

**ACT 155**

S.B. NO. 2724

A Bill for an Act Relating to the Code of Financial Institutions.

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

SECTION 1. Chapter 412, Hawaii Revised Statutes, is amended by adding a new article to be appropriately designated and to read as follows:

**“ARTICLE . INTERSTATE BRANCHING AND BANK MERGERS**

**§412: -100 Purpose.** It is the express intent of this article to permit interstate branching under sections 102 and 103 of the Riegle-Neal Interstate

Banking and Branching Efficiency Act of 1994, Public Law No. 103-328, in accordance with the provisions set forth in this article.

**§412: -101 Definitions.** As used in this article, unless a different meaning is required by the context, the following words and phrases shall have the following meanings:

“Acquisition of a branch” means the acquisition of a branch located in a host state, without engaging in an “interstate merger transaction” as defined in this article.

“Bank” has the meaning set forth in 12 U.S.C. section 1813(h); provided that the term “bank” shall not include any “foreign bank” as defined in 12 U.S.C. section 3101(7), except that the term “bank” shall include any foreign bank organized under the laws of a territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands, the deposits of which are insured by the Federal Deposit Insurance Corporation.

“Bank holding company” has the meaning set forth in 12 U.S.C. section 1841(a)(1).

“Bank supervisory agency” means:

- (1) Any agency of another state with primary responsibility for chartering and supervising banks; and
- (2) The Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, and any successor to these agencies.

“Branch” means a place of business of a bank, other than its main office, which is open to the public and at which deposits are received and paid. The term does not include an automatic teller machine as defined in section 412:3-501.

“Control” shall be construed consistently with 12 U.S.C. section 1841(a)(2).

“De novo branch” means a branch of a bank located in a host state which:

- (1) Is originally established by the bank as a branch; and
- (2) Does not become a branch of the bank as a result of (A) the acquisition of another bank or a branch of another bank, or (B) the merger, consolidation, or conversion involving any bank or branch.

“Foreign bank” has the meaning set forth in 12 U.S.C. section 3101(7).

“Hawaii bank” means a bank whose home state is Hawaii.

“Hawaii state bank” means a bank chartered under the laws of Hawaii.

“Home state” means:

- (1) With respect to a state bank, the state by which the bank is chartered;
- (2) With respect to a national bank, the state in which the main office of the bank is located; and
- (3) With respect to a foreign bank, the state determined to be the home state of the foreign bank under 12 U.S.C. section 3103(c).

“Home state regulator” means, with respect to an out-of-state state bank, the bank supervisory agency of the state in which the bank is chartered.

“Host state” means a state, other than the home state of a bank, in which the bank maintains, or seeks to establish and maintain a branch.

“Interstate merger transaction” means:

- (1) The merger or consolidation of banks with different home states, and the conversion of branches of any bank involved in the merger or consolidation into branches of the resulting bank; or
- (2) The purchase of all or substantially all of the assets (including all or substantially all of the branches) of a bank whose home state is different from the home state of the acquiring bank.

“Out-of-state bank” means a bank whose home state is a state other than Hawaii.

“Out-of-state state bank” means a bank chartered under the laws of any state other than Hawaii.

“Resulting bank” means a bank that has resulted from an interstate merger transaction under this article.

“State,” whenever this word is used in its uncapitalized form, means any state of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

**§412: -102 Authority of Hawaii state banks to establish interstate branches by merger.** (a) With the prior approval of the commissioner, a Hawaii state bank may establish and operate one or more branches in a state other than Hawaii, pursuant to an interstate merger transaction in which the Hawaii state bank is the resulting bank.

(b) Not later than the date on which the required application for the interstate merger transaction is filed with the responsible federal bank supervisory agency, the applicant Hawaii state bank shall comply with and the application shall be processed in accordance with all applicable provisions of this part VI, article 3, of this chapter. The interstate merger transaction may be consummated and the Hawaii state bank may establish and operate the branches outside of Hawaii only after the applicant has received the commissioner’s written approval.

**§412: -103 Authority of Hawaii state banks to establish a de novo interstate branch or acquire an interstate branch.** (a) With the prior approval of the commissioner, any Hawaii state bank may establish and operate a de novo branch or acquire and operate a branch in a state other than Hawaii.

(b) A Hawaii state bank desiring to establish and operate a de novo branch or acquire and operate a branch in another state under this section shall comply with, and the application shall be processed in accordance with sections 412:3-503 and 412:3-505. In acting on the application, the commissioner shall consider the views of the appropriate bank supervisory agencies. The applicant bank may establish and operate the branch when it has received the written approval of the commissioner.

**§412: -104 Authority of out-of-state banks to establish interstate branches in Hawaii by merger.** (a) One or more Hawaii banks may enter into an interstate merger transaction with one or more out-of-state banks under this article, and an out-of-state bank resulting from the transaction may maintain and operate the branches in Hawaii of a Hawaii bank that participated in the transaction, if the conditions and filing requirements of this article are met.

- (b) (1) An interstate merger transaction resulting in the acquisition by an out-of-state bank of a Hawaii state bank, or of all or substantially all of the branches of a Hawaii state bank, shall not be permitted under this article unless the Hawaii state bank shall have been in continuous operation, on the date of such acquisition, for a period of at least five years.
- (2) For purposes of paragraph (1), a Hawaii state bank chartered solely for the purpose of acquiring another Hawaii state bank is considered to have been in existence for the same period as the Hawaii state bank to be acquired, so long as it does not open for business at any time before the acquisition.
- (3) The commissioner may waive the restriction in paragraph (1) in the case of a Hawaii state bank that is subject to, or is in danger of

becoming subject to supervisory action under article 2 of this chapter or, if applicable, the equivalent provisions of federal law.

(c) Any out-of-state bank that will be the resulting bank pursuant to an interstate merger transaction involving a Hawaii state bank shall notify the commissioner of the proposed merger not later than the date on which it files an application for an interstate merger transaction with the responsible federal bank supervisory agency, and shall submit a copy of that application to the commissioner and pay a filing fee of \$9,000, or a greater amount as the commissioner may establish by rule pursuant to chapter 91. The filing fee shall be non-refundable. Any Hawaii state bank which is a party to an interstate merger transaction shall comply with part VI, article 3, of this chapter to the extent applicable, and with other applicable state and federal laws. If the resulting bank in the interstate merger transaction is an out-of-state state bank, the director of commerce and consumer affairs shall not file the articles of merger until the out-of-state state bank has filed a confirmation in writing by the commissioner of compliance with this section. If the resulting bank in the interstate merger transaction is an out-of-state bank which is a national banking association, the resulting bank shall file with the director of commerce and consumer affairs a confirmation in writing by the commissioner of compliance with this section.

(d) Any out-of-state state bank which shall be the resulting bank in an interstate merger transaction involving a Hawaii bank shall provide satisfactory evidence to the commissioner of compliance with applicable requirements of chapter 415 relating to foreign corporations.

**§412: -105 Prohibition of out-of-state banks to establish a de novo interstate branch or acquire an interstate branch.** (a) An out-of-state bank that does not operate a branch in this State may not establish and operate a de novo branch in this State.

(b) An out-of-state bank that does not operate a branch in this State may not establish and operate a branch in this State through the acquisition of a branch.

(c) Notwithstanding subsection (b), the commissioner may approve the acquisition of a branch by an out-of-state bank in the case of a bank that is subject to, or is in danger of becoming subject to supervisory action under article 2 of this chapter or, if applicable, the equivalent provisions of federal law or the law of the out-of-state bank's home state.

**§412: -106 No concentration limit under Hawaii state law; waiver of federal concentration limits.** (a) There shall be no state deposit cap or concentration limit under the law of this State.

(b) The commissioner may waive, on a case by case basis, the federal statewide concentration limits under section 44(b) of the Federal Deposit Insurance Act; provided that the commissioner shall apply a standard that does not discriminate against out-of-state banks. In granting a waiver, the commissioner shall consider whether the waiver promotes the availability of financial services, the marketability of Hawaii banks, or another public interest. This section shall not affect the applicability, if any, of federal or state antitrust law.

**§412: -107 Powers; additional branches.** (a) An out-of-state state bank which establishes and operates a branch in Hawaii under this article may conduct any activities at the branch that are authorized under the laws of this State for Hawaii state banks chartered under article 5 of this chapter.

(b) A Hawaii state bank may conduct any activities at any branch outside Hawaii that are permissible for a bank chartered by the host state where the branch is located, except to the extent the activities are expressly prohibited by the laws of this

State or by any rule or order of the commissioner applicable to the Hawaii state bank; provided that the commissioner may waive any prohibition if the commissioner determines, by order or rule, that the involvement of out-of-state branches of Hawaii state banks in particular activities would not threaten the safety or soundness of those banks.

(c) An out-of-state bank that has established or acquired a branch in Hawaii under this article may establish or acquire additional branches or other places of business as authorized pursuant to section 412:3-501 in Hawaii to the same extent that any Hawaii bank may establish or acquire a branch or other places of business in Hawaii under applicable federal and state law.

(d) If an out-of-state bank operates two or more branches in Hawaii, the out-of-state bank shall designate one of its branches as its principal office in this State.

**§412: -108 Examinations; periodic reports; cooperative agreements; assessment of fees.** (a) To the extent consistent with subsection (c), the commissioner may examine any branch established and maintained in this State pursuant to this article by an out-of-state state bank as the commissioner deems necessary to determine whether the branch is being operated in compliance with the laws of this State and in accordance with safe and sound banking practices. Sections 412:2-105 and 412:2-200 shall apply to the examinations of the out-of-state state banks in the same manner as to the examinations of Hawaii financial institutions.

(b) The commissioner may require periodic reports regarding any out-of-state bank that operates a branch in Hawaii pursuant to this article. The required reports shall be provided by the bank or by the bank supervisory agency having primary responsibility for the bank. Any reporting requirements prescribed by the commissioner under this subsection shall be (1) consistent with the reporting requirements applicable to Hawaii state banks and (2) appropriate for the purpose of enabling the commissioner to carry out the commissioner's responsibilities under this chapter.

(c) The commissioner may enter into cooperative, coordinating, and information-sharing agreements with any other bank supervisory agencies or any organization affiliated with or representing one or more bank supervisory agencies with respect to the periodic examination or other supervision of any branch in Hawaii of an out-of-state state bank, or any branch of a Hawaii state bank in any host state, and the commissioner may accept the parties' reports of examination and reports of investigation in lieu of conducting the commissioner's own examinations or investigations.

(d) The commissioner may enter into contracts with any bank supervisory agency that has concurrent jurisdiction over a Hawaii state bank or an out-of-state state bank operating a branch in this State pursuant to this article to engage the services of the agency's examiners at a reasonable rate of compensation, or to provide the services of the commissioner's examiners to the agency at a reasonable rate of compensation. Any contract executed under this section shall be exempt from the requirements of chapter 103D.

(e) The commissioner may enter into joint examinations or joint enforcement actions with other bank supervisory agencies having concurrent jurisdiction over any branch in Hawaii of an out-of-state state bank or any branch of a Hawaii state bank in any host state; provided that the commissioner at any time may take action independently if the commissioner deems the action to be necessary or appropriate to carry out the commissioner's responsibilities under this article or to ensure compliance with the laws of this State; provided further that, in the case of an out-of-state state bank, the commissioner shall recognize the exclusive authority of the home state regulator over corporate governance matters and the primary responsibility of the home state regulator with respect to safety and soundness matters.

(f) Each out-of-state state bank that maintains one or more branches in this State may be assessed and, if assessed, shall pay supervisory, examination, and other fees in accordance with the laws of this State and rules of the commissioner. The fees may be shared with other bank supervisory agencies or any organization affiliated with or representing one or more bank supervisory agencies in accordance with agreements between the parties and the commissioner.

**§412: -109 Enforcement.** If the commissioner determines that a branch maintained by an out-of-state state bank in this State is being operated in violation of any provision of the laws of this State, or that the branch is being operated in an unsafe and unsound manner, the commissioner may take all enforcement actions as the commissioner could take if the branch were a Hawaii state bank; provided that the commissioner shall promptly give notice to the home state regulator of each enforcement action taken against an out-of-state state bank and, to the extent practicable, shall consult and cooperate with the home state regulator in pursuing and resolving the enforcement action. The enforcement and supervisory powers of the commissioner contained in parts III to VI, article 2 of this chapter shall apply to an out-of-state state bank to the same extent that the provisions are applicable to a Hawaii financial institution.

**§412: -110 Notice of subsequent merger, etc.** Each out-of-state state bank that operates a branch in this State pursuant to this article, or the home state regulator of the bank, shall give at least thirty days' prior written notice (or, in the case of an emergency transaction, shorter notice as is consistent with applicable state or federal law) to the commissioner of any merger, consolidation, or other transaction that would cause a change of control with respect to the out-of-state state bank or any bank holding company that controls the bank, with the result that an application would be required to be filed pursuant to the federal Change in Bank Control Act of 1978, as amended, 12 U.S.C. section 1817(j), or the federal Bank Holding Company Act of 1956, as amended, 12 U.S.C. section 1841 et seq., or any successor statutes thereto."

SECTION 2. Chapter 412, Hawaii Revised Statutes, is amended by adding a new article to be appropriately designated and to read as follows:

## **"ARTICLE . THE HAWAII INTERNATIONAL BANKING ACT**

### **PART I. GENERAL**

**§412: -100 Title and purpose.** (a) This article shall be known and may be cited as the Hawaii International Banking Act.

(b) This article is intended generally to provide for state regulation of the participation by foreign banks in the financial markets of this State.

(c) Consistent with the federal International Banking Act, the Bank Holding Company Act, the Federal Deposit Insurance Act, and the Interstate Banking and Branching Efficiency Act, this article is intended specifically:

- (1) To authorize banking activities and operations, under state licenses issued by the commissioner, of direct branch and agency offices in this State of foreign banks, generally under terms and conditions not less favorable than the terms and conditions under which the activities and operations may be conducted by federal branch or agency offices of foreign banks in the United States, and to set forth a statutory framework for the licensing, regulation, and supervision of the State-licensed offices of foreign banks by the commissioner to assure the safe and

sound operation of the offices that are licensed under the laws of this State;

- (2) To authorize representative offices in this State of foreign banks, and to set forth statutory provisions governing the licensing and supervision of the representative offices by the commissioner; and
- (3) To ensure that the banking laws and rules of this State otherwise apply to foreign banks in a manner consistent with the laws and policies of the United States governing the operations in this country of foreign banks.

**§412: -101 Application to existing foreign banks.** (a) The licenses of foreign banks to open and maintain agency offices and representative offices in this State which were granted before and which are in effect on June 1, 1997, are not invalidated by the enactment of this article nor by any change made in the requirements for licensing of foreign bank offices, nor by the repeal of the laws under which they were licensed.

(b) The provisions of this article shall apply to all agency and representative offices of foreign banks which were licensed under previous laws of this State and which are in operation on June 1, 1997, except as provided in this section.

(c) With the enactment of this article, non-depository agency offices of foreign banks which were licensed under previous laws of this State and are in operation on June 1, 1997, shall have all of the powers and authority of a Hawaii state agency under this article, except that the non-depository agency office shall not accept any deposits pursuant to section 412: -208, and as long as deposits are not accepted, the non-depository agency office shall not be required to comply with section 412: -213. Notwithstanding the foregoing provision, nothing shall prohibit the foreign bank operating a non-depository agency office from filing an application under section 412: -205 to amend its license.

**§412: -102 Definitions.** As used in this article:

“Affiliate” has the same meaning as set forth in section 2(k) of the Bank Holding Company Act (12 U.S.C. 1841(k)).

“Agency,” when used in reference to an office of a foreign bank, shall have the same meaning as is set forth in section 1(b)(1) of the federal International Banking Act (12 U.S.C. 3101(1)).

“Bank” means any bank as defined in: section 2(c) of the Bank Holding Company Act (12 U.S.C. 1841(c)); section 3(a)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(a)(1)), other than a branch of a foreign bank; or, as the context may require, in section 412:5-100. The term shall not in any event include a foreign bank or a branch or agency of a foreign bank.

“Bank holding company” has the same meaning as set forth in section 2(a) of the Bank Holding Company Act (12 U.S.C. 1841(a)).

“Bank Holding Company Act” means the federal Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841 et seq.).

“Bank supervisory agency” means:

- (1) The Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, and any successor to these agencies;
- (2) Any agency of another state with primary responsibility for chartering and supervising banks; and
- (3) Any agency of a country (including any colonies, dependencies, possessions, or political subdivisions thereof) other than the United States with primary responsibility for chartering and supervising banks.

“Branch,” when used in reference to an office of a foreign bank, has the same meaning as is set forth in section 1(b)(3) of the federal International Banking

Act (12 U.S.C. 3101(3)), and when used in reference to an office of a bank as defined in this section, shall have the same meaning as is set forth in section 3(o) of the Federal Deposit Insurance Act (12 U.S.C. 1813(o)).

“Control” shall be construed consistently with the provisions of section 2(a)(2) of the Bank Holding Company Act (12 U.S.C. 1841(a)(2)).

“Depository institution” means any institution that is included for any purpose within the definitions of “insured depository institution” as set forth in section 3(c)(2) and (3) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)(2) and (3)).

“Federal agency” means an agency of a foreign bank that is licensed by the Comptroller of the Currency pursuant to section 4 of the federal International Banking Act (12 U.S.C. 3102).

“Federal branch” means a branch of a foreign bank that is licensed by the Comptroller of the Currency pursuant to section 4 of the federal International Banking Act (12 U.S.C. 3102).

“Federal Deposit Insurance Act” means the Federal Deposit Insurance Act, as amended (12 U.S.C. 1813 et seq.).

“Federal International Banking Act” means the federal International Banking Act of 1978, as amended (12 U.S.C. 3101 et seq.).

“Foreign bank” means any company organized under the laws of a foreign country, a territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands, that engages directly in the business of banking. The term includes foreign commercial banks, foreign merchant banks, and other foreign institutions that engage in banking activities usual in connection with the business of banking in the countries where the foreign institutions are organized or operating.

“Hawaii bank” means a Hawaii state bank or a Hawaii national bank.

“Hawaii national bank” means a national banking association having its headquarters within Hawaii.

“Hawaii representative office” means a representative office that is located in this State.

“Hawaii state agency,” when used in reference to an office of a foreign bank, means an agency of a foreign bank that is located in this State and licensed pursuant to this chapter, part II, of this article.

“Hawaii state bank” means a bank organized under the laws of Hawaii.

“Hawaii state branch,” when used in reference to an office of a foreign bank, means a branch of a foreign bank that is located in this State and licensed pursuant to this chapter, part II, of this article.

“Home state” has the same meaning in reference to national banks, state banks, and bank holding companies as is set forth in section 44(f)(4) of the Federal Deposit Insurance Act (12 U.S.C. 1831u), and the same meaning in reference to foreign banks as is set forth in section 5(c) of the federal International Banking Act (12 U.S.C. 3103(c)).

“Interstate Banking and Branching Efficiency Act” means the federal Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Public Law No. 103-328, 108 Stat. sections 2338 to 2381 (September 29, 1994, codified at various sections of Title 12, United States Code).

“Interstate branch” means a branch of a bank or a branch of a foreign bank, as the context may require, which is established after September 29, 1994, pursuant to the authority contained in the Interstate Banking and Branching Efficiency Act, outside the home state of the bank or foreign bank. In the case of a foreign bank, the term shall not include a limited branch.

“Limited branch” means a branch of a foreign bank that accepts only those deposits as would be permissible for a corporation organized under section 25A of



the Federal Reserve Act in accordance with section 5(a)(7) of the federal International Banking Act (12 U.S.C. 3103(a)(7)).

“Out-of-state bank” means a bank, the home state of which is a state other than Hawaii.

“Out-of-state bank holding company” means a bank holding company, the home state of which is a state other than Hawaii.

“Out-of-state foreign bank” means a foreign bank, the home state of which is a state other than Hawaii.

“Representative office” has the same meaning as is set forth in section 1(b)(15) of the federal International Banking Act (12 U.S.C. 3101(15)).

“State,” whenever this word is used in its uncapitalized form, has the same meaning as is set forth in section 3(a)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1813(a)(3)).

“Subsidiary” has the same meaning as set forth in section 2(d) of the Bank Holding Company Act (12 U.S.C. 1841(d)).

“United States,” when used in a geographical sense, means the several states, the District of Columbia, Puerto Rico, Guam, American Samoa, the American Virgin Islands, the Trust Territory of the Pacific Islands, and any other territory of the United States; and, when used in a political sense, means the federal government of the United States.

## PART II. DIRECT BRANCH, AGENCY, AND REPRESENTATIVE OFFICES OF FOREIGN BANKS

**§412: -200 Purpose.** Consistent with the federal International Banking Act, the Bank Holding Company Act, the Federal Deposit Insurance Act, and the Interstate Banking and Branching Efficiency Act, this part is intended:

- (1) To authorize banking activities and operations, under state licenses issued by the commissioner, of direct branch and agency offices in this State of foreign banks, generally under terms and conditions not less favorable than the terms and conditions under which the activities and operations may be conducted by federal branch or agency offices of foreign banks in the United States, and to set forth a statutory framework for the licensing, regulation, and supervision of state-licensed offices of foreign banks by the commissioner to assure the safe and sound operation of the offices that are licensed under the laws of this State; and
- (2) To authorize representative offices in this State of foreign banks, and to set forth statutory provisions governing the licensing and supervision of these offices by the commissioner.

**§412: -201 Branches and agencies of foreign banks; necessity of license.** (a) No foreign bank shall transact business in this State except at a Hawaii state branch or Hawaii state agency which it is licensed to establish and maintain pursuant to, and at which it conducts the activities as are permitted by this article.

(b) Subsection (a) shall not be deemed to prohibit:

- (1) Any foreign bank that establishes and maintains a federal agency or federal branch in this State from transacting at the federal agency or federal branch any business it may be authorized to transact under applicable federal laws and regulations;
- (2) Any foreign bank that does not maintain a Hawaii state branch or Hawaii state agency from making in this State loans secured by liens on real or personal property located in this State or enforcing the loans in this State; or

- (3) Any foreign bank organized under the laws of a territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands, the deposits of which are insured by the Federal Deposit Insurance Corporation, from establishing and operating an interstate branch in this State in its capacity as a "state bank" as defined in the Federal Deposit Insurance Act, pursuant to the authorities contained in that Act and in the laws of this State.

(c) For purposes of subsection (a), no foreign bank shall be deemed to be transacting business in this State merely because a subsidiary or affiliate transacts business in this State, including business that any depository institution subsidiary or affiliate may lawfully conduct in this State, as an agent for the foreign bank in accordance with and to the extent authorized by the laws of this State and applicable rules or orders of the commissioner.

**§412: -202 Application to establish and maintain a branch or agency; contents.** A foreign bank, in order to procure a license under this article to establish and maintain a Hawaii state branch or Hawaii state agency shall submit an application to the commissioner, together with the application fee prescribed in section 412: -206. The application shall contain:

- (1) The same information as required by the Board of Governors of the Federal Reserve System for an application to establish a branch or agency, as the case may be, in the United States;
- (2) A statement under oath appointing an agent in this State for receipt of service of process in accordance with section 415-113 if the license is granted; and
- (3) Any additional information that the commissioner may require.

**§412: -203 Application to establish and maintain a branch or agency; manner of filing and determination.** (a) A foreign bank making an application under this article for a license to establish and maintain a Hawaii state branch or Hawaii state agency shall deliver to the commissioner:

- (1) Three duplicate originals of the foreign bank's application, or a greater number as the commissioner may require by rule; and
  - (2) Three copies of its charter or articles of incorporation and all amendments thereto, duly authenticated by the proper officer of the country of the foreign bank's organization, or a greater number of copies as the commissioner may require by rule. If the charter, articles of incorporation, or amendments are in a foreign language, three copies (or a greater number of copies as the commissioner may require by rule) of an English translation of the documents under the oath of the translator shall accompany the charter, articles of incorporation, or amendments.
- (b) The commissioner shall issue a license to a foreign bank to establish and maintain a Hawaii state branch or Hawaii state agency if the commissioner finds that:

- (1) The foreign bank is in good standing under the laws of the country in which it is organized and is in sound financial condition;
- (2) The management of the foreign bank and the proposed management of the Hawaii state branch or Hawaii state agency are of good moral character, competent, and sufficiently experienced;
- (3) The convenience and needs of persons to be served by the proposed Hawaii state branch or a Hawaii state agency will be promoted; and
- (4) The foreign bank satisfies any other standards that the commissioner may establish by rule.

(c) In considering whether a foreign bank is in sound financial condition for the purposes of subsection (b), the commissioner may consider the length of time the foreign bank has engaged in the banking business, the asset size of the bank, and any other criteria which the commissioner deems relevant. The commissioner may presume, in the absence of creditable evidence to the contrary, that a foreign bank that has total assets having an aggregate value in United States currency of \$10,000,000,000 or more and that has engaged in the banking business for at least ten years prior to filing an application pursuant to this article is in sound financial condition.

(d) In considering whether the management of the foreign bank and the proposed management of the Hawaii state branch or Hawaii state agency is of good moral character for the purposes of subsection (b), the commissioner may presume that in the absence of creditable evidence to the contrary, the management is of good moral character. The presumption may be rebutted by evidence to the contrary, including, but not limited to a finding that a person has:

- (1) Been convicted of, or has pleaded nolo contendere to, any crime involving an act of fraud or dishonesty;
- (2) Consented to or suffered a judgment in any civil action based upon conduct involving an act of fraud or dishonesty;
- (3) 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;
- (4) 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
- (5) 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.

(e) If the commissioner approves the application of the foreign bank for a license to establish and maintain a Hawaii state branch or Hawaii state agency, the foreign bank shall then provide satisfactory evidence to the commissioner of compliance with the applicable requirements of chapter 415 relating to foreign corporations. The commissioner shall then:

- (1) Endorse on each document filed as part of the application the word "Filed", and the date of the filing thereof and return to the foreign bank a copy of each document so endorsed;
- (2) File in the commissioner's office one of the originals of the application and copies of the charter or articles of incorporation and amendments thereto; and
- (3) Issue a license to establish and maintain a Hawaii state branch or Hawaii state agency to the foreign bank.

(f) Each license issued to a foreign bank to establish and maintain a Hawaii state branch or Hawaii state agency shall state fully the name of the foreign bank to which the license is issued, and any other information as the commissioner may require.

(g) The commissioner may waive some of the requirements, procedures, and standards applicable to applications to establish additional intrastate Hawaii state branches or Hawaii state agencies if the foreign bank has already established an initial Hawaii state branch or Hawaii state agency.

(h) If a foreign bank operates two or more Hawaii state branches or Hawaii state agencies, the foreign bank shall designate one of the offices as its principal office in this State.

**§412: -204 Denial of license.** If the commissioner is not satisfied that the foreign bank meets all the criteria set forth for approval, the commissioner shall issue a written decision denying the application. A foreign bank which is denied approval may request a hearing before the commissioner in accordance with chapter 91. Any final decision of the commissioner denying a foreign bank a license may be appealed to the circuit court as provided in chapter 91.

**§412: -205 Amended license to establish and maintain a branch or agency.** (a) A foreign bank that is licensed to establish and maintain a Hawaii state branch or Hawaii state agency shall secure an amended license if it changes its corporate name, changes the duration of its corporate existence, or desires to pursue in this State other or additional purposes than those set forth in its prior application for a license under this article, by making application therefor to the commissioner.

(b) The requirements with respect to the form and contents of an application under subsection (a), the manner of its execution, the filing of triplicate originals thereof with the commissioner, the payment of an application fee, the issuance of an amended license, and the effect thereof shall be the same as in the case of an initial application for a license to establish and maintain a Hawaii state branch or Hawaii state agency.

**§412: -206 Application fees.** Upon applying to the commissioner under this article for an initial license to establish and maintain a Hawaii state branch or Hawaii state agency, a foreign bank shall pay to the commissioner an application fee of \$9,000 or a greater amount as the commissioner shall establish by rule pursuant to chapter 91. For an application to establish additional branches or agencies, the foreign bank shall pay an application fee of \$1,500 or a greater amount as may be established by rule. For an application to amend a license, the foreign bank shall pay an application fee of \$1,500 or a greater amount as may be established by rule. All application fees shall be non-refundable.

**§412: -207 No concurrent maintenance of federal branches or agencies.** (a) No foreign bank that is licensed under this article to establish and maintain a Hawaii state branch or Hawaii state agency shall concurrently maintain a federal branch or federal agency in this State.

(b) No foreign bank that maintains a federal branch or federal agency in this State shall concurrently be licensed under this article to maintain a Hawaii state branch or Hawaii state agency.

**§412: -208 Powers of branch and agency.** (a) Except as otherwise specifically provided in this article or in rules or orders adopted by the commissioner, and notwithstanding any other law or rule of this State to the contrary, operations of a foreign bank at a Hawaii state branch or Hawaii state agency shall be conducted with the same rights, privileges, and powers as a Hawaii state bank at the location and shall be subject to all the same duties, restrictions, penalties, liabilities, conditions, and limitations that would apply under the laws of this State to a Hawaii state bank doing business at the same location.

(b) Among other exceptions to subsection (a) that may be required or authorized by the commissioner pursuant to this part:

- (1) A Hawaii state branch shall not accept, from individuals who are citizens or residents of the United States, deposits (other than credit

balances that are incidental to or arise out of its exercise of other lawful banking powers) of less than \$100,000, except to the extent that the deposits are determined by the Federal Deposit Insurance Corporation not to constitute "domestic retail deposit activities requiring deposit insurance protection" within the meaning of section 6 of the federal International Banking Act (12 U.S.C. 3104); provided that, a Hawaii state branch of a bank organized under the laws of any territory of the United States, Puerto Rico, Guam, American Samoa or the Virgin Islands, the deposits of which are insured by the Federal Deposit Insurance Corporation, shall not be subject to the foregoing limitation on domestic retail deposit taking;

- (2) A Hawaii state agency shall not accept any deposits except:
  - (A) Deposits of a foreign nation, its political subdivisions, agencies, or instrumentalities; and
  - (B) Deposits of persons who reside, are domiciled and maintain their principal place of business in a foreign nation, and are not citizens of the United States;
- (3) A Hawaii state branch or Hawaii state agency shall not be required to maintain federal deposit insurance under any law, rule, or order of this State that requires Hawaii state banks and other depository institutions to maintain federal deposit insurance, and the commissioner, by rule or order, may exclude or exempt uninsured Hawaii state branches and Hawaii state agencies from, or otherwise modify the applicability to uninsured Hawaii state branches and Hawaii state agencies of, any law or rule of this State that is generally applicable to insured Hawaii state banks, or that would otherwise be applicable to an insured Hawaii state bank doing business at the same location, as the commissioner may deem necessary or desirable, taking into account applicable limitations on the retail deposit-taking powers and privileges of Hawaii state branches and Hawaii state agencies;
- (4) A foreign bank which is licensed to establish and maintain a Hawaii state branch or Hawaii state agency shall not engage in fiduciary activities at its Hawaii office;
- (5) Any limitation or restriction based on the capital stock and surplus of a Hawaii state bank shall be deemed to refer, as applied to a Hawaii state branch or Hawaii state agency, to the dollar equivalent of the capital stock and surplus of the foreign bank, and if the foreign bank has more than one Hawaii state branch or Hawaii state agency in this State, the business transacted by all the Hawaii state branches and Hawaii state agencies shall be aggregated in determining compliance with the limitation; and
- (6) The commissioner may adopt any additional or modify the applicability of any existing standards, conditions, or requirements, by rule or order, as the commissioner may deem necessary to ensure the safety and soundness and the protection of creditors of the operations of branches and agencies of foreign banks in this State.

**§412: -209 Filing of amendments to articles of incorporation.** A foreign bank that is licensed to maintain a Hawaii state branch or Hawaii state agency, whenever its articles of incorporation are amended, shall forthwith file in the office of the commissioner a copy of the amendment duly authenticated by the proper officer of the country of the foreign bank's organization, but the filing thereof may not of itself enlarge or alter the purpose or purposes for which the foreign bank is authorized to pursue in the transaction of its business in this State, nor authorize the

foreign bank to transact business in this State under any name other than the name set forth in its license, nor extend the duration of its corporate existence. If the amendment is in a foreign language, an English translation of the amendment under the oath of the translator shall accompany the amendment.

**§412: -210 Separate assets.** (a) Each foreign bank that is licensed to establish and maintain a Hawaii state branch or Hawaii state agency in this State shall keep the assets of its business in this State separate and apart from the assets of its business outside this State.

(b) The creditors of a foreign bank arising out of transactions with, and recorded on the books of, its Hawaii state branch or Hawaii state agency shall be entitled to absolute preference and priority over the creditors of the foreign bank's offices located outside this State with respect to the assets of the foreign bank in this State.

**§412: -211 Disclosure of lack of deposit insurance.** Each foreign bank that is licensed to establish and maintain a Hawaii state branch or Hawaii state agency, in a manner established by the commissioner by rule or order, shall give notice that deposits and credit balances in the branch or agency office are not insured by the Federal Deposit Insurance Corporation. The foregoing notice requirement shall not apply to an insured Hawaii state branch of a bank organized under the laws of any territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands.

**§412: -212 Limitations on payment of interest on deposits.** A foreign bank that is licensed to establish and maintain a Hawaii state branch or Hawaii state agency shall be subject to the same limitations with respect to the payment of interest on deposits as a state bank that is a member of the Federal Reserve System.

**§412: -213 Pledge of assets.** (a) Each foreign bank that is licensed to establish and maintain a Hawaii state branch or Hawaii state agency shall keep on deposit \$500,000 or any greater amount as the commissioner may prescribe by rule in unaffiliated Hawaii banks as have been selected by the foreign bank and approved in writing by the commissioner.

(b) The only assets that may be deposited in order to comply with this section are:

- (1) Cash;
- (2) 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;
- (3) Securities and obligations of the United States government and any agency of the United States government whose debt obligations are fully and explicitly guaranteed as to the timely payment of principal and interest by the full faith and credit of the United States;
- (4) Securities and obligations of United States government-sponsored agencies which are originally established or chartered by the United States government to serve public purposes specified by the Congress but whose debt obligations are not explicitly guaranteed by the full faith and credit of the United States;

- (5) Obligations of the International Bank for Reconstruction and Development, the InterAmerican Development Bank, the Asian Development Bank, or the African Development Bank;
- (6) Securities and obligations issued by this State or any county of this State, through an appropriate agency or instrumentality; and
- (7) Any other assets as the commissioner shall permit by rule or order.

Any assets deposited shall be valued at the lower of principal amount or market value. The commissioner may limit the amount of each type of asset that may be deposited. An asset will not satisfy the requirements of this section if it is an instrument that is issued by the foreign bank itself, or by a person who controls, is controlled by, or is in common control with the foreign bank.

(c) The commissioner, from time to time, may require that the assets deposited pursuant to this section may be maintained by the foreign bank in an amount, in a form, and subject to any conditions, the commissioner deems necessary or desirable for the maintenance of a sound financial condition, the protection of depositors and the public interest, and to maintain public confidence in the business of the Hawaii state branch or Hawaii state agency. The commissioner may give credit to reserves required to be maintained with a Federal Reserve Bank in or outside this State pursuant to federal law, in accordance with rules or procedures as the commissioner may adopt.

(d) So long as it shall continue business in the ordinary course, the foreign bank shall be permitted to collect interest on the securities deposited under this section and from time to time exchange, examine and compare the securities.

**§412: -214 Asset maintenance.** (a) Each foreign bank that is licensed to establish and maintain a Hawaii state branch or Hawaii state agency shall hold in this State currency, bonds, notes, debentures, drafts, bills of exchange, or other evidences of indebtedness, including loan participation agreements or certificates, or other obligations payable in the United States or in United States funds or, with the prior approval of the commissioner, in funds freely convertible into United States funds, or any other assets as the commissioner shall by rule or order permit, in an amount which shall bear the relationship as the commissioner prescribes by rule or order to liabilities of the foreign bank appearing in the books, accounts, or records of its Hawaii state branch or Hawaii state agency, including acceptances, but excluding amounts due and other liabilities to other offices, agencies or branches of, and wholly owned (except for a nominal number of directors' shares) subsidiaries of, the foreign bank and any other liabilities as the commissioner shall determine.

(b) In implementing this section, the commissioner may vary the ratio of assets to liabilities for Hawaii state branches or Hawaii state agencies applicable under this section, of certain foreign banks as determined by the commissioner in the commissioner's discretion to be necessary or desirable to reflect differences among these Hawaii state branches or Hawaii state agencies on account of:

- (1) The financial condition of the Hawaii state branch or agency offices of the foreign bank;
- (2) The financial condition of branch or agency offices of the same foreign bank located in other states;
- (3) General economic conditions prevalent in the home country of the parent foreign bank; or
- (4) The financial condition of the parent foreign bank itself, including but not limited to (A) the financial condition of its branches and agencies located in other countries, (B) the financial condition of its affiliated bank and nonbank subsidiaries in the United States, and (C) the financial condition of the foreign bank on a worldwide consolidated basis or in its home country.

(c) For the purposes of this section, the commissioner shall value marketable securities at principal amount or market value, whichever is lower, shall have the right to determine the value of any non-marketable bond, note, debenture, draft, bill of exchange, other evidence of indebtedness, including loan participation agreements or certificates, or of any other asset or obligation held or owed to the foreign bank or its Hawaii state branch or Hawaii state agency in this State, and in determining the amount of assets for the purpose of computing the above ratio of assets to liabilities, by rule or order may exclude in whole or in part any particular asset.

(d) If, by reason of the existence or the potential occurrence of unusual and extraordinary circumstances, the commissioner deems it necessary or desirable for the maintenance of a sound financial condition, the protection of depositors, creditors, and the public interest, and to maintain public confidence in the business of a Hawaii state branch or Hawaii state agency, the commissioner, subject to any terms and conditions as the commissioner may prescribe, may require the foreign bank to deposit the assets required to be held in this State pursuant to this section with any Hawaii bank, as the commissioner may designate.

(e) The assets held to satisfy the assets to liabilities relationship, prescribed by the commissioner pursuant to this section, shall include obligations of any person for money borrowed from a foreign bank holding a license to establish and maintain a Hawaii state branch or Hawaii state agency only to the extent that the total of the obligations of any person are not more than ten per cent of the assets considered for purposes of this section.

**§412: -215 Representative office of foreign banks; necessity of licensure.** (a) No foreign bank shall establish or maintain a Hawaii representative office unless the foreign bank is licensed by the commissioner to maintain a Hawaii representative office.

(b) Nothing in subsection (a) shall be deemed to prohibit a foreign bank which maintains a federal agency or federal branch in this State from establishing or maintaining one or more Hawaii representative offices.

**§412: -216 Representative office; application.** (a) The application for a license to establish and maintain a Hawaii representative office shall be in writing under oath and shall be in a form and contain any information as the commissioner may require by rule or order. The application shall be accompanied by a non-refundable application fee of \$1,500 or a greater amount as the commissioner may establish by rule.

(b) Each application to establish and maintain a Hawaii representative office shall include a statement under oath appointing an agent in this State for receipt of service of process in accordance with section 415-113, if the license is granted.

**§412: -217 Representative office; factors for approval of application.** (a) A foreign bank making an application for a license to establish and maintain a Hawaii representative office shall deliver to the commissioner three duplicate originals, or a greater number as the commissioner may require by rule, of the foreign bank's application.

(b) The commissioner shall issue a license to a foreign bank to establish and maintain a Hawaii representative office if the commissioner finds that:

- (1) The foreign bank is in good standing under the laws of the country in which it is organized and is in sound financial condition;
- (2) The management of the foreign bank and the proposed management of the Hawaii representative office are of good moral character, competent, and sufficiently experienced; and



- (3) The convenience and needs of persons to be served by the proposed Hawaii representative office will be promoted.

(c) In considering whether the management of the foreign bank and the proposed management of the Hawaii representative office is of good moral character for the purposes of subsection (b), the commissioner may presume that in the absence of creditable evidence to the contrary, the management is of good moral character. The presumption may be rebutted by evidence to the contrary, including, but not limited to a finding that a person has:

- (1) Been convicted of, or has pleaded nolo contendere to, any crime involving an act of fraud or dishonesty;
- (2) Consented to or suffered a judgment in any civil action based upon conduct involving an act of fraud or dishonesty;
- (3) 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;
- (4) 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
- (5) 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.

(d) If the commissioner approves the application of the foreign bank for a license to establish and maintain a Hawaii representative office, the foreign bank shall then provide satisfactory evidence to the commissioner of compliance with the applicable requirements of chapter 415, relating to foreign corporations. The commissioner shall then:

- (1) Endorse on each original of the application the word "Filed", and the date of the filing thereof and return to the foreign bank one original so endorsed;
- (2) File in the commissioner's office one of the originals of the application; and
- (3) Issue a license to establish and maintain a Hawaii representative office to the foreign bank.

(e) Each license issued to a foreign bank to establish and maintain a Hawaii representative office shall state fully the name of the foreign bank to which the license is issued, the address or addresses at which the Hawaii representative office is to be located, and any other information as the commissioner may require.

**§412: -218 Representative office; permissible activities.** (a) A foreign bank which is licensed to establish and maintain a Hawaii representative office, subject to any rules as the commissioner may prescribe, may engage in the following activities:

- (1) Solicitation for loans and in connection therewith the assembly of credit information, making of property inspections and appraisals, securing of title information, preparation of applications for loans including making recommendations with respect to action thereon, solicitation of investors to purchase loans from the foreign bank, and the search for investors to contract with the foreign bank for servicing of the loans;
- (2) The solicitation of new business;

- (3) The conduct of research; and
- (4) Back office administrative functions as may be more specifically defined in rules issued by the commissioner.

Any other activity which the foreign bank seeks to conduct at the office shall be subject to the prior written approval of the commissioner by general rule or upon application in a form as the commissioner shall require.

(b) Notwithstanding subsection (a), a Hawaii representative office that is a regional administrative office of the foreign bank, as may be defined more fully by the commissioner in rules and orders, may engage in credit approval activities provided that (1) the foreign bank give forty-five days prior written notice to the commissioner; and (2) the commissioner does not object within the forty-five day period to the conduct of the activities by the Hawaii representative office. Written notice under this subsection shall be in a form and contain any information as the commissioner shall require.

**§412: -219 Posting of license.** Each foreign bank that is licensed to establish and maintain a Hawaii state branch, Hawaii state agency, or Hawaii representative office shall post its license in a conspicuous place at the office.

**§412: -220 Licenses not transferable.** No license issued by the commissioner in accordance with this article shall be transferable or assignable.

**§412: -221 Change of control of foreign bank.** A foreign bank that is licensed to establish and maintain a Hawaii state branch, Hawaii state agency, or Hawaii representative office shall file with the commissioner a notice, in a form and containing any information as the commissioner may prescribe, no later than fourteen calendar days after the foreign bank becomes aware of any acquisition of control of the foreign bank or merges with another foreign bank.

**§412: -222 Relocation of office; written notice necessary.** (a) No foreign bank that is licensed to establish and maintain a Hawaii state branch, Hawaii state agency, or Hawaii representative office shall relocate any Hawaii office unless the foreign bank provides prior written notice to commissioner and the commissioner has approved the relocation.

(b) Written notice provided by a foreign bank under this section shall be in a form and contain any information as the commissioner shall require and shall be accompanied by a fee, the amount of which shall be established by rule.

**§412: -223 Examination; payment of fees.** (a) A Hawaii state branch, Hawaii state agency, or Hawaii representative office shall be subject to examination by the commissioner at intervals prescribed, and in accordance with, section 412:2-200.

(b) In conducting an examination pursuant to this section, the commissioner shall:

- (1) Have full access to the offices, books, accounts, and records of each office located in this State as well as all of the books, accounts, and records maintained in this State of any office not located in this State of the foreign bank; and
- (2) Have authority to require the attendance of, and to examine under oath, all persons whose testimony may be required relative to the activities of the office.

(c) A foreign bank that is licensed to establish and maintain a Hawaii state branch, Hawaii state agency, or Hawaii representative office shall be subject to examination fees, examination expenses, and all other fees and assessments in

accordance with the laws of this State and the rules of the commissioner, including but not limited to sections 412:2-105, 412:2-109, and 412:2-315.

**§412: -224 Supervision and enforcement.** (a) The commissioner shall have all of the powers granted to the commissioner by the laws of this State to the extent appropriate to enable the commissioner to supervise each Hawaii state branch, Hawaii state agency, or Hawaii representative office.

(b) In order to carry out the purposes under this article, the commissioner may:

- (1) Enter into cooperative, coordinating, or information-sharing agreements with any other bank supervisory agency or any organization affiliated or representing one or more bank supervisory agencies;
- (2) With respect to periodic examination or other supervision of a foreign bank that maintains a Hawaii state branch, Hawaii state agency, or Hawaii representative office, accept reports of examinations performed by, and reports submitted to, other bank supervisory agencies in lieu of conducting examinations, or of receiving reports, as might otherwise be required under this article;
- (3) Enter into joint examinations or joint enforcement actions with any other bank supervisory agency having concurrent jurisdiction over any foreign bank; provided that the commissioner, at any time, may take any action independently if the commissioner determines that the action is necessary or appropriate to carry out the commissioner's responsibilities under this article and to ensure compliance with the laws of this State;
- (4) Enter into contracts, exempt from the requirements of chapter 103D, with any bank supervisory agency having concurrent regulatory or supervisory jurisdiction over a foreign bank maintaining a Hawaii state branch, Hawaii state agency, or Hawaii representative office, to engage the services of the agency's examiners at a reasonable rate of compensation; and
- (5) Assess supervisory, examination, and other fees and charges that shall be payable by foreign banks maintaining a Hawaii state branch, Hawaii state agency, or Hawaii representative office in connection with the commissioner's performance of the commissioner's duties under this article and in accordance with this chapter and rules adopted by the commissioner.

(c) Supervisory, examination, and other fees and charges assessed by the commissioner in accordance with this article may be shared with other bank supervisory agencies or any organizations affiliated with or representing one or more bank supervisory agencies in accordance with agreements between the commissioner and the agencies or organizations.

**§412: -225 Reports.** (a) Each foreign bank that is licensed to establish and maintain a Hawaii state branch, Hawaii state agency, or Hawaii representative office shall file with the commissioner any reports the commissioner may require.

(b) Each report filed with the commissioner under this article, or under any rule or order issued under this article, shall be in a form and contain any information, shall be signed in a manner, and shall be verified in a manner, as the commissioner may require.

**§412: -226 Books, accounts, and records.** Each foreign bank that is licensed to establish and maintain a Hawaii state branch, Hawaii state agency, or

Hawaii representative office shall maintain or make available at any office appropriate books, accounts, and records reflecting:

- (1) All transactions effected by or on behalf of the office; and
- (2) All actions taken in this State by employees of the foreign banking corporation located in this State to effect transactions on behalf of any office of the foreign bank located outside this State.

**§412: -227 Voluntary closure of branch, agency, or representative office; application.** (a) No foreign bank that is licensed to establish and maintain a Hawaii state branch, Hawaii state agency, or Hawaii representative office shall close the office without filing an application with, and obtaining the prior approval of, the commissioner. The application filed by a foreign bank under this section shall include the following information:

- (1) The reasons for the closure of the office;
- (2) The current financial condition of the bank in a form prescribed by the commissioner;
- (3) The current business being conducted in the State, and an indication of the assets and liabilities attributable to business conducted in this State;
- (4) A list of all creditors of the bank's business in this State, and their outstanding balances; and
- (5) Any other information as the commissioner may require.

(b) If the commissioner finds, with respect to an application by a foreign bank under this section, that the closing of the office will not be substantially detrimental to the public convenience and advantage, the commissioner shall approve the application. If the commissioner finds otherwise, the commissioner shall deny the application.

(c) Whenever an application by a foreign bank under this section has been approved and all conditions precedent to the closing have been fulfilled, the foreign bank may close the office and shall promptly thereafter surrender to the commissioner the license which authorized the foreign bank to maintain the office.

**§412: -228 Suspension or revocation of license; grounds; procedures.** (a) The commissioner may issue an order revoking a license of a foreign bank to establish and maintain a Hawaii representative office if the commissioner finds that:

- (1) The foreign bank has violated any provision of this article or any other law or rule of this State; or
- (2) Any fact or condition exists which, if it had existed at the time of the foreign bank's original application for the license, would have resulted in the commissioner's refusing to issue the license to the foreign bank.

(b) The commissioner may issue an order suspending or revoking a license of a foreign bank to establish and maintain a Hawaii state branch or Hawaii state agency if the commissioner finds that:

- (1) The foreign bank has violated any provision of this article, or any rule or order issued under this article, or any provision of any other applicable law, rule, or order;
- (2) The foreign bank is transacting activities in this State in an unsafe or unsound manner or, in any case, is transacting activities elsewhere in an unsafe or unsound manner;
- (3) The foreign bank, or any one or more of its Hawaii state branches or Hawaii state agencies, is in an unsafe or unsound condition;
- (4) The foreign bank has ceased to operate any of its offices in this State without the prior approval of the commissioner in accordance with this article;

- (5) The foreign 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 foreign 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 foreign bank has applied for an adjudication of bankruptcy, reorganization, arrangement, or other relief under any foreign or domestic bankruptcy, reorganization, insolvency, or moratorium law, or that any person has applied for any relief under law against the foreign bank and the foreign bank has by any affirmative act, approved of or consented to an action or relief has been granted;
- (8) A receiver, liquidator, or conservator has been appointed for the foreign bank or that any proceeding for an appointment of a receiver, liquidator, or conservator, or any similar proceeding has been initiated in the country of the foreign bank's organization;
- (9) The existence of the foreign bank or the authority of the foreign bank to transact banking business under the laws of the country of the foreign bank's organization has been suspended or terminated; and
- (10) Any fact or condition exists which, if it had existed at the time when the foreign bank applied for its license to transact business in this State, would have been grounds for denying its application.

(c) In issuing a revocation order under subsection (a) or a suspension or revocation order under subsection (b), the commissioner may revoke or suspend a license, and shall follow the procedures regarding notice, hearing, appeal, and enforcement of the order as provided in sections 412:2-311 and 412:2-312.

(d) A foreign bank may waive its right to a hearing on any notice of charges by stipulating and consenting to the issuance of an order suspending or revoking a license. Any final suspension or revocation order issued by consent shall be effective as of the date specified therein and shall remain effective until modified or terminated by the commissioner.

**§412: -229 Immediate suspension or revocation.** (a) If the commissioner finds that any of the factors set forth in section 412: -228(b) are true with respect to any foreign bank that is licensed to maintain a Hawaii state branch or Hawaii state agency, and that it is necessary for the protection of the interests of creditors of the foreign bank's business in this State or, in any case, for the protection of the public interest that the commissioner immediately suspend or revoke the license of the foreign bank, the commissioner may issue, without notice and hearing, an order immediately suspending or revoking the license of the foreign bank for a period of up to twenty days, pending investigation or hearing.

(b) The order immediately suspending or revoking the license shall be accompanied by a notice of charges which states the alleged grounds for the order. The notice of charges shall set forth a time and place for a hearing to determine whether the immediate order of suspension or revocation shall be made final.

(c) The order shall be effective upon service on the Hawaii state branch or Hawaii state agency and shall remain in effect until a final order is issued after a hearing, a final order is consented to, or the charges are dismissed upon completion of a hearing. The foreign bank may contest the issuance of the immediate suspension or revocation order by applying to the circuit court for an injunction.

(d) Within twenty days after the service of a notice of charges, unless an earlier date or later date is set by the commissioner upon request of the foreign bank, the commissioner shall hold a hearing in accordance with chapter 91. If no appearance is made at the scheduled hearing by the foreign bank or the foreign

bank's authorized representative, the foreign bank shall be deemed to have consented to the issuance of the final suspension or revocation order. Any appeal of a final order of suspension or revocation shall be made to the circuit court in accordance with chapter 91.

(e) Any order of immediate suspension or revocation may be enforced in the circuit court upon application by the commissioner. Any final order of suspension or revocation issued in accordance with this section may be enforced as provided for in section 412: -228(c).

**§412: -230 Seizure of foreign bank's property and business; liquidation.** (a) If the commissioner finds that any of the factors set forth in section 412: -228 are true with respect to any foreign bank that is licensed to establish and maintain a Hawaii state branch or Hawaii state agency and that it is necessary for the protection of the interests of the creditors of the foreign bank's business in this State, or for the protection of the public interest that a conservator or receiver take immediate possession of the property and business of the foreign bank, the commissioner, by order, may appoint a conservator or receiver forthwith to take possession of the property and business of the foreign bank in this State and retain possession until the foreign bank resumes business in this State or is finally liquidated. The provisions of part IV of article 2 of this chapter, to the extent applicable, shall govern the procedures for appointment of the conservator or receiver, any judicial proceedings arising from the appointment, and the duties and powers of the conservator or receiver. The foreign bank, with the consent of the commissioner, may resume business in this State upon any conditions as the commissioner may prescribe by rule or order.

(b) Whenever a conservator or receiver takes possession of the property and business of a foreign bank pursuant to subsection (a), the conservator or receiver shall conserve or liquidate the property and business of the foreign bank pursuant to the laws of this State as if the foreign bank were a Hawaii state bank, with absolute preference and priority given to the creditors of the foreign bank arising out of transactions with, and recorded on the books of, its Hawaii state branch or Hawaii state agency over the creditors of the foreign bank's offices located outside this State.

(c) Whenever a receiver has completed the liquidation of the property and business of a foreign bank, the receiver shall transfer any remaining assets to the foreign bank in accordance with the orders as the court may issue. However, in case the foreign bank has an office in another state of the United States that is in liquidation and the assets of that office appear to be insufficient to pay in full the creditors of that office, the court shall order the receiver to transfer to the liquidator of that office the amount of any remaining assets as appears to be necessary to cover the insufficiency; 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 receiver to distribute the remaining assets among the liquidators of the offices in a manner as the court finds equitable.

### **PART III. HAWAII BRANCHES OF OUT-OF-STATE FOREIGN BANKS**

**§412: -300 Purposes.** This part is generally intended to ensure that interstate state branches of out-of-state foreign banks may be established and operated in this State:

- (1) To the extent consistent with the provisions of section 5 of the federal International Banking Act; and

- (2) Under terms and conditions that are generally comparable to and no less favorable than those applicable to, the establishment of interstate federal branches in this State by out-of-state foreign banks.

**§412: -301 Establishment of interstate branches in this State by out-of-state foreign banks.** (a) Except as provided in subsection (b), an out-of-state foreign bank may establish an interstate Hawaii state branch in the same manner (including by merger or other transactions under section 44 of the Federal Deposit Insurance Act, and comparable provisions of the laws of this State, with Hawaii banks or other institutions) as, and generally subject to the same criteria, standards, conditions, requirements, and procedures applicable to the establishment of interstate branches in this State by, an out-of-state bank having the same home state in the United States, notwithstanding any provision of the laws or rules of this State to the contrary.

(b) Notwithstanding subsection (a), the commissioner:

- (1) Shall apply to the establishment of an initial interstate Hawaii state branch, and subsequent intrastate Hawaii state branches, of any out-of-state foreign bank the same criteria, standards, conditions, requirements, and procedures applicable under part II of this article, or rules thereunder to the establishment of an initial Hawaii state branch, and of subsequent intrastate Hawaii state branches, respectively;
- (2) May apply any other criteria, standards, conditions, requirements, or provisions of the laws or rules of this State that are determined by the commissioner to be substantially equivalent to or consistent with criteria, standards, conditions, requirements, or provisions of federal law or regulation generally applicable to the establishment of branches in the United States by foreign banks or specifically applicable to the establishment of a branch in the United States by the applicant foreign bank;
- (3) May by rule or order allow an out-of-state foreign bank:
  - (A) To acquire an individual branch of any "insured bank" within the meaning of section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h)), or of any other depository institution, including another foreign bank, without acquiring the entire bank or other institution; or
  - (B) To acquire or merge with another foreign bank maintaining a Hawaii state branch or agency and thereafter continue operations as its own; and
  - (C) To acquire or establish an interstate Hawaii state branch through any other means not inconsistent with section 5 of the federal International Banking Act (12 U.S.C. 3103)."

SECTION 3. Article 5A of chapter 412, Hawaii Revised Statutes, is amended by amending the title to read as follows:

**“ARTICLE 5A. INTERNATIONAL [AND FOREIGN] BANKING  
CORPORATIONS”**

SECTION 4. Part II of article 5A of chapter 412, Hawaii Revised Statutes, is amended by amending the title to read as follows:

**‘PART II. [INTERNATIONAL BANKING CORPORATIONS]  
APPLICATION PROCEDURES AND POWERS’**

SECTION 5. Section 412:3-609, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Any one or more financial institutions may merge into another financial institution and any two or more financial institutions other than credit unions may consolidate into a new financial institution if the institutions shall have complied with all requirements, conditions, and limitations imposed by this chapter and by federal law, if applicable. A merger or consolidation in which one or more of the participating financial institutions is a financial institution chartered or licensed under the laws of or whose operations are conducted principally in any state other than Hawaii, in any possession or territory of the United States or in any foreign country shall be authorized only in accordance with subsection (d), [or] in accordance with part IV [of], article 5[.], of this chapter or in accordance with article \_\_\_\_.”

SECTION 6. Part III of article 5A, chapter 412, Hawaii Revised Statutes, is repealed.

SECTION 7. The commissioner of financial institutions shall review the interstate branching laws adopted by other jurisdictions to determine whether the following restrictions contained in this Act should be continued, modified, sunsetted, or repealed. The commissioner of financial institutions shall submit a report, along with findings and recommendations to the legislature not less than twenty days prior to the convening of the regular session of 1997. The following restrictions are to be reviewed:

- (1) The prohibition of de novo branching (opening a new branch) by out-of-state banks (section 412: -105(a), Hawaii Revised Statutes);
- (2) The prohibition of partial acquisition of branches (purchasing single branches) by out-of-state banks (section 412: -105(b), Hawaii Revised Statutes); and
- (3) The requirement that only banks that have been in operation for at least five years (five-year age requirement) may be acquired in a whole bank acquisition (section 412: -104(b)(1), Hawaii Revised Statutes).

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

SECTION 9. This Act shall take effect on June 1, 1997; provided that section 7 shall take effect upon approval.

(Approved June 12, 1996.)