

ACT 168

S.B. NO. 35

A Bill for an Act Relating to Foreign Banks.

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

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
FOREIGN BANKS**

PART I. GENERAL PROVISIONS

§ -1 **Definitions.** As used in this chapter, unless the context otherwise requires:

“Agency” means a depository agency or a nondepository agency.

“Business in this State”, when used with respect to a foreign bank which is licensed to maintain one or more agencies, includes the aggregate business of all the offices.

“Commissioner” means the commissioner of financial institutions.

“Control” means possession, direct or indirect, of the power:

- (1) To vote twenty-five per cent or more of any class of the voting securities issued by a person; or
- (2) To direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract (other than a commercial contract for goods or nonmanagement services), or otherwise; provided that no individual shall be deemed to control a person solely on account of being a director, officer, or employee of the person.

For purposes of paragraph (2), a person who, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, ten per cent or more of the then outstanding voting securities issued by another person is presumed to control the other person.

“Controlling person”, when used with respect to a foreign bank, means any person who, directly or indirectly, controls the bank.

“Depository agency”, when used with respect to a foreign bank, means a place in this State at which the foreign bank transacts commercial banking business but at which it does not receive deposits except as permitted under section -35.

“Executive officer”, when used with respect to a foreign bank or a controlling person of a foreign bank, means the chief executive officer, the chief operating officer, the chief financial officer, and any other person who participates or has authority to participate in major policy-making functions

of such bank or controlling person. "Executive officer", when used with respect to a foreign bank, includes the head of the international division or, if there is no such division, the closest equivalent division or unit of such bank.

"Federal agency" has the meaning set forth in section 1(b) of the International Banking Act of 1978, Public Law 95-369, as amended.

"Foreign bank" means any bank including any commercial bank, merchant bank, or other institution that engages in banking activities which are usual in connection with the business of banking in the nations where the institution is organized or operating other than (1) a bank which is organized under the laws of a state of the United States or (2) a national bank which maintains its head office in a state of the United States.

"Foreign nation" means any nation other than the United States, including any subdivision, territory, trust territory, dependency, or possession of any such nation. "Foreign nation" includes Puerto Rico, Guam, American Samoa, the Virgin Islands, and any territory, trust territory, dependency, or insular possession of the United States.

"Nondepository agency", when used with respect to a foreign bank, means a place in this State at which the bank transacts commercial banking business, except the business of receiving deposits.

"Office", when used with respect to a foreign bank, means any agency or representative office of the bank.

"Primary office", when used with respect to a foreign bank licensed to maintain a single agency, means such agency and, when used with respect to a foreign bank licensed to maintain two or more agencies, means the office the bank has designated as its primary office in accordance with section -12.

"Representative office", when used with respect to a foreign bank, means an office in this State at which the bank engages in representational functions but does not transact commercial banking business.

§ -2 Classification of offices. For purposes of this chapter, offices of foreign banks are divided into classes and ranked in ascending order, as follows:

- (1) Representative office.
- (2) Nondepository agency.
- (3) Depository agency.

§ -3 Fees. Fees shall be paid to, and collected by, the commissioner, as follows:

- (1) The fee for filing an application by a foreign bank not licensed to transact business in this State for approval to establish an agency shall be \$5,000.
- (2) The fee for filing an application by a foreign bank licensed to transact business in this State for approval to establish an agency shall be \$1,500.
- (3) The fee for filing an application by a foreign bank for approval to establish a representative office shall be \$1,500.
- (4) The fee for filing an application by a foreign bank licensed to maintain an agency for approval to relocate or to close the office shall be \$250.
- (5) The fee for filing an application by a foreign bank licensed to maintain a representative office for approval to relocate or to close such representative office shall be \$250.
- (6) The fee for issuing a license shall be \$100.

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- (7) Each foreign bank which on June 1 of any year is licensed to maintain a representative office but is not licensed to transact business in this State shall pay, on or before the following July 1, a fee of \$1,000 for each representative office.

§ -4 **Applications.** Each application filed with the commissioner under this chapter shall be in such form as prescribed by rules.

§ -5 **Good character of officers and directors.** (a) In this section, "act" includes omission.

(b) For the purpose of making findings on an application by a foreign bank for approval to establish an office the commissioner may:

- (1) In the absence of credible evidence to the contrary, presume that the directors, executive officers, and any controlling person of the bank and the directors and executive officers of any controlling person of the bank are each of good character and sound financial standing.
- (2) Find that the bank, a director, executive officer, or a controlling person of the bank, or a director or executive officer of a controlling person of the bank is not of good character if the person has:
 - (A) Been convicted of, or has pleaded nolo contendere to, any crime involving an act of fraud or dishonesty;
 - (B) Consented to or suffered a judgment in any civil action based upon conduct involving an act of fraud or dishonesty;
 - (C) Consented to or suffered the suspension or revocation of any professional, occupational, or vocational license based upon conduct involving an act of fraud or dishonesty;
 - (D) Wilfully made or caused to be made in any application or report filed with the commissioner, or in any proceeding before the commissioner, any statement which was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, or has wilfully omitted to state in any application or report any material fact which was required to be stated therein; or
 - (E) Wilfully committed any violation of, or has wilfully aided, abetted, counseled, commanded, induced, or procured the violation by any other person of, any provision of this chapter or of any rule or order issued under this chapter.

(c) Subsection (b)(2) shall not be deemed an exclusive list of the grounds upon which the commissioner may find that a bank, a director, executive officer, or controlling person of the bank, or a director or executive officer of a controlling person of the bank is not of good character.

§ -6 **Reports; records.** (a) Every foreign bank doing business in this State shall submit written reports in the English language to the commissioner at the times and in the form as the commissioner prescribes, under the oath of one of its officers, managers, or agents transacting business in this State, showing the amount of its assets and liabilities, and containing such other matters as the commissioner prescribes. If any foreign bank fails to submit a report, or if any report contains any false statement knowingly made, the failure or false statement, as the case may be, shall be grounds for revocation of the license of the foreign bank.

(b) Each foreign bank licensed under this chapter shall keep, at its place of business in this State, correct and complete books and records of

account of its business operations transacted by the foreign bank. The foreign bank shall also keep current copies of the charter and bylaws of the foreign bank, relative to the operations of the foreign bank, and minutes of the proceedings of its directors or committees relative to the bank business. The records shall be subject to examination by the commissioner as provided under section 403-8 and shall be made available to the commissioner, upon request, at any time during regular business hours of the foreign bank. Any failure to keep the records or any refusal to produce the records upon request by the commissioner shall be grounds for suspension or revocation of any license issued under this chapter.

§ -7 Concurrent federal and state agencies. (a) No foreign bank licensed to maintain an agency shall concurrently maintain a federal agency in this State.

(b) No foreign bank which maintains a federal agency in this State shall concurrently be licensed to maintain an agency in this State.

§ -8 Concurrent offices of different classes. No foreign bank shall concurrently be licensed to maintain offices of different classes; provided that a foreign bank licensed to maintain a representative office is not prohibited from being concurrently licensed to maintain an office of a different class, or a foreign bank licensed to maintain an office other than a representative office is not prohibited from being concurrently licensed to maintain a representative office.

§ -9 Agent for service of process; manner of service. (a) No foreign bank shall be issued a license under this chapter unless it has first filed with the commissioner an irrevocable affidavit appointing the commissioner to be the bank's attorney to receive service of process in any noncriminal judicial or administrative proceeding against the bank or any of its successors which arises out of the activities in this State of the bank after the affidavit has been filed.

(b) Service may be made on a foreign bank which has appointed the commissioner as its attorney for service of process by leaving a copy of the process at any office of the commissioner; provided that the service is not effective unless: (1) the party making the service, who may be the commissioner, forthwith sends notice of the service and a copy of the process by registered or certified mail to the bank served at its last address on file with the commissioner at any of its offices in this State or at its head office; and (2) an affidavit of compliance with this section by the party making service is filed in the case on or before the return date, if any, or within such further time as the court, in the case of a judicial proceeding, or the administrative agency, in the case of an administrative proceeding, allows.

§ -10 Display, transferability, and assignability of license. A foreign bank licensed to maintain an office shall post its license in a conspicuous place at the office. No license shall be transferable or assignable.

§ -11 Names. A foreign bank licensed to maintain an office shall assign to the office a popular name consisting of a specific designation by name or number and shall post the popular name and the name of the bank in a conspicuous place at the office.

The popular name that a foreign bank assigns to its licensed representative office shall include the term "representative office".

The popular name that a foreign bank assigns to its licensed agency shall not include the term "branch" unless the term is modified by the word "foreign" or "overseas" or by a similar word.

§ -12 **Designation of primary office; location of business.** When a foreign bank is licensed to maintain two or more agencies, it shall designate one of such agencies as its primary office. A foreign bank licensed to maintain an office shall conduct all of the office's business in a single building or in adjoining buildings; provided that, for good cause and with the approval of the commissioner, the bank may conduct part of the business of the office elsewhere in the same vicinity.

§ -13 **Interest rate restrictions.** Chapter 478 shall apply to foreign banks licensed under this chapter.

§ -14 **Applicability of state laws.** (a) Foreign banks shall be subject to chapter 403 as though such foreign banks were state banks, except where it may appear, from the context or otherwise, that the provisions are clearly applicable only to banks organized under the laws of this State or the United States. Foreign banks shall be subject to the general corporation laws relating to foreign corporations which are not in conflict with this chapter or chapter 403.

(b) Foreign banks, with regard to assets located within this State, shall be subject specifically to the liquidation and receivership provisions of chapter 403.

(c) A foreign bank shall have no greater right under, or by virtue of, this section than is granted to banks organized under the laws of this State. Legal and financial terms used in this chapter shall be deemed to refer to equivalent terms used by the country in which the foreign bank is organized; provided that all contracts or agreements which are negotiated in this State with Hawaii residents shall be construed under Hawaii law.

(d) When any provision of this chapter which is applicable to or with respect to a foreign bank licensed to transact business in this State limits the amount of any assets or liabilities of the bank, including the amount of borrowings of, obligations to, or investments of the bank, for purposes of calculating the amount of such assets or liabilities, only the assets or liabilities of the agencies of the bank shall be included, and the assets and liabilities of offices of the bank outside this State shall be excluded.

§ -15 **Rules.** The commissioner shall adopt rules under chapter 91 necessary for the administration of foreign banks under this chapter in the interest of protecting depositors, creditors, borrowers, or the public interest and in the interest of maintaining a sound banking system in this State.

PART II. REPRESENTATIVE OFFICES

§ -21 **License.** (a) No foreign bank shall establish or maintain an office in this State to engage in representational functions unless it is licensed to maintain a representative office or an agency at the place.

(b) No person shall establish or maintain an office in this State as representative of a foreign bank unless the bank is licensed under this part to maintain such office as a representative office. For purposes of this chapter, if any person establishes or maintains an office in this State as representative of a foreign bank, the foreign bank shall be deemed to establish and maintain such office as a representative office.

§ -22 **Establishment of office.** (a) No foreign bank shall establish or maintain a representative office without prior approval of the commissioner and a license authorizing the bank to maintain the office; provided that a foreign bank which maintains a federal agency in this State is not prohibited from establishing or maintaining one or more representative offices in this State.

(b) An application for a license under this part shall be approved if the commissioner finds that:

- (1) The bank, any controlling person of the bank, the directors and executive officers of the bank or of any controlling person of the bank, and the proposed management of the office are of good character and sound financial standing;
- (2) The financial history and condition of the bank are satisfactory;
- (3) The management of the bank and the proposed management of the office are adequate;
- (4) It is reasonable to believe that, if licensed to maintain the office, the bank will operate the office in compliance with all applicable laws and rules; and
- (5) The bank's establishment and maintenance of the office will promote the public convenience and advantage.

(c) When an application to establish a representative office has been approved and all conditions precedent to the issuance of a license authorizing the bank to maintain the office have been fulfilled, the commissioner shall issue the license.

§ -23 Relocation of office. (a) No foreign bank licensed to maintain a representative office shall relocate the office without the prior approval of the commissioner and a new license authorizing the bank to maintain the office at the new site.

(b) An application for approval to relocate shall be approved if the commissioner finds:

- (1) The new site of the office is in the same vicinity as the old site, and the relocation of the office will not be substantially detrimental to the public convenience and advantage; or
- (2) The new site of the office is not in the same vicinity as the old site; but:
 - (A) The relocation of the office from the old site will not be substantially detrimental to the public convenience and advantage in the area which is primarily served by the office at the old site; and
 - (B) The relocation of the office to the new site will promote the public convenience and advantage.

(c) When an application to relocate a representative office has been approved and all conditions precedent to the issuance of a license authorizing such bank to maintain the office at the new site have been fulfilled, the commissioner shall issue the license.

(d) Promptly after an approved relocation, the bank shall surrender to the commissioner the license which authorized it to maintain the office at the old site.

§ -24 Permissible activities. A foreign bank licensed to maintain a representative office, subject to the rules as the commissioner may prescribe, may engage in representational functions at the office but shall not solicit or accept deposits or otherwise transact business at the office.

§ -25 Closure of office. (a) No foreign bank licensed to maintain a representative office shall close the office unless the commissioner first approves such closing; provided that a foreign bank licensed to maintain a representative office is not prohibited from closing the office in accordance with part IV.

(b) If the commissioner finds that the closing of the office will not be substantially detrimental to the public convenience and advantage, the application shall be approved.

(c) When an application to close a representative office has been approved and all conditions precedent to the closing have been fulfilled, the bank may close the office and shall promptly thereafter surrender to the commissioner the license which authorized it to maintain the office.

PART III. AGENCIES

§ -31 **Limitations on transacting business.** (a) No foreign bank shall transact business in this State except at an agency licensed to transact business in this State.

(b) Subsection (a) does not prohibit:

- (1) Any foreign bank which maintains a federal agency in this State from transacting the business at the federal agency as it may be authorized to transact under applicable federal laws and regulations; or
- (2) Any foreign bank which does not maintain an agency from making in this State loans secured by liens on real property located in this State.

§ -32 **License; deposit insurance.** (a) No foreign bank shall be licensed to maintain any agency unless it is qualified to transact intrastate business in this State under the corporation laws dealing with foreign corporations.

(b) A foreign bank licensed to maintain a depository agency shall give notice that deposits in the agency are not insured by the Federal Deposit Insurance Corporation.

§ -33 **Establishment of office.** (a) No foreign bank shall establish or maintain in this State an agency, except a federal agency, without a license under this chapter.

(b) An application for a license under this part shall be approved if the commissioner finds that:

- (1) The bank, any controlling person of the bank, the directors and executive officers of the bank or of any controlling person of the bank, and the proposed management of the agency are each of good character and sound financial standing;
- (2) The financial history and condition of the bank are satisfactory;
- (3) The management of the bank and the proposed management of the agency are adequate;
- (4) It is reasonable to believe that, if licensed to maintain the agency, the bank will operate the agency in a safe and sound manner and in compliance with all applicable laws, rules, and orders;
- (5) The bank's plan to establish and to maintain the agency affords reasonable promise of successful operation;
- (6) The bank's establishment and maintenance of the agency will promote the public convenience and advantage; and
- (7) The foreign nation where the bank is domiciled permits banks organized under the laws of this State and national banks headquartered in this State to establish and maintain in the foreign nation offices substantially equivalent to agencies or, except for directors' qualifying shares, wholly owned banks organized under the laws of the foreign nation.

(c) When an application to establish an agency has been approved and all conditions precedent to the issuance of a license authorizing the bank to maintain the agency have been fulfilled, the commissioner shall issue the license.

§ -34 Relocation of agency. (a) No foreign bank licensed to maintain an agency shall relocate the agency without the prior approval of the commissioner and a new license authorizing the bank to maintain the agency at the new site.

(b) An application shall be approved if the commissioner finds that:

- (1) The new site of the agency is in the same vicinity as the old site, and:
 - (A) It will not be unsafe or unsound for the bank to relocate the agency; and
 - (B) The relocation will not be substantially detrimental to the public convenience and advantage, or the relocation is necessary in the interests of the safety and soundness of the bank; or
- (2) The new site of the agency is not in the same vicinity as the old site, but:
 - (A) The bank's plan to relocate and to maintain the agency at the new site affords reasonable promise of successful operation;
 - (B) The relocation will not be substantially detrimental to the public convenience and advantage in the area which is primarily served by the agency at the old site, or the relocation is necessary in the interests of the safety and soundness of the bank; and
 - (C) The relocation will promote the public convenience and advantage.

(c) When an application to relocate has been approved and all conditions precedent to the issuance of a license authorizing the bank to maintain the agency at the new site have been fulfilled, the commissioner shall issue the license.

(d) Promptly after an approved relocation, the bank shall surrender to the commissioner the license which authorized it to maintain such agency at the old site.

§ -35 Permissible activities. A foreign bank licensed to maintain an agency may transact commercial banking business at such office, subject to the following:

- (1) If the agency is a nondepository agency, the bank shall not transact the business of accepting deposits.
- (2) If the agency is a depository agency, the bank shall not transact the business of accepting any deposits other than deposits of:
 - (A) A foreign nation;
 - (B) An agency or instrumentality of a foreign nation; or
 - (C) A person which resides, is domiciled, and maintains its principal place of business in a foreign nation.

For purposes of this paragraph "person" means any individual, proprietorship, joint venture, partnership, trust, business trust, syndicate, association, joint stock company, corporation, or any other organization or any branch or division thereof.

- (3) The bank, subject to rules adopted by the commissioner, may maintain credit balances.

- (4) In any case, the bank shall not transact any business which it is not authorized to transact or is prohibited from transacting under the laws of its domicile or which commercial banks organized under the laws of this State are not authorized to transact or are prohibited from transacting.

§ -36 **Restricted activities.** No foreign bank licensed to maintain an agency shall transact any trust business. Foreign banks shall not establish branch banks as permitted under sections 403-53 and 403-55. Foreign banks shall not be eligible for the deposit of public funds as provided under section 38-2.

§ -37 **Deposit regulations.** If a foreign bank is licensed to maintain a depository agency, the agency shall be subject to applicable federal deposit regulations.

§ -38 **Segregation of assets; priority among creditors.** A foreign bank licensed to transact business in this State shall keep the assets of the business separate and apart from the assets of its business outside this State. The creditors of the business in this State of a licensed foreign bank shall be entitled to priority over other creditors with respect to the assets of such bank's business in this State.

§ -39 **Deposit, withdrawal, and release of assets; claims.** (a) As used in this section:

"Adjusted liabilities" means the liabilities of the bank's business in this State, excluding:

- (1) Accrued expenses;
- (2) Any liability to an office, whether in or outside of this State, or majority-owned subsidiary of the bank; and
- (3) Such other liabilities as the commissioner may exclude.

"Applicable minimum", when used with respect to eligible assets deposited or to be deposited with an approved depository by a foreign bank, means the amount as the commissioner by rule may determine as necessary for the maintenance of sound financial condition, for the protection of the interests of creditors of the bank's business in this State, or for the protection of the public interest.

"Approved depository" means a bank organized under the laws of this State or a national bank headquartered in this State which has been selected by the foreign bank and approved by the commissioner to act as the approved depository of the foreign bank and which has filed with the commissioner an agreement to comply with all applicable provisions of this section and of any rule or order issued under this section.

"Eligible assets" means any of the following:

- (1) Cash;
- (2) Any security of the type described in section 403-128;
- (3) Any negotiable certificate of deposit which:
 - (A) Has a maturity of not more than one year;
 - (B) Is payable in the United States; and
 - (C) Is issued by a bank organized under the laws of a state of the United States, by a national bank, or by a branch office of a foreign bank which is located in the United States;
- (4) Any commercial paper which is payable in the United States and which is rated P-1 or its equivalent by a nationally recognized rating service; provided that any conflict in rating shall be resolved in favor of the lower rating;

- (5) Any banker's acceptance which is payable in the United States and which is eligible for discount with a Federal Reserve Bank;
- (6) Any other asset which the commissioner determines is eligible.

Notwithstanding the foregoing provisions of this paragraph, "eligible asset" does not include any instrument the issuer of which is, or is affiliated with, the foreign bank, is domiciled in, or controlled by a bank or other person domiciled in, the same foreign nation as the foreign bank, or is controlled by the foreign nation. For purposes of this paragraph, to be "affiliated" means to control, to be controlled by, or to be under common control with.

(b) For purposes of this section:

- (1) The amount of adjusted liabilities of a foreign bank's business in this State shall be computed for such period, in the manner, and on the basis as the commissioner may prescribe by rule;
- (2) Any eligible asset shall be valued at the lesser of market or par.

(c) Before any foreign bank is licensed to transact business in this State, the bank shall deposit, and each foreign bank licensed to transact business in this State shall maintain on deposit, with an approved depository eligible assets having a value in an amount not less than the applicable minimum.

When a foreign bank licensed to transact business in this State ceases to be so licensed, the bank shall thereafter maintain on deposit with an approved depository eligible assets having a value in an amount not less than the applicable minimum for the period of time as the commissioner may determine necessary to protect the creditors of the bank's business in this State or for the protection of the public interest.

(d) No foreign bank which maintains eligible assets on deposit with an approved depository pursuant to this section shall withdraw any eligible assets except with the prior approval of the commissioner.

No approved depository which holds eligible assets on deposit from a foreign bank pursuant to this section shall release any eligible assets except with the prior approval of the commissioner or as otherwise provided in subsection (h).

(e) Any foreign bank which maintains eligible assets on deposit with an approved depository pursuant to this section, unless the commissioner suspends or revokes its license or takes possession of its property and business in this State, shall be entitled to receive any income paid on such eligible assets.

(f) When a foreign bank deposits eligible assets with, or withdraws eligible assets from, an approved depository pursuant to this section, the bank shall do so in accordance with procedures and requirements prescribed by the commissioner.

When an approved depository receives, holds, or releases eligible assets pursuant to this section, the approved depository shall do so in accordance with such procedures and requirements, and shall file such reports, as the commissioner may require.

(g) When a foreign bank maintains eligible assets on deposit with an approved depository pursuant to this section:

- (1) The eligible assets shall be deemed pledged to the commissioner for the benefit of the creditors of the bank's business in this State; and, notwithstanding any provision of the Uniform Commercial Code, chapter 490, to the contrary, the commissioner, for the benefit of the creditors, shall have a security interest in the eligible assets;

- (2) The eligible assets shall be free from any lien, charge, right of setoff, credit, or preference in connection with any claim of the approved depository against the bank.

(h) If the commissioner takes possession of the property and business of a foreign bank which maintains eligible assets on deposit with an approved depository pursuant to this section, the approved depository, upon order of the commissioner, shall release the eligible assets to the commissioner as liquidator of the property and business of the bank.

If a foreign bank which maintains eligible assets on deposit with an approved depository pursuant to this section fails to pay any judgment creditor of its business in this State and the commissioner has not taken possession of the property and business of the bank, the approved depository shall release such eligible assets to the commissioner, and the commissioner shall make the disposition of the eligible assets as a court of competent jurisdiction of this State or of the United States may order for the benefit of the judgment creditor. For purposes of this paragraph, "judgment creditor of its business in this State" means a person to whom the bank is required to pay money under a judgment which:

- (1) Arose out of the bank's business in this State;
- (2) Has been entered by a court of this State or of the United States;
- (3) Has become final, in that all possibility of direct attack on the judgment by way of appeal, motion for new trial, motion to vacate, or petition for extraordinary writ has been exhausted; and
- (4) Has remained unpaid for a period of not less than sixty days after becoming final.

§ -40 Closure of agency. (a) No foreign bank licensed to maintain an agency shall close such agency without prior approval of the commissioner.

This subsection shall not prohibit a foreign bank which is licensed to maintain an agency from closing the agency in accordance with part IV.

(b) The commissioner shall approve an application for closure if the commissioner finds that:

- (1) It will not be unsafe or unsound for the bank to close the agency; and
- (2) The closing will not be substantially detrimental to the public convenience and advantage or that the closing is necessary in the interests of the safety and soundness of the bank.

(c) When an application for closure has been approved and all conditions precedent to the closing have been fulfilled, the bank may close the agency and shall promptly thereafter surrender to the commissioner the license which authorized it to maintain the agency.

PART IV. VOLUNTARY SURRENDER OF LICENSE

§ -51 Report and filing; effective date of surrender. Any foreign bank licensed to maintain an office may voluntarily surrender its license by filing the license and a report with the commissioner; provided that any foreign bank which holds licenses to maintain two or more offices may not voluntarily surrender less than all of the licenses.

A voluntary surrender of a license shall be effective on the thirtieth day after the license and the report are filed or on such earlier date as specified by the commissioner; provided that if a proceeding to revoke or suspend a license is pending at the time of the filing or if a proceeding to revoke or suspend a license or to impose conditions upon the surrender of a

license is instituted before the thirtieth day after the filing, the voluntary surrender of the license shall become effective at the time and upon the conditions as specified by the commissioner.

PART V. ENFORCEMENT

§ -61 **Civil penalties.** If, after a notice and a hearing, the commissioner finds that a person has violated any provision of this chapter or any rule or order issued under this chapter, the commissioner may order the person to pay a civil penalty determined by the commissioner; provided that the amount shall not exceed \$100 for each violation or, in the case of a continuing violation, \$100 for each day the violation continues.

§ -62 **Suspension or revocation of license.** (a) The commissioner may suspend or revoke the license of a foreign bank to maintain an office if the commissioner finds that:

- (1) The bank has violated any provision of this chapter or any rule or order under this chapter or any provision of any other applicable law, rule, or order;
- (2) The bank, if licensed to transact business in this State, is transacting business in an unsafe or unsound manner or, in any case, is transacting business elsewhere in an unsafe or unsound manner;
- (3) The bank is in unsafe or unsound condition;
- (4) The bank has ceased to operate its office;
- (5) The bank is insolvent in that it has ceased to pay its debts in the ordinary course of business, it cannot pay its debts as they become due, or its liabilities exceed its assets;
- (6) The bank has suspended payment of its obligations, has made an assignment for the benefit of its creditors, or has admitted in writing its inability to pay its debts as they become due;
- (7) The bank has applied for an adjudication of bankruptcy, reorganization, arrangement, or other relief under any bankruptcy, reorganization, insolvency, or moratorium law, or that any person has applied for any relief under any law against the bank and the bank has by any affirmative act approved of or consented to such action or such relief has been granted;
- (8) A receiver, liquidator, or conservator has been appointed for the bank, or that any proceeding for such an appointment or any similar proceeding has been initiated in the place where the bank is domiciled;
- (9) The existence of the bank or the authority of the bank to transact banking business under the laws of the place where the bank is domiciled has been suspended or terminated; or
- (10) Any fact or condition exists which, if it had existed at the time the bank applied for its license to transact business in this State, would have been grounds for denying the application.

(b) If the commissioner finds it necessary, in case the bank is licensed to transact business in this State, for the protection of the interests of creditors of the bank's business in this State or, in any case, for the protection of the public interest, the commissioner may issue an order immediately suspending or revoking the license of the bank.

Within thirty days after such an order is issued, the foreign bank may file an application for a hearing on the order. If the commissioner fails to commence the hearing within fifteen business days after the application is filed or within a longer period to which the bank consents, the order shall be

deemed rescinded. Within thirty days after the hearing, the commissioner shall affirm, modify, or rescind the order; otherwise, the order shall be deemed rescinded.

The right of any foreign bank to which an order is issued to petition for judicial review of the order shall not be affected by the failure of the bank to apply for a hearing on the order.

(c) A foreign bank whose license to maintain an office is suspended or revoked shall immediately surrender the license to the commissioner.

§ -63 Modification or rescission of order; review. (a) Any foreign bank to which an order is issued under section -62 may apply to the commissioner to modify or rescind the order. The commissioner shall grant the application if it is in the public interest to do so and if it is reasonable to believe that the bank, if and when it is again licensed to maintain an office, will comply with all applicable provisions of this chapter and of any rule or order issued under this chapter.

(b) The right of any foreign bank to which an order is issued under section -62 to petition for judicial review of the order shall not be affected by the failure of the bank to apply to the commissioner to modify or rescind the order.

§ -64 Possession and liquidation of business by commissioner; injunction. (a) The commissioner may take immediate possession of the property and business of a foreign bank licensed to transact business in this State and retain possession until the bank resumes business in this State or is finally liquidated if the commissioner finds it necessary for the protection of the bank's creditors in this State or of the public interest. The bank, with the consent of the commissioner, may resume business in this State upon conditions prescribed by the commissioner.

(b) When the commissioner takes possession of the property and business of a foreign bank, the bank, within ten days, may apply to the circuit court in the county in which the primary office of the bank is located to enjoin further proceedings. The court, after citing the commissioner to show cause why further proceedings should not be enjoined and after a hearing, may dismiss the application or enjoin the commissioner from further proceedings and order the commissioner to surrender the property and business of the bank to the bank or make such further order as may be just.

The judgment of the court may be appealed by the commissioner or the bank. An appeal by the commissioner shall operate as a stay of the judgment, and the commissioner shall not be required to post any bond.

(c) When the commissioner takes possession of the property and business of a foreign bank, the commissioner shall conserve or liquidate the property and business of the bank pursuant to the liquidation procedures under chapter 403.

(d) Upon completion of the liquidation of the property and business of a foreign bank, the commissioner shall transfer any remaining assets to the bank in accordance with the orders as the court may issue; provided that, if the bank has an office in another state of the United States which is in liquidation and the assets of the office appear to be insufficient to pay in full the creditors of the office, the court shall order the commissioner to transfer to the liquidator of the office the amount of any remaining assets as appears to be necessary to cover the insufficiency; provided further that, if there are two or more offices and the amount of remaining assets is less than the aggregate amount of insufficiencies with respect to the offices, the court shall order the commissioner to distribute the remaining assets among the liquidators of the offices in the manner as the court finds equitable."

SECTION 2. Section 241-1, Hawaii Revised Statutes, is amended by amending the definition of "bank" to read as follows:

““Bank” means and includes any national banking association, any bank organized under the laws of the State, any foreign bank doing business in the State under the authority of chapter , and any other corporation doing a banking business within the State under the authority of chapters 403 and 405.”

SECTION 3. Section 403-11, Hawaii Revised Statutes, is amended to read as follows:

“§403-11 Terms implying conducting of banking business; restrictions on use; penalty. No person (including firm, company, association, copartnership, or corporation, either domestic or foreign, except national banks) without having received a certificate of authority from the commissioner: shall advertise that the person or it is receiving or accepting money or savings and issuing notes or certificates of deposit or passbooks therefor; or make use of any office sign having any name or bearing any word or words indicating that its office or place of business is the office or place of business of a bank or that deposits are received there or payments made on check, or that any other form of banking business is transacted; or make use of or circulate any letterheads, blank notes, blank receipts, certificates, or circulars or other paper whatever, whether written or printed, having thereon any name, word, or words indicating that it is engaged in any banking business. Nor shall any [such] person or any agent of a foreign corporation solicit or receive deposits or transact any business in the way or manner of a banking business or in such a way or manner as to lead the public to believe that it is so engaged[.] unless the person or agent possesses a license as required under chapter . Nor shall any¹ person or agent transact business under any name, title, or descriptive term which contains the word “bank”, or “banker”, or “bankers”, or “banking”, or “savings bank”, or “savings”, or any other word in any language having the same or a similar meaning. The commissioner or an examiner may examine the accounts, books, and papers of every such person or agent to ascertain whether this section has been or is being violated.

Any person, violating this section, shall forfeit to the State \$100 a day for every day or part thereof during which the violation continues. Upon action brought by the commissioner the court may issue an injunction restraining any person or agent from further violating this section or from further acting in any way or manner as to imply or lead the public to believe that its business is of a banking character, as well during the pendency of such action as for all time, and may make any¹ other order or decree as may be proper.”

SECTION 4. Section 403-16, Hawaii Revised Statutes, is amended to read as follows:

“§403-16 Foreign banks; powers and restrictions. [No foreign bank shall be permitted to] Foreign banks shall engage in any banking business in the State [except as in this chapter provided.] only as authorized under this section or chapter .

Foreign banks not licensed under chapter shall be limited to the business of making and collecting loans, buying and selling, paying and collecting bills of exchange, issuing letters of credit, receiving money for transmission and transmitting the same by draft, check, cable, or otherwise; provided that no¹ bank shall be authorized to engage in any¹ business until it

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has received from the commissioner a certificate permitting it to do so. The commissioner may require from the bank all facts necessary for the commissioner to determine whether or not the public convenience and advantage will be promoted by issuing the certificate, and may in the commissioner's discretion refuse to issue the certificate. [Such] The banks, when authorized to engage in any business [aforesaid,] in this State, shall possess and be entitled to exercise the same rights and privileges and be subject to the same limitations, requirements, and restrictions, as respects the business so authorized, as by this chapter are given to or placed upon other banks transacting a like business in the State."

SECTION 5. Chapter 405, Hawaii Revised Statutes, is amended by amending the title to read as follows:

"CHAPTER 405 INTERNATIONAL AND FOREIGN BANKING BY HAWAII CORPORATIONS"

SECTION 6. The department of planning and economic development shall be responsible for the promotion of international banking in Hawaii as authorized by this Act. The department shall develop and implement a promotional program encouraging foreign banks to establish offices in Hawaii by advertising the enactment of this enabling legislation and providing foreign banks with sufficient information so as to facilitate the application and licensing process. In carrying out its responsibilities, the department may:

- (1) Organize, conduct, sponsor, or cooperate in and assist the conduct of special institutes, conferences, demonstrations, and studies relating to the stimulation and attraction of foreign banks to establish offices in Hawaii;
- (2) Provide advisory services and technical assistance to foreign banks interested in establishing offices in Hawaii;
- (3) Prepare, publish, and distribute, with or without charge, technical studies, reports, bulletins, and other materials as it deems appropriate to properly inform foreign banks of the opportunity to establish offices and conduct business in Hawaii; and
- (4) Contract for services or hire temporary staff.

SECTION 7. There is appropriated out of the general revenues of the State of Hawaii the sum of \$100,000, or so much thereof as may be necessary for fiscal year 1987-1988, for the promotion of international and foreign banking. The sum appropriated shall be expended by the department of planning and economic development for the purpose of this Act. The department shall submit a report of its promotion program to the Legislature twenty days before the convening of the Regular Session of 1988.

SECTION 8. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 9. This Act shall take effect upon its approval.

(Approved June 5, 1987.)

Note

1. Prior to amendment, "such" appeared here.