

## ACT 228

H.B. NO. 2315

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 section to be appropriately designated and to read as follows:

“§412: - **Request for information by the commissioner.** The commissioner, for good cause, may at any time request records, documents, information, and reports from any financial institution regulated by the division of financial institutions.”

SECTION 2. Section 241-1, Hawaii Revised Statutes, is amended by amending the definition of “building and loan association” to read as follows:

““Building and loan association” means any corporation ~~or mutual association which~~ that has been authorized to operate as a savings bank or savings and loan association pursuant to chapter 412, and any federal savings and loan association.”

SECTION 3. Section 412:1-104, Hawaii Revised Statutes, is amended to read as follows:

“§412:1-104 **Names.** (a) Unless authorized to engage in business as a financial institution in this State of the type indicated by the name or as otherwise approved by the commissioner, no person may use any of the terms “financial ~~[institution,] institution~~”, “~~bank,~~ bank”, “savings ~~[bank,] bank~~”, “savings and ~~[loan,] loan~~”, “savings ~~[association,] association~~”, “financial services loan ~~[company,] company~~”, “credit ~~[union,] union~~”, “trust ~~[company,] company~~”, “intra-Pacific ~~[bank,] bank~~”, “international banking ~~[corporation,] corporation~~”, words of similar import, or translations of such words, in a manner that might suggest or tend to lead others into believing that the person is a financial institution of the character indicated by the name.

(b) No financial institution may use words designating another type of financial institution, ~~or~~ words of similar import, or translations of ~~such~~ these

words, in a manner that suggests or ~~[might tend]~~ tends to lead others into believing that it is that type of financial institution.

(c) No financial institution may use a name except in accordance with section 412:3-101.”

SECTION 4. Section 412:1-109, Hawaii Revised Statutes, is amended by amending the definitions of “capital”, “capital stock”, “Hawaii financial institution”, and “stock financial institution” to read as follows:

““Capital” means:

- (1) ~~[the]~~ The aggregate par value or other amount received and allocated to the issued and outstanding capital stock of a financial institution; or
- (2) ~~[the]~~ The total amount of ~~[a mutual savings and loan association or]~~ a credit union’s outstanding and unimpaired membership shares or share accounts.

“Capital stock” means the units of interest, whether or not having a par value, common or preferred, legally issued by a financial institution or other corporation, which represents a fractional ownership interest in the institution or corporation. The term does not include shares or membership in a ~~[mutual savings and loan association or]~~ credit union.

“Hawaii financial institution” means:

- (1) A corporation or credit union ~~[which]~~ that holds a charter or license under this chapter or under prior Hawaii law, authorizing it to accept deposits, to make loans in excess of the rates permitted in chapter 478, or to engage in the business of a trust company; or
- (2) A resulting bank as defined in article 12,

and includes a corporation~~[- mutual savings and loan association,]~~ or credit union existing and chartered as a Hawaii financial institution or licensed to transact business in this State on July 1, 1993. A Hawaii financial institution may be a bank, resulting bank as defined in article 12, savings bank, savings and loan association, depository financial services loan company, nondepository financial services loan company, trust company, credit union, or intra-Pacific bank.

“Stock financial institution” means a financial institution ~~[which]~~ that issues shares of capital stock as evidence of fractional ownership in the institution. The term does not include ~~[mutual savings and loan associations or]~~ credit unions.”

SECTION 5. Section 412:2-104, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) The commissioner and all employees, contractors, attorneys retained or employed by the State, and appointees of the division of financial institutions shall not divulge or furnish any information in their possession or obtained by them in the course of their official duties to persons outside the division of financial institutions, except to the director of ~~[the department of]~~ commerce and consumer affairs[;] or unless otherwise permitted by this section or any other law regulating financial institutions or financial institution holding companies, in which case ~~[such]~~ that disclosure shall not authorize or permit any further disclosure of ~~[such]~~ that information. The disclosures prohibited by this ~~[section]~~ subsection shall include without limitation information that is:

- (1) Privileged or exempt from disclosure under any federal or state law;
- (2) Related to an examination performed by or on behalf of the commissioner or contained in any report of examination;
- (3) Contained in any report submitted to or for the use of the commissioner, except for the nonproprietary portions of applications;

- (4) Related to the business, personal, or financial affairs of any person [and] that is furnished to or for the use of the commissioner in confidence;
- (5) Related to trade secrets and commercial or financial information obtained from a person [and] that is privileged or confidential;
- (6) Obtained pursuant to any lawful investigation for the purpose of enforcing the laws regulating financial institutions and financial institution holding companies in an action or proceeding under parts III, IV, V, and VI of this article;
- (7) Related solely to the internal personnel rules or other internal practices of the commissioner;
- (8) Contained in personnel, medical, and similar files (including financial files), the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or
- (9) Contained in inter-agency and intra-agency communications, whether or not contained in written memoranda, letters, tapes, or records that would not be routinely available by law to a private party, including but not limited to memoranda, reports, and other documents prepared by the staff of the commissioner.

Any information identified in paragraphs (1) through (9) is confidential and shall not be subject to subpoena or other legal process.

(b) The commissioner shall furnish a copy of each report of examination to the financial institution or financial institution holding company examined. The report and its contents shall remain the property of the commissioner and shall not be disclosed to any person who is not an officer, director, employee, or authorized auditor, attorney, or other consultant or advisor of the financial institution or financial institution holding company. Any person ~~[which]~~ who has received the report from the financial institution or financial institution holding company shall be bound by the confidentiality provisions of this part. ~~[Subpoenas of or other legal process to obtain reports of examination or information contained therein shall be directed to the commissioner and not to the financial institution or financial institution holding company that is the subject of the examination. Upon receipt of such a subpoena or other legal process requiring disclosure of such information the commissioner may file a statement of objections or a motion with a court of competent jurisdiction for a protective order and, in any event, shall immediately notify the financial institution that is the subject of the report of examination of the subpoena or other legal process and all relevant circumstances pertaining to the same. Upon receipt of such notification, the financial institution may itself file a statement of objections or a motion with a court of competent jurisdiction for a protective order.]~~ The report and its contents shall not be subject to subpoena or other legal process requiring disclosure.

SECTION 6. Section 412:2-109, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

“(g) [Each year before July 2,] The commissioner may annually charge each financial institution subject to examination by the commissioner [shall pay a] the sum of \$500 plus \$100 for each office, agency, and branch office maintained by the financial institution, [to the commissioner to be] payment of which shall be made before July 2 and thereafter credited to the compliance resolution fund. The commissioner may establish, increase, decrease, or repeal this fee when necessary pursuant to rules adopted in accordance with chapter 91.”

SECTION 7. Section 412:2-306, Hawaii Revised Statutes, is amended to read as follows:

**“§412:2-306 Removal or prohibition of institution-affiliated party<sup>1</sup>.** (a) The commissioner may order the removal of any institution-affiliated party from office or employment with a Hawaii financial institution and the prohibition of the party’s affiliation or participation in the affairs of the financial institution or any other Hawaii financial institution if the commissioner determines that all three of the following circumstances exist:

- (1) The institution-affiliated party has violated this chapter or any rules [issued] adopted pursuant to this chapter, violated a cease and desist order [which] that has become effective, engaged or participated in an unsafe or unsound practice in connection with the financial institution, or breached a fiduciary duty owed to the financial institution;
- (2) By reason of such violation, practice, or breach the financial institution has suffered or will probably suffer financial loss or other damage, the interests of the financial institution’s depositors have been or may be prejudiced, or the institution-affiliated party has received financial gain or other benefit as a result of the violation, practice, or breach; and
- (3) The violation, practice, or breach involves the institution-affiliated party’s personal dishonesty[;] or demonstrates the party’s wilful or continuing disregard for the safety or soundness of the financial institution.

(b) The commissioner may also order the removal of any institution-affiliated party from office or employment with a Hawaii financial institution and the prohibition of the party’s affiliation or participation in the affairs of the financial institution or any other Hawaii financial institution if the commissioner determines that:

- (1) The institution-affiliated party has been charged in any information, indictment, or complaint authorized by a United States attorney, state attorney general, or similar legal officer, with the commission of, or participation[;] in, a crime involving dishonesty or breach of trust that is punishable by imprisonment for a term exceeding one year under state or federal law; and
- (2) The continued service by the institution-affiliated party may pose a threat to the interests of the financial institution’s depositors or may threaten to impair public confidence in the institution.”

SECTION 8. Section 412:2-307, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The notice of charges and the proposed order of removal or prohibition shall be in writing and served upon the institution-affiliated party and the affiliated Hawaii financial institution. The notice of charges shall state the alleged violations, wrongful practices, or breaches and a summary of the facts upon which [sueh] the allegations are based. The notice shall be accompanied by a proposed order stating the commissioner’s intention to remove [sueh] the party from office, or prohibit [sueh] the party’s affiliation with the financial institution[;] or any other Hawaii financial institution, or both. The notice of charges shall set forth a time and place for a hearing to determine whether the removal or prohibition order shall be issued.”

SECTION 9. Section 412:2-308, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) In order to act with the utmost speed, the commissioner may issue an order immediately suspending an institution-affiliated party upon a determination that:

- (1) ~~[the]~~ The grounds specified in section 412:2-306 are present; and
- (2) ~~[the]~~ The protection of depositors or the financial institution ~~[warrant]~~ warrants the immediate suspension and prohibition of the institution-affiliated party from further participation in the conduct of the affairs of the financial institution~~[-]~~ or any other Hawaii financial institution.

The order shall be accompanied by a notice of charges ~~[which]~~ that states the alleged violation, wrongful practice, or breach, and a summary of the facts in support of ~~[such]~~ the allegation. The notice of charges shall set forth a time and place for a hearing to determine whether the temporary order shall be ~~[made permanent.]~~ converted to a permanent removal or prohibition order. Any order of immediate suspension issued to an institution-affiliated party shall also be served upon the affiliated Hawaii financial institution.”

SECTION 10. Section 412:2-310, Hawaii Revised Statutes, is amended to read as follows:

“**§412:2-310 Removal, prohibition, or suspension; effect of order.** No institution-affiliated party whose removal, prohibition, or suspension has been ordered shall thereafter participate in any manner in the conduct of the affairs of the affiliated Hawaii financial institution or any other Hawaii financial institution as long as ~~[such]~~ the order is in effect. Any violation of ~~[such]~~ the order shall constitute a violation of law, and shall constitute sufficient grounds for the issuance of a cease and desist order to the affiliated financial institution.”

SECTION 11. Section 412:3-101, Hawaii Revised Statutes, is amended to read as follows:

“**§412:3-101 Name of financial institution.** (a) The name of every Hawaii financial institution shall be subject to the approval of the commissioner and shall conform with the provisions of section 414-51 or any successor thereto, whether or not the Hawaii financial institution is a corporation. If the Hawaii financial institution is incorporated, its name may, but need not, contain the word “corporation”, “incorporated”, or “limited”, or an abbreviation of ~~[one]~~ any of the words.

(b) Prior to using a trade name or a fictitious name, a Hawaii financial institution shall provide written notification to the commissioner.”

SECTION 12. Section 412:3-102, Hawaii Revised Statutes, is amended to read as follows:

“**§412:3-102 Change of name.** To change its name, a Hawaii financial institution shall file an application with the commissioner and pay ~~[such]~~ the fees as the commissioner may establish. The application shall be approved if the commissioner is satisfied that the new name complies with this chapter and chapter 414. Any change of name of a stock financial institution ~~[or mutual savings and loan association]~~ pursuant to this section shall be effected in accordance with chapter 414. Any change of name shall not affect a financial institution’s rights, liabilities, or obligations existing prior to the effective date thereof, and no documents of transfer shall be necessary to preserve ~~[such]~~ the rights, liabilities, or obligations; provided that the commissioner may require notice to be given to the public and other governmental agencies.”

SECTION 13. Section 412:3-111, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

“(g) The following records or files of a Hawaii financial institution shall not be destroyed except in accordance with rules of the commissioner ~~[promulgated]~~ adopted under chapter 91:

- (1) Minute books of meetings of shareholders, directors, and executive ~~[committee;]~~ committees;
- (2) Articles of incorporation or association and bylaws, and any amendments thereto;
- ~~[(2)]~~ (3) Capital stock ~~[ledger;]~~ ledgers; and
- ~~[(3)]~~ (4) General ledgers and trust ledgers.

These records and files may be maintained in original form or in the form of a photographic, photostatic, microfilm, microcard, miniature photographic, or other reproduction by a durable medium for reproducing the original.”

SECTION 14. Section 412:3-114, Hawaii Revised Statutes, is amended to read as follows:

“**§412:3-114 Duty to report illegal acts.** A Hawaii financial institution shall immediately notify the commissioner in writing of any act of robbery, embezzlement, or fraud committed in connection with its affairs whenever the concerned act involves a sum in excess of ~~[\$10,000.]~~ \$100,000.”

SECTION 15. Section 412:3-201, Hawaii Revised Statutes, is amended to read as follows:

“**§412:3-201 Application for preliminary approval to organize a financial institution.** (a) Three~~;~~ or more individuals, of whom at least three are residents of the State, or any company ~~[which] that~~ seeks to become a financial institution holding company may file an application with the commissioner for preliminary approval to organize a Hawaii financial institution under this part. Banks seeking authority to engage in the trust business through a division or department of the bank, or through a subsidiary, shall apply for such authority under section 412:5-205.

(b) The application shall contain the following information, unless waived by the commissioner:

- (1) The proposed name of the financial institution~~[-the];~~
- (2) The specific location of its principal office, branches, agencies, and support facilities, and any lease agreements for such principal office~~[-];~~, branches, agencies, and support facilities;
- ~~[(2)]~~ (3) Financial statements, employment history, education, management experience, and other biographical information for all applicants, organizers, proposed executive officers, and directors of the financial institution;
- ~~[(3)]~~ (4) The name and address of each proposed subscriber of capital stock in the financial institution ~~[and if capital has not been fully raised, a];~~
- (5) The proposed capital plan [including a], if capital has not been fully raised, that shall include:
  - (A) A description of any stock options, debentures, and stock warrants offered or proposed to be offered to any person; and
  - (B) Any stock option plan;
- (6) The proposed capital stock solicitation plan, if subscriptions for capital stock will be solicited, that shall include:

- (A) Information regarding the solicitation plan by which the applicant and the proposed financial institution propose to conduct the solicitation of subscribers;
  - (B) Information regarding the classes of shares, respective quantities of shares for each class, and the subscription price of each class of stock;
  - (C) A specimen subscription contract or purchase agreement and other related documents to be executed by subscribers;
  - (D) Any underwriting agreement or other agreement for the purchase or distribution of the capital stock;
  - (E) Any escrow agreements or other agreement for the holding of the purchase proceeds of the capital stock;
  - (F) Proposed advertising materials;
  - (G) If the offer and sale of the capital stock is subject to the Securities Act of 1933 and regulations thereunder, a copy of the registration statement most recently filed with the federal Securities and Exchange Commission or any other notices or other filings in lieu of registration required or permitted by that Act or regulation and any subsequent amendments thereto;
  - (H) If the offer and sale of the capital stock is subject to chapter 485, a copy of the registration or qualification statement most recently filed with the commissioner of securities and any subsequent amendments thereto; and
  - (I) If the offer and sale of the capital stock is not subject to the Securities Act of 1933 or chapter 485, whether exempted by law or regulation or otherwise, a copy of the most recent version of any prospectus, offering memorandum, offering circular, or other offering document proposed to be delivered to prospective subscribers to the capital stock, and any subsequent amendments thereto;
- [(4)] Proposed] (7) The financial [institution] institution's proposed policies concerning loans[;] and concentrations of credit, asset and liability management, conflicts of interest, investments, [~~operations, and~~] community reinvestment[;], bank secrecy, anti-money laundering, and customer identification;
- [(5)] (8) The financial institution's business plan[;] for the first three years of operations;
- [(6)] (9) Financial projections regarding the financial institution's profitability[;] for the first three years of operations;
- [(7)] (10) A market study or letters of support evidencing the need and advisability of granting authority to organize a financial institution;
- [(8)] (11) Except for trust companies, evidence that the financial institution has applied for federal deposit insurance from the Federal Deposit Insurance Corporation or other appropriate federal deposit insurer;
- (12) Evidence that the financial institution has applied for fidelity bonds and other insurance appropriate to its size and operations, including the types and the amounts of coverage, and the respective deductible amounts, from insurance companies licensed in the United States;
- [(9)] (13) Evidence that the proposed directors and executive officers of the financial institution have the financial ability, responsibility, and experience to engage in the business of a financial institution;
- (14) The employment agreements for all proposed executive officers of the financial institution;

(15) The proposed articles of incorporation and bylaws of the financial institution;

[(10)] (16) A description of any existing or proposed service corporation, affiliate, or subsidiary; and

[(11)] (17) Any other information that the commissioner may require.

(c) The application shall be submitted in a form prescribed by the commissioner. The commissioner may accept application forms ~~[which]~~ that are utilized by any federal regulatory agency in processing similar applications. The application shall be accompanied by an application fee of \$9,000, or such greater amount as the commissioner shall establish by rule pursuant to chapter 91. The application fee shall not be refundable.

(d) The identity of each applicant and organizer, and any information ~~[which]~~ that is not confidential, shall be available to the public. The applicant may request in writing that information be kept confidential. The applicant shall designate and separate any matter ~~[which]~~ that the applicant claims is confidential and shall submit a separate statement providing the reasons and authority for the request for confidential treatment. The failure by the applicant to request confidential treatment and to designate and separate the confidential matter shall preclude any objection or claim for wrongful disclosure of the ~~[same-]~~ information. Information determined by the commissioner to be confidential, pursuant to an applicant's request or otherwise, shall not be available to the public.

(e) The commissioner shall review the application, may conduct an examination of the proposed financial institution, and may interview any proposed director or executive officer."

SECTION 16. Section 412:3-202, Hawaii Revised Statutes, is amended to read as follows:

**"§412:3-202 Additional requirements for holding company.** ~~[(a)]~~ An applicant for the organization of a Hawaii financial institution ~~[which]~~ that will be a subsidiary of a holding company shall furnish the commissioner with the following additional information regarding the holding company, unless waived by the commissioner:

- (1) If the holding company is a corporation, a certificate from the incorporating jurisdiction indicating that the corporation was properly organized under applicable corporate law, and that it is otherwise in good standing;
- (2) Its existing and proposed affiliates and subsidiaries, and the extent and nature of its control over the operations of the proposed financial institution;
- (3) Financial statements, employment history, education, management experience, and other biographical information for all of its executive officers and directors;
- (4) The name and address of each shareholder or each proposed subscriber of capital stock ~~[-, and if capital has not been fully raised, a];~~
- (5) The proposed capital plan [including a], if capital has not been fully raised, that shall include:
  - (A) A description of any stock options, debentures, and stock warrants offered or proposed to be offered to any person; and
  - (B) Any stock option plan;
- (6) The proposed capital stock solicitation plan, if subscriptions for capital stock will be solicited, that shall include:



- (A) Information regarding the solicitation plan by which the applicant and the proposed holding company propose to conduct the solicitation of subscribers;
  - (B) Information regarding the classes of shares, respective quantities of shares for each class, and the subscription price of each class of stock;
  - (C) A specimen subscription contract or purchase agreement and other related documents to be executed by subscribers;
  - (D) Any underwriting agreement or other agreement for the purchase or distribution of the capital stock;
  - (E) Any escrow agreements or other agreement for the holding of the purchase proceeds of the capital stock;
  - (F) Proposed advertising materials;
  - (G) If the offer and sale of the capital stock is subject to the Securities Act of 1933 and regulations thereunder, a copy of the registration statement most recently filed with the federal Securities and Exchange Commission or any other notices or other filings in lieu of registration required or permitted by that Act or regulation and any subsequent amendments thereto;
  - (H) If the offer and sale of the capital stock is subject to chapter 485, a copy of the registration or qualification statement most recently filed with the commissioner of securities and any subsequent amendments thereto; and
  - (I) If the offer and sale of the capital stock is not subject to the Securities Act of 1933 or chapter 485, whether exempted by law or regulation or otherwise, a copy of the most recent version of any prospectus, offering memorandum, offering circular, or other offering document proposed to be delivered to prospective subscribers to the capital stock, and any subsequent amendments thereto;
  - (7) The articles of incorporation and bylaws of the holding company;
  - [(5)] (8) Evidence that it has or will have the financial ability, responsibility, and experience to engage in the business of a financial institution holding company; [and]
  - (9) The employment agreements for all executive officers of the holding company; and
  - [(6)] (10) Any other information that the commissioner may require.
- [(b) ~~The commissioner may issue a preliminary decision regarding the qualifications of the holding company.~~”]

SECTION 17. Section 412:3-203, Hawaii Revised Statutes, is amended to read as follows:

“**§412:3-203 Deferral of application requirements.** For good cause, the commissioner may defer specific application requirements until the filing of an application for a charter or [a] license.”

SECTION 18. Section 412:3-204, Hawaii Revised Statutes, is amended to read as follows:

“**§412:3-204 Publication of notice.** (a) Once the application to organize a Hawaii financial institution is complete and has been accepted by the commissioner, the applicant shall publish a notice at least once a week for three successive weeks in

a newspaper of general circulation in each county in this State where the proposed financial institution intends to establish a principal office, branch, or agency.

(b) The notice shall be in a form prescribed by the commissioner and shall state the fact that an application has been filed, the names of the applicant and organizers, the location of the financial institution's proposed [place] places of business, and the amount of its proposed capital. The notice shall also state that within fifteen days after the last publication of the notice any person may file with the commissioner written comments on the application or a request for an informational and comment proceeding to present information and comments to the commissioner. Any request for an informational and comment proceeding shall be accompanied by a brief statement of the person's interest in the application, the matters to be discussed at the informational and comment proceeding, and the reasons why written comments will not suffice in lieu of an informational and comment proceeding."

SECTION 19. Section 412:3-206, Hawaii Revised Statutes, is amended to read as follows:

**“§412:3-206 Grant of preliminary approval to organize a financial institution.** (a) Following the expiration of the time for the submission of written comments or the completion of an informational and comment proceeding, the commissioner shall issue a written decision and order on the application for preliminary approval to organize. If the commissioner approves the application, the applicant shall become an “applicant in [~~organization,~~”] organization”, and may take all steps necessary to complete organization and file an application for a charter or license.

(b) An application for preliminary approval to organize shall be approved only if the commissioner finds that:

- (1) The proposed activities of the financial institution will comply with the requirements of this chapter;
- (2) If the financial institution will be a subsidiary of a holding company, the holding company is or will be properly organized, in good standing, and financially sound, and is not or will not be engaging directly or indirectly through any subsidiary or affiliate in business prohibited by this chapter;
- (3) The qualifications, character, financial responsibility, experience, and general fitness of the proposed directors and executive officers of the financial institution and any holding company are such as will warrant public confidence and a belief that the business of the financial institution will be honestly and efficiently conducted. For purposes of this section, the commissioner may presume that in the absence of credible evidence to the contrary, a director, officer, or controlling person is of good character and sound financial standing. [Sueh] The presumption may be rebutted by evidence to the contrary, including without limitation a finding that [sueh] the director, officer, or controlling 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~~] that 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~~] that 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; [~~and~~]

(4) The proposed operations of the financial institution will be conducted in a safe and sound manner[-];

(5) The articles of incorporation of the financial institution comply in all respects with this chapter and chapter 414; and

(6) The capital stock solicitation submission is complete and the solicitation will not affect the safety or soundness of the proposed financial institution or harm the public interest.

(c) In granting preliminary approval to organize, the commissioner may impose any conditions and restrictions that are in the public interest, including but not limited to requiring the applicant to fulfill representations contained in its application and agreements made with the commissioner during the application process.

(d) Upon the issuance of a written decision and order granting the application for preliminary approval to organize, the articles of incorporation may be delivered by the applicant in organization to the director of commerce and consumer affairs for filing and, if accepted for filing, the financial institution shall have corporate existence. Although the proposed financial institution may have corporate existence, it may not transact any financial institution business until it has received a financial institution charter or license under this article; provided that the financial institution may conduct any transaction that is incidental and necessary to prepare to do a financial institution business and obtain a charter or license.

(e) The applicant and the proposed Hawaii financial institution shall not solicit subscriptions for the capital stock of the Hawaii financial institution until the written decision and order granting the application for preliminary approval to organize has been issued and the articles of incorporation have been accepted for filing by the director of commerce and consumer affairs. The approval shall not constitute a determination that the applicant has complied with chapter 485 or any other state or federal law.”

SECTION 20. Section 412:3-211, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A proposed Hawaii financial institution shall obtain its required capital and surplus, complete its organization, and obtain a charter or license from the commissioner within one year from the date of [~~incorporation;~~] issuance of the decision and order granting the application for preliminary approval to organize; provided that for good cause shown by the applicant in organization, the commissioner may by written order extend the deadline for a period not to exceed six months.”

SECTION 21. Section 412:3-212, Hawaii Revised Statutes, is amended to read as follows:

“**§412:3-212 Final application for charter or license.** (a) After completing its organization of the Hawaii financial institution, the applicant in organization may

file with the commissioner an application for a charter or license to engage in the business of a Hawaii financial institution. The application shall be in a form prescribed by the commissioner and, unless waived by the commissioner, shall contain the following information:

- (1) A sworn statement by the applicant in organization that it has complied with all requirements of law concerning the organization of the proposed financial institution, including but not limited to the requirement that the full amount of its required capital and surplus has been paid in or deposited in escrow under terms satisfactory to the commissioner;
- (2) The names and addresses of all common and preferred shareholders, and elected or appointed directors and executive officers of the proposed financial institution and any holding company of the financial institution, and the number of shares owned by each;
- (3) A description of any material changes ~~[which]~~ that have occurred in the financial institution's organizers or the applicant in organization, its business plan, and its financial condition since the issuance of the preliminary approval to organize, accompanied by updated financial statements of the financial institution, any holding company of the financial institution, the applicant in organization, and all executive officers and directors of the financial institution and any holding company of the financial institution;
- (4) Evidence that all federal deposit insurance, fidelity bonds, and any other insurance ~~[required by the order of preliminary approval]~~, as represented in the application for preliminary approval to organize, have been or will be obtained[;] and in effect prior to opening;
- (5) A description of the financial institution's disaster recovery policies and programs, security programs, and all vending contractors for electronic data processing and servicing[;] that are or will be in effect prior to opening; and
- (6) Any other information that the commissioner may require.

(b) The commissioner shall review the application, may conduct an examination of the financial institution, and may interview any proposed director or executive officer.

(c) If the commissioner is satisfied that the financial institution and, if applicable, its holding company have fulfilled all the requirements of law[;] and the grounds for preliminary approval, and that the financial institution is qualified to engage in the business of a financial institution, the commissioner shall issue a written decision and order approving the application. The order may restrict the payment of dividends for a period of up to three years, and may contain any other conditions and restrictions on the financial institution that are in the public interest, including but not limited to the divestment of any contractual arrangement with an affiliate or subsidiary involving any type of business not permitted under this chapter. Upon [approving the application] the satisfactory fulfillment by the financial institution and, if applicable, its holding company of the conditions in the written decision and order approving the application and upon the payment by a depository financial services loan company of an initial license fee established by rule pursuant to chapter 91, the commissioner shall issue to the financial institution a charter or license to engage in the business of a financial institution under this chapter."

SECTION 22. Section 412:3-506, Hawaii Revised Statutes, is amended to read as follows:

**“§412:3-506 Opening or relocating ~~[automatic teller machine or]~~ a support facility.** A Hawaii financial institution ~~[which]~~ that opens or relocates ~~[an automatic teller machine or]~~ a support facility shall within thirty days thereafter submit a letter to the commissioner containing the following information:

- (1) The location of the ~~[automatic teller machine or]~~ support facility;
- (2) A description of the type of functions which the ~~[automatic teller machine or]~~ support facility will perform; and
- (3) The date or anticipated date of opening or relocation.”

SECTION 23. Section 412:3-508, Hawaii Revised Statutes, is amended to read as follows:

**“§412:3-508 Closing ~~[automatic teller machine or]~~ a support facility.** A Hawaii financial institution shall provide notice to the commissioner of its closure of ~~[an automatic teller machine or]~~ a support facility within thirty days of the closing. The notice shall contain the location of the ~~[automatic teller machine or]~~ support facility closed and the date of closing.”

SECTION 24. Section 412:3-604, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) For any transaction covered by this part ~~[which]~~ that requires approval of the shareholders or members of the financial institution, the voting requirements shall be:

- (1) If a Hawaii financial institution is a stock institution, the holders of two-thirds of each class of the issued and outstanding capital stock of the financial institution entitled to vote, or such greater majority as may be provided by the articles of incorporation of the Hawaii financial institution, shall be required to approve any action under this part;
- ~~[(2) If a Hawaii financial institution is a mutual savings and loan association, a majority of members present in person or by proxy at any meeting shall be required to approve any action under this part;]~~ or
- ~~[(3)]~~ (2) If a Hawaii financial institution is a credit union, a majority of members present in person at any meeting shall be required to approve any action under this part.”

SECTION 25. Section 412:3-605, Hawaii Revised Statutes, is amended to read as follows:

**“§412:3-605 Notice to ~~[mutual savings and loan or]~~ credit union member~~;~~ ~~[no right of dissent].~~ [(a)]** Wherever the approval of a transaction is required by this part by the members of a ~~[mutual savings and loan association or a]~~ credit union, notice of a ~~[meeting]~~ of its members, which may be an annual or a special ~~[meeting]~~ shall be given to each member entitled to vote. The notice shall be provided not less than twenty days before the date of the meeting. The notice shall state that the purpose or one of the purposes of the meeting is to vote upon a transaction covered by this part and shall be accompanied by a detailed description of the proposed transaction or a summary of the transaction and a copy of the plan of conversion, merger, consolidation, sale of assets or assumption of liabilities, or voluntary cessation of business and dissolution approved by the board of directors.

~~[(b) A member of a mutual savings and loan association or credit union shall have no right of dissent under chapter 414 for any of the transactions governed by this part.]”~~

SECTION 26. Section 412:3-608, Hawaii Revised Statutes, is amended to read as follows:

**“§412:3-608 Conversion to another type of financial institution.** (a) A financial institution of any type, whether federal or State, may convert to a Hawaii financial institution of any other type if the institution and its holding company or holding companies, if any, shall have complied with all requirements, conditions, and limitations imposed by this part and by federal law, if applicable.

(b) If the converting institution is a Hawaii financial institution, its shareholders or members shall approve a conversion to another type of financial institution at a meeting duly called and noticed and upon a vote which satisfies the requirements of section 412:3-604.

(c) The financial institution shall file an application with the commissioner pursuant to section 412:3-603 for a charter or license to engage in the business of the type of financial institution to which it will convert. The application shall be accompanied by:

- (1) A certificate signed by two executive officers of the financial institution, verifying the validity of the meeting of the shareholders or members, that the requisite vote [has] had been obtained, and that the attached copy of the resolution to convert adopted at the meeting is true and correct, or that the applicant has complied with all federal laws and regulations regarding the conversion, as the case may be;
- (2) The information required from applicants for approval to organize a Hawaii financial institution of the type into which it will convert; and
- (3) Any other information that the commissioner may require.

(d) The commissioner may require notice to be given to the public as may be deemed appropriate. The commissioner may conduct an examination of the financial institution as provided under article 2, part II. The cost of any examination shall be assessed against and paid by the financial institution pursuant to section 412:2-105.

(e) The charter or license shall be granted only if the commissioner is satisfied that the granting of the charter or license will not impair the safety or soundness of the financial institution or any other financial institution, and that the applicant meets all the requirements set forth in this chapter for the type of financial institution for which the application has been filed. The requirements shall include[;] but not be limited to[;] the appropriate location of offices, capital structure, business experience, the character of its executive officers and directors, and compliance with all applicable provisions of chapter 414. If the resulting Hawaii financial institution is a new corporation to be formed under chapter 414, the director of commerce and consumer affairs shall not file the articles of incorporation until the application for a charter or license to engage in the business of the type of financial institution to which it will convert shall have been approved by the commissioner in writing. The commissioner may impose any restrictions and conditions on the operation of the resulting financial institution as the commissioner deems appropriate and consistent with federal law.

(f) If the resulting Hawaii financial institution is an existing corporation formed under chapter 414, the conversion shall be effective upon the effective date of the new charter or license granted by the commissioner after all provisions of this section and of federal law shall have been complied with in full. If the resulting Hawaii financial institution is a new corporation to be formed under chapter 414, the effective date of the new charter or license shall be the date of filing of the articles of incorporation by the director of commerce and consumer affairs.

~~[(g) Nothing in this section shall be construed as permitting the conversion of any financial institution to a state chartered mutual savings and loan association.]”~~

SECTION 27. Section 412:3-609, Hawaii Revised Statutes, is amended to read as follows:

**“§412:3-609 Merger or consolidation of Hawaii financial institutions.** (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), in accordance with part IV, article 5, of this chapter or in accordance with article 12.

(b) Any merger or consolidation of Hawaii stock financial institutions shall be effected pursuant to the procedures, conditions, and requirements for, and with the effect of, the merger or consolidation of two or more corporations pursuant to chapter 414; except that the vote by the shareholders of each of the participating institutions to approve the plan of merger or consolidation shall satisfy the requirements of section 412:3-604 and that the director of commerce and consumer affairs shall not file the articles of merger or consolidation until the plan of merger or consolidation shall have been approved by the commissioner in writing.

(c) One or more federal financial institutions whose operations are conducted principally in this State and one or more Hawaii financial institutions may be merged or consolidated, with the federal financial institution, the Hawaii financial institution, or a new consolidated financial institution being the resulting institution, if the merger or consolidation is permitted by federal law. The federal financial institution shall comply with all requirements, conditions, and limitations imposed by federal law or regulation with respect to the merger or consolidation. The Hawaii financial institution shall comply with all of the provisions of this chapter and chapter 414, except that the vote by shareholders or members of the Hawaii financial institution to approve the plan of merger or consolidation shall satisfy the requirements of section 412:3-604. The resulting financial institution shall file with the director of commerce and consumer affairs a confirmation in writing by the commissioner of the date and time of the merger or consolidation, together with the appropriate filing fee pursuant to chapter 414.

(d) One or more financial institutions chartered or licensed under the laws of or whose operations are conducted principally in any state other than this State, in any possession or territory of the United States, or in any foreign country and one or more Hawaii depository financial institutions or trust companies may be merged or consolidated, but only where the depository financial institution or trust company resulting from any merger or consolidation pursuant to this subsection is chartered or licensed under the laws of and conducts its operations principally in this State, is a federal financial institution that conducts its operations principally in this State, or is an out-of-state bank authorized to establish interstate branches in this State pursuant to section 412:12-104. A nondepository financial services loan company licensed pursuant to article 9 may be merged or consolidated with another corporation, but only where the nondepository financial institution resulting from any merger or consolidation is licensed under the laws of this State. The financial institution chartered or licensed under the laws of any state other than this State, any possession or territory of the United States, or any foreign country shall comply with all requirements, conditions, and limitations imposed by the law of the jurisdiction under which the financial institution is chartered or licensed with respect to the merger or consolidation. The Hawaii financial institution shall comply with all of the provisions of this chapter and

chapter 414, except that the vote by shareholders or members of the Hawaii financial institution to approve the plan of merger or consolidation shall satisfy the requirements of section 412:3-604. If the resulting institution is a Hawaii financial institution, the director of commerce and consumer affairs shall not file articles of merger or consolidation until the plan of merger or consolidation shall have been approved by the commissioner in writing. If the resulting institution is a federal financial institution, the director of commerce and consumer affairs shall not file the articles of merger or consolidation until the plan of merger or consolidation shall have been approved by the commissioner in writing and the resulting federal financial institution shall file with the director of commerce and consumer affairs a confirmation in writing by the commissioner of the date and time of the merger or consolidation, together with the appropriate filing fee pursuant to chapter 414.

~~[(e) A Hawaii mutual savings and loan association may merge into a Hawaii stock financial institution or a federal financial institution whose operations are principally conducted in this State, or may consolidate with a Hawaii stock financial institution or a federal financial institution whose operations are conducted principally in this State into a new resulting institution; provided that the resulting institution shall be a Hawaii stock financial institution or a federal financial institution, and shall not be a Hawaii mutual savings and loan association. The merger or consolidation shall be effected pursuant to the procedures, conditions, and requirements for, and with the effect of, the merger or consolidation of two or more stock financial institutions pursuant to this section and to chapter 414, as though the Hawaii mutual savings and loan association was a stock financial institution; except that the members of the participating Hawaii mutual savings and loan association shall approve the plan of merger or consolidation at a meeting duly called and noticed and upon a vote which satisfies the requirements of sections 412:3-604 and 412:3-605. If the resulting institution is a Hawaii financial institution, the director of commerce and consumer affairs shall not file articles of merger or consolidation until the plan of merger or consolidation shall have been approved by the commissioner in writing. If the resulting institution is a federal financial institution, the resulting federal financial institution shall file with the director of commerce and consumer affairs a confirmation in writing by the commissioner of the date and time of the merger or consolidation, together with the appropriate filing fee pursuant to chapter 414.~~

~~[(f)]~~ (e) A Hawaii credit union may merge with a Hawaii credit union or federal credit union. The merger shall be effected pursuant to the procedures, conditions, and requirements for, and with the effect of, the merger of two or more stock financial institutions pursuant to this section and to chapter 414, as though the credit unions were stock financial institutions; except that the plan of merger shall be approved by a majority of the members of the board of directors of each participating credit union and by the members of the participating credit unions at a meeting duly called and noticed and upon a vote ~~[which]~~ that satisfies the requirements of sections 412:3-604 and 412:3-605.

~~[(g)]~~ (f) Prior to or after the vote of the shareholders or members upon the plan of merger or consolidation, but prior to delivery of articles of merger or consolidation and plan of merger or consolidation to the director of commerce and consumer affairs, the participating financial institutions shall file an application with the commissioner pursuant to section 412:3-603 for approval of the proposed merger or consolidation. The application shall be accompanied by:

- (1) The plan of merger or consolidation;
- (2) A certificate signed by two executive officers of each of the participating institutions, verifying that the plan of merger or consolidation has been approved by the board of directors of ~~[the]~~ each participating financial institution and that the attached copy of the resolution approving the proposed merger or consolidation is true and correct;



- (3) If any participating financial institution is a federal financial institution or a financial institution chartered or licensed under the laws of any state other than this State, any possession or territory of the United States, or any foreign country, a certificate signed by two executive officers verifying that the financial institution has complied, or will comply, with all federal laws and regulations or all laws and regulations of the jurisdiction under which it is chartered or licensed relating to the merger or consolidation;
- (4) If the resulting financial institution is to be a Hawaii financial institution, the information required from applicants for approval to organize a Hawaii financial institution of the same type as the proposed resulting Hawaii financial institution;
- (5) If a Hawaii financial institution is seeking to merge or consolidate with a financial institution of another type, the information required from applicants for approval to convert to another type of financial institution; and
- (6) Any other information that the commissioner may require.

~~[(h)]~~ (g) The commissioner may require notice to be given to the public as may ~~seem~~ be deemed appropriate. The commissioner may conduct an examination of the financial institution as provided under article 2, part II. The cost of any examination shall be assessed against and paid by the institution pursuant to section 412:2-105.

~~[(i)]~~ (h) The commissioner shall approve the plan of merger or consolidation if it appears that:

- (1) Any resulting Hawaii financial institution would meet all the requirements under this chapter for a charter or license to the same extent that it would if it were applying for a new charter or license;
- (2) Any resulting financial institution would be adequately capitalized;
- (3) The plan of merger or consolidation is fair to creditors and the shareholders or members of all participating institutions;
- (4) The participating institutions have complied, or will comply, with all requirements, conditions, and limitations imposed by federal [law] laws or [regulation] regulations or by the [law] laws or [regulation] regulations of the jurisdiction under which an institution is chartered or licensed with respect to the merger or consolidation;
- (5) The overall experience, moral character, or integrity of the proposed directors and executive officers of the resulting financial institution is consistent with the interests of the depositors, beneficiaries, creditors, shareholders, or members of the financial institution, or in the public interest;
- (6) The merger or consolidation will not jeopardize the safety or soundness of any participating financial institutions or the resulting financial institution, and is not otherwise contrary to the public interest;
- (7) The merger or consolidation will not substantially lessen competition or tend to create a monopoly or restraint of trade in any section of the country that includes this State or a part thereof, or that any anti-competitive effects are clearly outweighed in the public interest by the probable effect of the merger or consolidation in meeting the convenience and needs of the community to be served;
- (8) The merger or consolidation will promote the convenience, needs, and advantage of the general public particularly in the communities in which the participating and resulting financial institutions conduct or will conduct their business;
- (9) The grounds for approval of a conversion to another type of financial institution pursuant to section 412:3-608 have been met in the case of a

participating Hawaii financial institution seeking to merge or consolidate with a financial institution of a different type; and

- (10) The plan meets any other criteria as the commissioner may deem appropriate.

[(+)] (i) In the case of a merger, the charter or license of the participating depository financial institution or trust company [which] that is the resulting institution shall continue as the charter or license of the resulting depository financial institution or trust company upon the effective date of the merger. In the case of a consolidation, when the commissioner is satisfied that the participating depository financial institutions or trust companies have complied with all state and federal law with regard to the consolidation, the commissioner shall issue a charter or license to the consolidated resulting Hawaii depository financial institution or trust company. A nondepository financial services loan company license may be issued to the resulting financial institution in conjunction with a merger or consolidation upon compliance with all applicable laws regarding the issuance of a license to a nondepository financial services loan company.”

SECTION 28. Section 412:3-610, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) If a converting or participating institution is a trust company or a bank [which] that is authorized to do a trust business, the resulting institution, by operation of law and without further court order, transfer, substitution, act, or deed shall succeed to the rights, properties, assets, investments, deposits, demands, agreements, and trusts of the converting or participating institutions under all trusts, personal representations, executorships, administrations, guardianships, agencies, and all other fiduciary or representative capacities as though the resulting institution had originally assumed the same and shall succeed to and be entitled to take and execute the appointment to all trusteeships, personal representations, executorships, guardianships, conservatorships, and other fiduciary and representative capacities to which the converting or participating institution may be named or is thereafter named in wills, whether probated before or after the conversion, merger, or consolidation, or to which it is or may be named or appointed by any other instrument.”

SECTION 29. Section 412:3-611, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Unless the commissioner shall have given prior approval or shall have waived the requirement for approval pursuant to subsection [(e);] (e), no financial institution holding company shall merge or consolidate with any other corporation if the effect of the merger or consolidation shall be to change the direct or indirect control of any Hawaii financial institution.”

SECTION 30. Section 412:3-612, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) [The] Approval may be denied by the commissioner [may disapprove the proposed acquisition of control] for the proposed acquisition of control if it appears that:

- (1) The overall experience, moral character, or integrity of any person who would acquire control of a Hawaii financial institution or financial institution holding company or become a financial institution holding company indicates that it would not be in the interest of the depositors, beneficiaries, creditors, or shareholders of the Hawaii financial institution or the financial institution holding company, or in the public

- interest, to permit the person to control the Hawaii financial institution or the financial institution holding company or to become a financial institution holding company;
- (2) The acquisition will not promote the convenience, needs, and advantage of the general public, particularly in the community in which the affected institution conducts its business;
  - (3) The effect of the proposed acquisition may be substantially to lessen competition or tend to create a monopoly or restraint of trade in any section of the country that includes this State or a part thereof, and that these anti-competitive effects are not clearly outweighed in the public interest by the probable effect of the acquisition in meeting the convenience and needs of the community to be served;
  - (4) The financial condition of any person who would acquire control of a Hawaii financial institution or a financial institution holding company or become a financial institution holding company may jeopardize the safety and soundness of the Hawaii financial institution or the financial institution holding company or prejudice the interests of the depositors, beneficiaries, creditors, or shareholders of the Hawaii financial institution or the financial institution holding company;
  - (5) Any plan or proposal to liquidate, merge, or consolidate, or make any other major change in the business, corporate structure, or management of the Hawaii financial institution or the financial institution holding company or any of its significant subsidiaries is not fair and reasonable to the depositors, beneficiaries, creditors, or shareholders of the Hawaii financial institution or the financial institution holding company or any of its significant subsidiaries; or
  - (6) The acquiring person has failed or refused to furnish information requested by the commissioner.’’

SECTION 31. Section 412:5-203, Hawaii Revised Statutes, is amended to read as follows:

“**§412:5-203 Operating subsidiaries.** (a) ‘‘Operating subsidiary’’ means a corporation other than a corporation referred to in section 412:5-305(g)(2) to (8) of which more than eighty per cent of the voting securities is held by a bank.

(b) An operating subsidiary may engage in activities [~~which~~] that are authorized for a bank or [~~which~~] that are usual or incidental to the business of a bank.

(c) No bank may acquire, establish, or hold the voting securities of an operating subsidiary without the commissioner’s prior written approval; provided[<sub>;</sub>] that such approval shall not be required so long as the bank’s aggregate net contributions to the capital of the operating subsidiary remain less than ten per cent of the bank’s capital and surplus; provided further[<sub>;</sub>] that the bank shall comply with the notification requirements of subsection (f). Unless otherwise provided by law or rule, all provisions of this chapter applicable to the operations of the parent bank shall [~~be applicable~~] apply to the operations of its operating subsidiary. Unless otherwise provided by law or rule, pertinent accounts of the parent bank and its operating subsidiaries shall be consolidated for the purpose of applying applicable statutory limitations such as contained in section 412:5-302.

(d) The bank shall file an application with the commissioner in a form approved by the commissioner. The application shall be accompanied by a fee the amount of which shall be prescribed by rule. The application shall contain the following information concerning the proposed operating subsidiary:

- (1) The name and date for commencement of operations;
- (2) The specific location;

(3) The activities and nature of business;  
(4) The ownership, amount, and nature of the investment; and  
(5) Any other information that the commissioner may require.  
(e) If after appropriate examination and investigation, the commissioner is satisfied that the acquisition, establishment, or holding the voting securities of the operating subsidiary will comply with this section, the commissioner shall approve [sueh] the application in writing, with [sueh] conditions as the commissioner may deem appropriate.

(f) The bank shall notify the commissioner in writing within five days of acquiring or establishing an operating subsidiary or performing new activities in the operating subsidiary. The notification shall provide the information specified in subsection (d).

(g) The accounts of each operating subsidiary of a bank shall be maintained independently of the accounts of all of the bank's other operating subsidiaries, and independently of the accounts of the bank itself. At least at the end of every quarter of its fiscal year the bank shall consolidate or recognize its proportionate share of the profit and loss from each operating subsidiary.

(h) The bank shall notify the commissioner in writing within five days of closing an operating subsidiary. The notification shall provide the date of closing, the reasons for the closure, and the means by which the assets and liabilities of the operating subsidiary were disposed."

SECTION 32. Section 412:5-305, Hawaii Revised Statutes, is amended by amending subsection (h) to read as follows:

"(h) To the extent specified herein, a bank may invest its own assets in limited partnerships, limited liability partnerships, limited liability companies, or corporations formed to invest in residential properties [whieh] that will qualify for the low income housing tax credit under section 42 of the Internal Revenue Code of 1986, as amended, and under chapters 235 and 241; provided that the total amount invested by a bank under this subsection in any one limited partnership, limited liability partnership, limited liability company, or corporation shall not, without the prior approval of the commissioner, exceed two per cent of the bank's capital and surplus and the aggregate amount invested under this subsection shall not, without the prior approval of the commissioner, exceed five per cent of the bank's capital and surplus. In no case shall the aggregate amount invested by a bank under this subsection exceed ten per cent of the bank's capital and surplus."

SECTION 33. Section 412:5-402, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) In order to obtain prior approval of the commissioner, the applicant shall file the application required by and comply with the provisions of article 3. [~~In addition to any information required under article 3, the~~] The application shall contain the following information:

- (1) The applicant's articles of incorporation and bylaws, or other basic governing documents; [~~and~~]
- (2) A certificate from the appropriate regulatory body where its home office is located, indicating that the applicant is in good standing in that jurisdiction[~~]; and~~
- (3) Any other information required by the commissioner."

SECTION 34. Section 412:6-203, Hawaii Revised Statutes, is amended to read as follows:

**“§412:6-203 Service corporations.** (a) “Service corporation” means a corporation whose stock is owned entirely by one or more state or federally chartered savings banks or savings and loan associations.

(b) Subject to the approval of the commissioner, a savings bank may form and own a service corporation only if the institution or institutions participating in the formation of the service corporation are in a safe and sound condition, and the amount of stock to be owned by each will not adversely affect their capital or solvency.

(c) A savings bank may not own or invest in any capital stock, securities, or other interest of a service corporation if, together with its investment in the capital stock, securities, or other interest of any other service corporations, its aggregate outstanding investment in all service corporations will exceed six per cent of the savings bank’s assets.

(d) No service corporation may be formed except upon written approval by the commissioner of an application submitted in a form satisfactory to the commissioner. The approval shall be subject to the written ~~[acknowledgement]~~ acknowledgment by the applicant that the service corporation shall be subject to:

- (1) ~~[the]~~ The supervision of the commissioner;
- (2) ~~[examination]~~ Examination pursuant to this section; and
- (3) ~~[such]~~ Any other terms and conditions as the commissioner deems appropriate.

(e) Every service corporation shall permit the commissioner to examine its books, records, and activities from time to time, to the extent and whenever the commissioner deems necessary to determine the propriety of any investment by a savings bank in ~~[such]~~ the service corporation and whether the activities of the service corporation pose a significant risk of loss to the parent savings bank. The service corporation shall pay the entire cost of ~~[such]~~ the examination. In addition, a service corporation, at its sole expense, shall cause an independent audit to be made of its books, records, and activities if and when deemed necessary by the commissioner.

(f) A service corporation may engage in activities permitted for a service corporation of a federally chartered savings bank or savings and loan association and ~~[such]~~ other activities as the commissioner may approve.

(g) A service corporation may engage in permitted activities directly or through one or more subsidiaries or joint ventures.

(h) Whenever a service corporation engages in an activity ~~[which]~~ that is not permitted under this section, and because of ~~[such]~~ this activity a savings bank’s investment in the service corporation would be improper, within ninety days following written notice from the commissioner to the savings bank:

- (1) ~~[the]~~ The improper activity shall be discontinued; or
- (2) ~~[the]~~ The savings bank shall divest itself of its ownership or investment in the service corporation.

The service corporation or the savings bank may appeal the commissioner’s decision and request a hearing in accordance with chapter 91.

(i) The savings bank shall notify the commissioner in writing within five days of closing a service corporation. The notification shall provide the date of closing, the reasons for the closure, and the means by which the assets and liabilities of the service corporation were disposed.”

SECTION 35. Section 412:6-204, Hawaii Revised Statutes, is amended to read as follows:

**“§412:6-204 Operating subsidiaries.** (a) “Operating subsidiary” means a corporation other than a corporation referred to in section 412:6-306(g)(2) to (7) of which more than fifty per cent of the voting securities is held by a savings bank.

(b) An operating subsidiary may engage in activities [~~which are~~] authorized for a savings bank or [~~which~~] that are usual or incidental to the business of a savings bank.

(c) No savings bank may acquire, establish, or hold the voting securities of an operating subsidiary without the commissioner's prior written approval; provided<sup>[,]</sup> that [~~such~~] approval shall not be required so long as the savings bank's aggregate net contributions to the capital of the operating subsidiary remain less than ten per cent of the savings bank's capital and surplus; provided further<sup>[,]</sup> that the savings bank shall comply with the notification requirements of subsection (f). Unless otherwise provided by law or rule, all provisions of this chapter applicable to the operations of the parent savings bank shall [~~be applicable~~] apply to the operations of its operating subsidiary. Unless otherwise provided by law or rule, pertinent accounts of the parent savings bank and its operating subsidiaries shall be consolidated for the purpose of applying applicable statutory limitations such as contained in section 412:6-303.

(d) The savings bank shall file an application with the commissioner in a form approved by the commissioner. The application shall be accompanied by a fee, the amount of which shall be prescribed by rule. The application shall contain the following information concerning the proposed operating subsidiary:

- (1) The name and date for commencement of operations;
- (2) The specific location;
- (3) The activities and nature of business;
- (4) The ownership, amount, and nature of the investment; and
- (5) Any other information that the commissioner may require.

(e) If after appropriate examination and investigation, the commissioner is satisfied that the acquisition, establishment, or holding the voting securities of the operating subsidiary will comply with this section, the commissioner shall approve [~~such~~] the application in writing, with [~~such~~] conditions as the commissioner may deem appropriate.

(f) The savings bank shall notify the commissioner in writing within five days of acquiring or establishing any operating subsidiary or performing new activities in the operating subsidiary. The notification shall provide the information specified in subsection (d).

(g) The accounts of each operating subsidiary of a savings bank shall be maintained independently of the accounts of all of the savings bank's other operating subsidiaries and independently of the accounts of the savings bank itself. At least at the end of every quarter of its fiscal year the savings bank shall consolidate or recognize its proportionate share of the profit and loss from each operating subsidiary.

(h) The savings bank shall notify the commissioner in writing within five days of closing an operating subsidiary. The notification shall provide the date of closing, the reasons for the closure, and the means by which the assets and liabilities of the operating subsidiary were disposed."

SECTION 36. Section 412:6-306, Hawaii Revised Statutes, is amended by amending subsection (h) to read as follows:

"(h) To the extent specified herein, a savings bank may invest its own assets in limited partnerships, limited liability partnerships, limited liability companies, or corporations formed to invest in residential properties [~~which~~] that will qualify for the low income housing tax credit under section 42 of the Internal Revenue Code of 1986, as amended, and under chapters 235 and 241; provided that the total amount invested by a savings bank under this subsection in any one limited partnership, limited liability partnership, limited liability company, or corporation shall not,

without the prior approval of the commissioner, exceed two per cent of the savings bank's capital and surplus and the aggregate amount invested under this subsection shall not, without the prior approval of the commissioner, exceed five per cent of the savings bank's capital and surplus. In no case shall the aggregate amount invested by a savings bank under this subsection exceed ten per cent of the savings bank's capital and surplus."

SECTION 37. Section 412:7-100, Hawaii Revised Statutes, is amended to read as follows:

"**§412:7-100 Definition.** In this article, "savings and loan association" means a corporation [~~or mutual association~~] [~~which~~] that has the authority to operate as a savings and loan association under this chapter."

SECTION 38. Section 412:7-203, Hawaii Revised Statutes, is amended to read as follows:

"**§412:7-203 Service corporations.** (a) "Service corporation" means a corporation whose stock is owned entirely by one or more state or federally chartered savings and loan associations or savings banks.

(b) Subject to the approval of the commissioner, a savings and loan association may form and own a service corporation only if the institution or institutions participating in the formation of the service corporation are in a safe and sound condition, and the amount of stock to be owned by each will not adversely affect their capital or solvency.

(c) A savings and loan association may not own or invest in any capital stock, securities, or other interest of a service corporation if, together with its investment in the capital stock, securities, or other interest of any other service corporations, its aggregate outstanding investment in all service corporations will exceed six per cent of the savings and loan association's assets.

(d) No service corporation may be formed except upon written approval by the commissioner of an application submitted in a form satisfactory to the commissioner. The approval shall be subject to the written [~~acknowledgement~~] acknowledgment by the applicant that the service corporation shall be subject to:

- (1) [~~the~~] The supervision of the commissioner;
- (2) [~~examination~~] Examination pursuant to this section; and
- (3) [~~such~~] Any other terms and conditions as the commissioner deems appropriate.

(e) Every service corporation shall permit the commissioner to examine its books, records, and activities from time to time, to the extent and whenever the commissioner deems necessary to determine the propriety of any investment by a savings and loan association in [~~such~~] the service corporation and whether the activities of the service corporation pose a significant risk of loss to the parent savings and loan association. The service corporation shall pay the entire cost of [~~such~~] the examination. In addition, a service corporation, at its sole expense, shall cause an independent audit to be made of its books, records, and activities if and when deemed necessary by the commissioner.

(f) A service corporation may engage in activities permitted for a service corporation of a federally chartered savings and loan association and [~~such~~] other activities as the commissioner may approve.

(g) A service corporation may engage in permitted activities directly or through one or more subsidiaries or joint ventures.

(h) Whenever a service corporation engages in an activity [~~which~~] that is not permitted under this section, and because of [~~such~~] the activity a savings and loan

association's investment in the service corporation would be improper, within ninety days following written notice from the commissioner to the savings and loan association:

- (1) ~~[the]~~ The improper activity shall be discontinued; or
- (2) ~~[the]~~ The savings and loan association shall divest itself of its ownership or investment in the service corporation.

The service corporation or the savings and loan association may appeal the commissioner's decision and request a hearing in accordance with chapter 91.

(i) The savings and loan association shall notify the commissioner in writing within five days of closing a service corporation. The notification shall provide the date of closing, the reasons for the closure, and the means by which the assets and liabilities of the service corporation were disposed."

SECTION 39. Section 412:7-204, Hawaii Revised Statutes, is amended to read as follows:

**"§412:7-204 Operating subsidiaries.** (a) "Operating subsidiary" means a corporation other than a corporation referred to in section 412:7-306(g)(2) to (7) of which more than fifty per cent of the voting securities is held by a savings and loan association.

(b) An operating subsidiary may engage in activities ~~[which are]~~ authorized for a savings and loan association or ~~[which]~~ that are usual or incidental to the business of a savings and loan association.

(c) No savings and loan association may acquire, establish, or hold the voting securities of an operating subsidiary without the commissioner's prior written approval; ~~provided[;]~~ ~~that [such approval];~~

- (1) Approval shall not be required so long as the savings and loan association's aggregate net contributions to the capital of the operating subsidiary remain less than ten per cent of the savings and loan association's capital and surplus; ~~[provided further, that the]~~ and
- (2) The savings and loan association shall comply with the notification requirements of subsection (f).

Unless otherwise provided by law or rule, all provisions of this chapter applicable to the operations of the parent savings and loan association shall ~~[be applicable]~~ apply to the operations of its operating subsidiary. Unless otherwise provided by law or rule, pertinent accounts of the parent savings and loan association and its operating subsidiaries shall be consolidated for the purpose of applying applicable statutory limitations such as contained in section 412:7-303.

(d) The savings and loan association shall file an application with the commissioner in a form approved by the commissioner. The application shall be accompanied by a fee, the amount of which shall be prescribed by rule. The application shall contain the following information concerning the proposed operating subsidiary:

- (1) The name and date for commencement of operations;
- (2) The specific location;
- (3) The activities and nature of business;
- (4) The ownership, amount, and nature of the investment; and
- (5) Any other information that the commissioner may require.

(e) If after appropriate examination and investigation, the commissioner is satisfied that the acquisition, establishment, or holding the voting securities of the operating subsidiary will comply with this section, the commissioner shall approve ~~[such]~~ the application in writing, with ~~[such]~~ conditions as the commissioner may deem appropriate.



(f) The savings and loan association shall notify the commissioner in writing within five days of acquiring or establishing any operating subsidiary or performing new activities in the operating subsidiary. The notification shall provide the information specified in subsection (d).

(g) The accounts of each operating subsidiary of a savings and loan association shall be maintained independently of the accounts of all of the savings and loan association's other operating subsidiaries and independently of the accounts of the savings and loan association itself. At least at the end of every quarter of its fiscal year the savings and loan association shall consolidate or recognize its proportionate share of the profit and loss from each operating subsidiary.

(h) The savings and loan association shall notify the commissioner in writing within five days of closing an operating subsidiary. The notification shall provide the date of closing, the reasons for the closure, and the means by which the assets and liabilities of the operating subsidiary were disposed.'

SECTION 40. Section 412:7-306, Hawaii Revised Statutes, is amended by amending subsection (h) to read as follows:

“(h) To the extent specified herein, a savings and loan association may invest its own assets in limited partnerships, limited liability partnerships, limited liability companies, or corporations formed to invest in residential properties [~~which~~] that will qualify for the low income housing tax credit under section 42 of the Internal Revenue Code of 1986, as amended, and under chapters 235 and 241; provided that the total amount invested by a savings and loan association under this subsection in any one limited partnership, limited liability partnership, limited liability company, or corporation shall not, without the prior approval of the commissioner, exceed two per cent of the savings and loan association's capital and surplus and the aggregate amount invested under this subsection shall not, without the prior approval of the commissioner, exceed five per cent of the savings and loan association's capital and surplus. In no case shall the aggregate amount invested by a savings and loan association under this subsection exceed ten per cent of the savings and loan association's capital and surplus.”

SECTION 41. Section 412:8-201, Hawaii Revised Statutes, is amended to read as follows:

“**§412:8-201 Fiduciary powers.** Every trust company shall have the power and authority to serve as a trustee, personal representative, conservator, assignee for the benefit of others, or receiver, subject to the duties imposed by the instrument or by law. As used herein, the term “instrument” means any trust agreement, declaration, or other agreement, any valid will, or any court order or decree in any probate, guardianship, conservatorship, or receivership. Pursuant thereto, a trust company is authorized and empowered to exercise powers as provided by law, including[.] but not limited to:

- (1) Perform such acts as may be prudent, consistent with, and reasonably necessary to carry out the legitimate purposes of [~~such~~] the instrument;
- (2) Administer, fulfill, and discharge all lawful duties imposed by the instrument or by law, for such remuneration as may be agreed upon or provided by law;
- (3) Acquire principal and income on behalf of the estate administered by the trust company, including without limitation real property, insurance proceeds, rents, interest, dividends, mortgages, bonds, bills, notes, and securities;

- (4) Buy, sell, issue, negotiate, register, transfer, or countersign certificates of stock, bonds, or other obligations of any corporation, association, or municipality;
- (5) Lease, purchase, hold, and convey real and personal property to the extent authorized by the instrument or by law, or consistent with the purposes thereof; and
- (6) Execute and issue on behalf of the estate any documents necessary to the prudent administration thereof, including without limitation any receipts, certificates, papers, and contracts which shall be signed by an appropriate trust officer designated by the trust company.’’

SECTION 42. Section 412:9-403, Hawaii Revised Statutes, is amended to read as follows:

“**§412:9-403 Service corporations.** Subject to the approval of the commissioner, one or more depository financial services loan companies[;] may form and own a service corporation only under the following conditions:

- (1) The depository financial services loan company or companies participating in the formation of the service corporation are in and will remain in a safe and sound condition, and the depository financial services loan company’s or companies’ solvency will not be adversely affected by the formation or ownership of the service corporation;
- (2) A depository financial services loan company may not own or invest in any capital stock, securities, or other interest of a service corporation if, together with its investment in the capital stock, securities, or other interest of any other service corporations, its aggregate outstanding investment in all service corporations will exceed fifty per cent of the depository financial services loan company’s capital and surplus;
- (3) No service corporation may be formed except upon written approval by the commissioner of an application submitted in a form satisfactory to the commissioner. The approval shall be subject to the written acknowledgment by the applicant that the service corporation shall be subject to:
  - (A) ~~[the]~~ The supervision of the commissioner;
  - (B) ~~[examination]~~ Examination pursuant to this section; and
  - (C) ~~[such]~~ Any other terms and conditions as the commissioner deems appropriate;
- (4) Every service corporation shall permit the commissioner to examine its books, records, and activities from time to time, to the extent and whenever the commissioner deems necessary to determine the propriety of any investment by a depository financial services loan company in ~~[such]~~ the service corporation and whether the activities of the service corporation pose a significant risk of loss to the parent depository financial services loan company. The service corporation shall pay the entire cost of the examination. In addition, a service corporation, at its sole expense, shall cause an independent audit to be made of its books, records, and activities if and when deemed necessary by the commissioner;
- (5) A service corporation may engage in any activity permitted to its parent depository financial services loan company and any other activity as the commissioner may approve;
- (6) A service corporation may engage in permitted activities directly or through one or more subsidiaries or joint ventures; ~~[and]~~

- (7) Whenever a service corporation engages in an activity [~~which~~] that is not permitted under this section, and because of [~~such~~] the activity a depository financial services loan company's investment in the service corporation would be improper, within ninety days following written notice from the commissioner to the depository financial services loan company:
- (A) [~~the~~] The improper activity shall be discontinued; or
- (B) [~~the~~] The depository financial services loan company shall divest itself of its ownership or investment in the service corporation.
- The service corporation or the depository financial services loan company may appeal the commissioner's decision and request a hearing in accordance with chapter 91[-]; and
- (8) The depository financial services loan company shall notify the commissioner in writing within five days of closing a service corporation. The notification shall provide the date of closing, the reasons for the closure, and the means by which the assets and liabilities of the service corporation were disposed."

SECTION 43. Section 412:9-409, Hawaii Revised Statutes, is amended by amending subsection (i) to read as follows:

"(i) To the extent specified herein, a depository financial services loan company may invest its own assets in limited partnerships, limited liability partnerships, limited liability companies, or corporations formed to invest in residential properties [~~which~~] that will qualify for the low income housing tax credit under section 42 of the Internal Revenue Code of 1986, as amended, and under chapters 235 and 241; provided that the total amount invested by a depository financial services loan company under this subsection in any one limited partnership, limited liability partnership, limited liability company, or corporation shall not, without the prior approval of the commissioner, exceed two per cent of the depository financial services loan company's capital and surplus and the aggregate amount invested under this subsection shall not, without the prior approval of the commissioner, exceed five per cent of the depository financial services loan company's capital and surplus. In no case shall the aggregate amount invested by a depository financial services loan company under this subsection exceed ten per cent of the depository financial services loan company's capital and surplus."

SECTION 44. Section 412:11-103, Hawaii Revised Statutes, is amended to read as follows:

**"§412:11-103 Use of state or federal examinations.** The commissioner may accept, adopt, or use in lieu of an examination prescribed by section 412:11-102 or otherwise, all or any part of the results of an examination conducted by an appropriate state or federal regulatory agency of a financial institution or a financial institution holding company for the same period or subject matter that would be covered by an examination required or permitted under this article."

SECTION 45. Section 412:3-103, Hawaii Revised Statutes, is repealed.

SECTION 46. Section 412:3-113, Hawaii Revised Statutes, is repealed.

SECTION 47. Section 412:3-115, Hawaii Revised Statutes, is repealed.

SECTION 48. Section 412:3-208, Hawaii Revised Statutes, is repealed.

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SECTION 49. Section 412:3-210, Hawaii Revised Statutes, is repealed.

SECTION 50. Chapter 412, article 7, part IV, Hawaii Revised Statutes, is repealed.

SECTION 51. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>2</sup>

SECTION 52. This Act shall take effect on January 1, 2007.

(Approved June 22, 2006.)

### Notes

1. Prior to amendment “; grounds” appeared here.
2. Edited pursuant to HRS §23G-16.5.