sup> s. 663.062, F.S.

<sup>11</sup> s. 663.0625, F.S.

<sup>12</sup> s. 663.063, F.S.

<sup>13</sup> s. 663.064, F.S.

<sup>14</sup> s. 655.005(i), F.S.

- s. 655.0321, F.S., relating to hearings, proceedings, related documents, and restricted access;
- s. 655.033, F.S., relating to cease and desist orders;
- s. 655.037, F.S., relating to removal by the office of an officer, director, committee member, employee, or other person;
- s. 655.041, F.S., relating to administrative fines and enforcement; and
- s. 655.50, F.S., relating to the control of money laundering and terrorist financing; and any law for which the penalty is increased under s. 775.31 F.S., for facilitating or furthering terrorism.

### *International Bank Agencies and International Branches*

International bank agencies and international branches are permitted to conduct activities similar to those of a domestic bank. An international bank agency may make and service loans, act as a custodian, furnish investment advice, conduct foreign exchange activities and trade in securities and commercial paper.<sup>15</sup> An international branch has the same rights and privileges as a federally licensed international branch.<sup>16</sup>

### *International Representative Offices and International Administrative Offices*

International representative offices and international administrative offices perform activities that are more limited. An international representative office may solicit business, 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.<sup>17</sup> An administrative office may provide personnel administration, data processing or recordkeeping, and negotiate, approve, or service loans or extensions of credit and investments.<sup>18</sup>

### *International Trust Company Representative Offices (ITCROs)*

An international trust company representative office (ITCRO) is an office of an international banking corporation or trust company organized and licensed under the laws of a foreign country, which is established or maintained in Florida for engaging in non-fiduciary activities described in s. 663.0625, F.S. An ITCRO may also include any affiliate, subsidiary, or other person that engages in such activities on behalf of such international banking corporation or trust company from an office located in Florida.<sup>19</sup>

ITCROs are not banks and may not accept deposits or make loans. The activities of a licensed ITCRO are limited to engaging in the following non-fiduciary activities that are ancillary to the trust business of the international banking corporation:

- 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 Financial Services Commission.<sup>20</sup>

## **Robert Allen Stanford & 2010 International Banking Legislation**

<sup>15</sup> s. 663.061, F.S.

<sup>16</sup> s. 663.064, F.S.

<sup>17</sup> s. 663.062, F.S.

<sup>18</sup> s. 663.063, F.S.

<sup>19</sup> s. 663.01(9), F.S.

<sup>20</sup> Section 663.0625, F.S.

In 2010, the Florida Legislature amended ch. 663, F.S., to establish the OFR's oversight responsibilities for "offshore" international non-depository trust companies that wish to establish an international trust company representative office (ITCRO) in Florida.<sup>21</sup> The legislation defined the ITCRO entity and established the licensing and regulatory requirements for these entities. The legislation was due, in part, to the exposure of the \$7 billion dollar Ponzi scheme perpetrated by former Texas billionaire Robert Allen 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)<sup>22</sup> 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 for 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. Only recently did federal authorities and the U.S. receiver reach a settlement agreement to expedite the distribution of assets back to victims of Stanford's Ponzi scheme.<sup>23</sup>

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 has the statutory responsibility for the licensing and oversight of international banking corporations that may or may not have trust powers and wish 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. To date, no ITCROs are licensed with the OFR, although 2 international administrative offices, 10 international

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<sup>21</sup> Ch. 2010-9, Laws of Fla.

<sup>22</sup> Florida Department of Banking and Finance and Stanford Trust Company Limited, Memorandum of Agreement (Dec. 1998), on file with Insurance & Banking Subcommittee staff.

<sup>23</sup> U.S. DEPARTMENT OF JUSTICE, *Pending Criminal Division Cases: U.S. v. Robert Allen Stanford et al.*, at <http://www.justice.gov/criminal-vns/case/stanfordr> (last visited Jan. 28, 2016).

Lucy Komisar, Michael Sallah, and Rob Barry, *Exclusive: Florida banking agency helped Stanford set up unregulated office to sell his phony CDs*, MIAMI HERALD (July 5, 2009), at A1.

bank agencies, 6 international representative offices, and 6 international bank branches are currently licensed with the OFR.<sup>24</sup>

According to industry representatives, 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.”<sup>25</sup> FIAA seeks to clarify that ITCROs that do not promote, sell, or accept any financial investments, money, or provide depository or custodial accounts and are not “financial institutions”; therefore, they should be exempt from its licensure and capital requirements, but still subject to appropriate registration and supervision by the OFR. HB 1383, as filed, amends chs. 663 to create a new entity known as limited purpose international trust company representative office (LPITCROs).

According to the OFR, current law requires an offshore entity that proposes the establishment of an ITCRO to obtain a license under ch. 663, F.S. HB 1383 would require only the onshore LPITCRO to be registered with the OFR. As a result, the operations and controlling shareholders of the offshore non-depository trust company would be unknown while allowing key regulatory oversight parameters such as capital requirements to be minimized, exposing unascertainable risk to consumers doing business in Florida. The current process for regulation of international entities establishing representative offices in Florida provides for the identification and understanding of the offshore/international entity, not simply the registration of the representative office in Florida. The OFR has also expressed numerous policy, other regulatory, technical, and implementation concerns about the proposed LPITCRO regulatory framework.<sup>26</sup>

To date, the OFR and the FIAA have not reached a mutually agreeable regulatory framework for these entities. The PCS represents a compromise proposal from the FIAA.

### **Effect of the Proposed Committee Substitute (PCS)**

The PCS creates a new section of ch. 663, F.S., to impose a moratorium on the OFR’s enforcement of ch. 663, F.S., with respect to any ITCRO or any person who manages or controls or is employed by such ITCRO, if such person:

- Has been organized or qualified to do business in this state since October 1, 2013;
- Has not been the subject of any consumer complaint to the OFR;
- Has not been convicted of a felony or subject to any regulatory penalties within 5 years of the PCS’s effective date;
- Does not provide banking or fiduciary trust services, promote or sell investments or accept custody of assets.

The moratorium does not affect the OFR’s authority to otherwise enforce ch. 655, F.S., or ch. 663, F.S., or other applicable provisions of the Codes to prevent the unlawful conduct of banking or trust business in Florida, to prevent fraud and violations of anti-money laundering and anti-terrorism laws or to protect the public from imminent harm. The PCS provides that companies may qualify for this moratorium, by providing written assurances of the conditions above.

The PCS also directs the OFR to deliver a report to the Financial Services Commission, the Speaker of the House, and the President of the Senate by September 1, 2016, describing current state and federal laws regarding ITCROs, particularly permissible, restricted, or prohibited activities and licensure requirements. The report must also include a list of international trust jurisdictions that the OFR does not consider to provide adequate supervision and regulation of international trust companies or are “at risk” jurisdictions for money laundering or terrorist financing. The report must also provide authorities or sources that the OFR relied upon to prepare this list of international trust jurisdictions.

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<sup>24</sup> OFFICE OF FINANCIAL REGULATION, *Financial Institution Search*, at <https://real.flofr.com/ConsumerServices/FinancialInstitutions/InstSrch.aspx> (search conducted Jan. 28, 2016).

<sup>25</sup> Memorandum from McDonald Hopkins LLC (Mar. 8, 2015), on file with Insurance & Banking Subcommittee staff.

<sup>26</sup> Office of Financial Regulation, 2016 Agency Analysis of House Bill 1383, pp. 12-22 (Jan. 19, 2016).

**B. SECTION DIRECTORY:**

Section 1. Creates s. 663.041, F.S., regarding a licensing moratorium, reporting requirements, and report.

Section 2. Provides the PCS takes effect upon becoming a law.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

The PCS requires the OFR to prepare a report and to review written submissions from the ITCRO industry. The OFR indicates that it is unable to absorb this additional workload. To comply, the OFR will need to hire an additional 8 FTEs to query and review the states, territories, jurisdictions, and countries in order to prepare and timely deliver the report to the House Speaker, Senate President, and Financial Services Commission by September 1, 2016. As there are over 250 states, territories, jurisdictions, and countries to query and review, additional FTEs may be needed to meet the September 1, 2016 deadline.

Additionally, the OFR notes that it has no database to track the ITCRO entity. In the short-term, the OFR would be able to track information related to these entities by utilizing a series of spreadsheets. However, reliance on such spreadsheets is less than ideal and, moreover, highlights the OFR's need for funding to bring the Division of Financial Institutions into the Regulatory Enforcement and Licensing System (REAL System), as submitted in the OFR's 2016-2017 Legislative Budget Requests.<sup>27</sup>

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Indeterminate. The PCS provides a limited moratorium on ITCRO licensing requirements.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments

2. Other:

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<sup>27</sup> Office of Financial Regulation, Agency Analysis of 2016 Proposed Committee Substitute for House Bill 1383, pp. 5-6 (Jan. 29, 2016).

None.

**B. RULE-MAKING AUTHORITY:**

None provided by the PCS.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

Although the substance of the proposed committee substitute characterizes the newly created statute as a “moratorium,” the OFR states that the PCS is effectively a permanent exemption that prevents the OFR’s enforcement of provisions in ch. 663, F.S., relating to ITCROs. This would permit ITCROs to operate in Florida without proper oversight. The OFR maintains that, by enacting the 2010 legislation, the Legislature established effective regulation of the activities of offshore trust companies that wish to have offices in Florida, and the current regulatory structure serves to impede fraudulent and other illicit activities that could be perpetrated by “offshore” international non-depository trust companies through the entities on Florida soil.<sup>28</sup>

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

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<sup>28</sup> *Id.* at 6.