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Banking

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Banking Report

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FLORIDA'S INTERNATIONAL BANK AGENCIES— A REGULATORY UPDATE

I. INTRODUCTION

For Florida, the late 1970's was a period of challenges and opportunities in the international field. The state's growing international trade activity with Latin American countries, coupled with the need to further fuel the economic emergence of the state both nationally and internationally, led state authorities in 1977 to extend a legislative invitation to foreign banks through the promulgation of an international banking law. As a result of this legislation, a number of foreign banking institutions established agency offices in Florida and contributed to Miami's emergence as a specialized Latin American banking center. In 1978, benchmark federal legislation was established for international banking. To accomodate this federal legislation, the State of Florida, in 1979, liberalized its international banking law and expanded the powers of foreign bank agencies.

This study will trace the influences of federal legislation on the regulatory climate in Florida for state-chartered international bank agencies, and will include an update of the author's earlier study of the International Banking Act of 1978 and recommended changes to Florida's banking law.[1]

II. BACKGROUND

A. Federal Legislation: The International Booking Act of 1978

The size and growth of foreign banking activities in the United States over the last two decades, and the competitive effect of these activities upon the domestic banking industry, led Congress in the late 1970s to pass legislation providing both a federal regulatory framework and a governmental overview of foreign banking activity in

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1. Roussakis, *Review of Key Provisions of Both State and Federal International Banking Laws for Florida,* LAW AM. 528 (1979).

this country. This legislation, signed in September, 1978, by President Carter, became known as the International Banking Act (IBA). The IBA introduced federal statutes in six major areas of foreign bank operations in the United States.

Those areas are as follows:

(1) Limitations were established on the interstate domestic deposit-taking activities of foreign banks.
(2) The option of federal licensing was provided for the agencies and branches of foreign banking corporations in this country.
(3) Authorization was granted to the Federal Reserve Board to impose federal reserve requirements on agencies and branches.
(4) Federal deposit insurance was required for those branches of foreign banks that engage in retail deposit-taking.
(5) Edge Act corporations engaged in banking were given broader powers to compete more effectively with agencies and branches, and foreign banks were permitted to own Edges.
(6) Foreign banks operating agencies and banks in this country were subjected to the non-banking prohibitions of the Bank Holding Company Act.[2]

As implied from the above provisions, federal legislators were introducing the principle of parity between foreign banking institutions operating in this country and their domestic counterparts. For the first time, foreign banks were authorized to establish federal branches and agencies in the United States and to pursue banking activity subject to the same conditions and limitations applicable to national banks. In essence, this law introduced a federal regulatory framework making it possible for foreign banks to obtain a charter from the Office of the U.S. Comptroller of the Currency, as an alternative to obtaining a state charter.[3] The objective of the legislators in enacting this law was to set the stage for a vigorous, competitive dual banking system with the foreign banks which would promote a more liberal approach to the state regulation of foreign banking corporations throughout the country.

B. Florida's Initial International Banking Legislation

One of the states to feel the implications of the IBA was Florida which, only a year earlier (June 1977), had moved to introduce appropriate foreign banking legislation by enacting into law House Bill

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2. 12 U.S.C. §§ 3101-3108 (1978).
3. S. REP. NO. 1073, 95th Cong., 2nd Sess., *reprinted in* [1978] U.S. CODE CONG. & AD. NEWS 2827, 2832.

1250.[4] In an effort to promote Florida as a center of international commerce and finance, the state legislators had provided only for the licensing of foreign bank representative offices and agencies. A representative office of an international banking corporation was authorized to generate loans and solicit business (*i.e.*, deposits and letters of credit) for the parent corporation for which it acted in a liason capacity.[5] In other words, the representative office was allowed to function along the lines of the "loan production," "trust production," or "business production" offices which large national banks maintain in regional centers throughout the country. An agency's permissible activities included making loans, as long as they were related to foreign business and the financing of international commerce,[6] and were made from permissible types of credit balances.[7] The credit balances permitted would be those which arose from transactions involving uncollected or undisbursed funds (*i.e.*, undisbursed proceeds of loans to customers, cash collateral or compensating balances, proceeds of incoming remittances, and the proceeds of collections made for customers' accounts).

Unlike Florida's regulatory framework, the IBA, by recognizing federal agencies as possessing a national-bank status, offered foreign banking corporations a broader latitude of operation and increased flexibility. In the first place, the national-bank status of federal agencies entitled them to establish additional offices within a state, subject to the same limitations and restrictions applicable to the establishment of branches by a national bank. Therefore, a federal agency located in Dade County, Florida, would be eligible to apply for the establishment of two additional offices in the county each year. A state-licensed agency would, however, be permitted only one. Another corollary of the national-bank status of federal agencies was that they would be free to make domestic and foreign loans, unlike state-chartered agencies which would only be allowed to engage in international lending. Lastly, the IBA, unlike the Florida Statutes, implicitly recognized that federal agencies had foreign (nonresident) deposit-taking capabilities[8] in addition to the allowed domestic credit balances. In sum, under the IBA, a federally-chartered agency could establish additional offices in the county where it is located, make

4. FLA. STAT. § 659.67 (1977).
5. *Id.* § 659.67(1)(d).
6. *Id.* § 659.67(6)(e).
7. *Id.*
8. *See* definition of agency in preamble of IBA, *supra* note 2.

foreign and domestic loans, and accept foreign (nonresident) deposits as well as domestic credit balances.

C. Demise of Florida's Initial Legislative Scheme

This latitude of agency activities under the aegis of the IBA, along with the Edge Act alternative given to foreign banking corporations through the same enactment, exerted important pressures for the revision of the state's foreign banking legislation. It was a matter of preventing the conversion of agencies from state-chartered into federally-chartered in order to retain control of agency activity within the state. This prospect left the state with no other alternative but to revise its own legislation.

III. Florida's Current Legal Framework For International Banking

Florida's response to the IBA came on July 1, 1979, in the form of an amendment to Chapter 79-145, which added, clarified, and amended Section 659.67 of Florida Statutes. At the level of foreign representative offices, the new provisions stipulate that the assets of international banking corporations must be at least $10,000,000 in excess of liabilities.[9] In other words, the capital base of the parent corporation must be in excess of $10 million. The reason for the capital requirement is to exclude banks of questionable background (*i.e.*, banks that have proliferated in tax haven countries) from establishing a representative office in Florida. This requirement complements a similar agency provision which, introduced earlier, provides for the agency-licensing of only those foreign banking corporations with capital in excess of $25 million.[10]

On the agency level, state amendments introduced a scope of activity compatible to that of federal agencies. Specifically, state amendments provide that "an international banking corporation licensed under this section as an international bank agency may, if authorized by rules of the department, make any loan or investment or exercise any power which it could make or exercise if it were operating in Florida as a federal agency under the federal International Banking Act of 1978."[11] In essence, this amendment authorizes the State Department of Banking and Finance to issue regu-

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9. Fla. Stat. § 659.67(5)(a)(5).
10. *Id.*
11. *Id.* § 659.67(6)(f).

lations which would insure the competitive equality of state-chartered agencies to federally-chartered agencies in Florida.

A. Administrative Regulation

Within the legislative framework established by this statute, Florida's Department of Banking and Finance began to expand the activities of Florida-licensed agencies through a set of new rules in February, 1980. These rules provide that notwithstanding other restrictions imposed by regulation, a state-licensed agency has

> the same rights and privileges as a state bank including, but not limited to, maintaining credit balances incidental to or arising out of the exercise of its banking powers, paying checks and lending money, except that it shall not exercise fiduciary powers or accept deposits from any person who is a citizen or who resides, is domiciled, or maintains its principal place of business in, the United States . . . .[12]

Therefore, except for fiduciary powers and taking domestic deposits, a Florida-licensed agency can exercise any power that a state bank can. Specifically, such agency is authorized to make domestic loans, as well as foreign, and to accept foreign (nonresident) deposits, as well as domestic credit balances.

Another implication of these regulations for a state-licensed agency is that it can apply for additional offices within the county in which it is located. In other words, a state agency, upon prior approval of Florida's Department of Banking and Finance, may establish up to two additional offices per year in the county of domicile. The first agency to take advantage of this implication has been the Israel Discount Bank which in mid-June 1980 applied for permission to establish an additional office in downtown Miami.

Since a state-licensed agency will have the same rights and privileges as a state bank, it is only natural that it should be subject to the same limitations. Consequently, the above-cited regulations provide that a Florida-licensed agency, "shall be subject to all the same duties, restrictions, penalties, liabilities, conditions, and limitations that would apply under the Florida Banking Code to a state bank doing business in this state."[13]

Lastly, these regulations reserve the right of the state to deny or limit the rights and privileges granted to Florida-licensed agencies, if

12. FLA. AD. CODE, ch. 3c-15.03(3)(a).
13. *Id.* ch. 3C-15.03(3)(b).

the exercise of these rights and privileges by federally-chartered agencies is denied or limited by federal law or regulation, or by judicial action.

B. Depository Requirements

Florida's version of IBA parity was also extended to capital equivalency requirements for foreign agencies. Specifically, a provision of Florida's 1979 legislation amplified the type and form of capital equivalency requirements for state agencies, thereby, permitting competition on an equal basis with federal agencies. Initially, each state agency was expected to hold at its office, within the state, assets in excess of 108 percent of the aggregate amount of its liabilities.[14] This provision has been amplified by authorizing the Department of Banking and Finance to permit state agencies to maintain reserves similar to those required for federal agencies[15] (*i.e.*, deposits and securities equal to the greater of the capital requirement of a national bank being organized at the same location or 5 percent of the total liabilities of such agency).[16] Alternatively, it was provided that state agencies may maintain reserves appropriate to the type of agency-business involved.[17] This latter alternative permits the state to interpret its provisions in a more liberal way than the federal statutes.

Whatever the type and form of capital equivalency requirements, it was further provided for their deposit with a state or national bank located in Florida. Here again, state provisions follow IBA requirements for a depository bank located within the state. This requirement may also be interpreted liberally by the state since it is to be complied with "to the extent feasible."[18] This stipulation may be seen as an offset to the fact that the agency's own premises is not, under the amendment, a qualified place for the holding of capital equivalency reserves.

C. Related Legislation

Other important legislation, separate but related to the above provisions, is the newly created Section 687.13 of Florida Statutes. This section, which became effective July 1, 1979, is concerned with the state's *usury ceiling rates* of interest. Florida's usury provisions

14. FLA. STAT. § 659.67(7)(a).
15. *Id.* § 659.67(7)(a)(1).
16. 12 U.S.C. § 3102(g)(1),(2).
17. *Id.* § 659.67(7)(a)(2).
18. *Id.*

provide that interest rates cannot exceed 18 percent per annum on loans up to $500,000 and 25 percent on loans in excess of this amount.[19] These provisions have general applicability both to individual and corporate borrowers alike. Section 687.13 of Florida Statutes exempts from these ceiling rates all loans to non-resident or alien borrowers made by a foreign agency, an Edge Act corporation, or any other local bank engaged in international lending. The disruption of international financing, caused when domestic interest rates rise above the state usury rates, was the motivating force behind this revision. Exemption of foreign loans from usury ceiling rates is expected to add momentum to the international banking activity of domestic banking institutions and improve their international competitiveness.

Still another separate but related statutory amendment has been the enactment of House Bill S. 568 in May 1980, which exempts all international transactions from the state's intangible and documentary stamp tax. Prior to May 1980, the international transactions of foreign agencies, Edge Act corporations, and local banks were subjected to three taxes: (1) the franchise tax; (2) the documentary stamp tax; and (3) the intangible tax.

The *franchise tax* had been imposed annually on the taxable income of banks and savings associations,[20] at the rate of 5 percent, as provided by the Internal Revenue Code (IRC). Unlike the franchise tax which functions as a corporate income tax, the documentary stamp tax and the intangible tax are specialized taxes levied upon financial assets only.

The *documentary stamp tax* is levied on documents, especially those whose primary purpose is the payment or repayment of money or the transfer of property. Taxable instruments include promissory notes, bonds and other certificates of indebtedness, original issues of stock, stock transfers, drafts or bills of exchange, deeds, and other instruments relating to the purchase or transfer of real property. With the exception of deeds and other instruments relating to the transfer of real property which are taxed at a higher rate, all others are subject to a documentary stamp tax rate of 0.15 percent. The tax is levied at the time of the execution of the document and is paid by the purchase of stamps or use of meter-machines. Since 1977, the Florida legislature, as part of its effort to promote international banking, provided for the exemption of foreign instruments from the

19. FLA. STAT. §§ 687.03(1),.071(2) (1979).
20. *Id.* § 220.63(a).

documentary stamp tax as long as the maker, drawer, or obligor resided outside the United States.[21] House Bill S. 568 further liberalized this provision by extending the exemption to all international documents regardless of the residence of the maker or drawer.

The *intangible personal property tax,* enacted in 1971, has been imposed on all intangible personal property held on January 1st of each year. Intangible personal property is defined as "all personal property which is not in itself intrinsically valuable, but which derives its chief value from that which it represents."[22] Among the most common types of taxable property are bills, notes, loans, accounts receivable, bonds, stocks, and other obligations or credits. The annual tax is imposed at the rate of $1.00 per $1,000 (0.10 percent) of the just valuation of taxable intangible assets as of January 1 of each year.[23]

Just as foreign instruments were exempted from the documentary stamp tax, the House enacted Bill S. 568, suspending intangible taxes on international transactions. Clearly this step was taken in a move to encourage an increase in the international operations of Florida's foreign agencies, Edge Act corporations, and local banks. A decrease in taxes would favorably affect the profitability of the international transactions of these institutions and increase the comparative advantage of Florida vis-a-vis other foreign-banking oriented states in this country.[24]

IV. Current Members of the Miami International Bank Agencies

The foreign agencies and representative offices operating in Miami as of June 30, 1980, are shown in Table 1. As indicated in this Table, Miami's foreign banking community is made up of fifteen agencies and two representative offices. Interestingly enough, the largest number of agencies comes from Spain (4), followed by Brazil (3) and Israel (3). If pending agency applications are counted (Table 2), the number of agencies from Spain would increase to 5. Another observation derived from the data in Table 1, is that the Banco de la Provincia de Buenos Aires which established itself initially as a representative office, has upgraded its status and is now operating as an agency.

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21. *Id.* § 201.23(1)(a).
22. *Id.* § 199.023.
23. *Id.* § 199.032.
24. *See* Exhibit 1 in appendix.

TABLE 1

FOREIGN AGENCIES AND REPRESENTATIVE OFFICES LOCATED IN MIAMI AS OF JUNE 30, 1980

Status	Foreign Banks	City and Country of Origin
Agencies	1. Banco Central, S.A.	Madrid, Spain
	2. Banco de Bilbao, S.A.	Bilbao, Spain
	3. Banco de la Nacion Argentina	Buenos Aires, Argentina
	4. Banco de la Provincia de Buenos Aires	Buenos Aires, Argentina
	5. Banco de Santander	Santander, Spain
	6. Banco do Brasil, S.A.	Brasilia, Brazil
	7. Banco do Estado de Sao Paulo, S.A.	Sao Paulo, Brazil
	8. Banco Exterior de Espana, S.A.	Madrid, Spain
	9. Banco Real, S.A.	Sao Paulo, Brazil
	10. Bank Hapoalim, B.M.	Tel Aviv, Israel
	11. Bank Leumi le-Israel, B.M.	Tel Aviv, Israel
	12. Bank of Nova Scotia	Toronto, Canada
	13. Israel Discount Bank Ltd.	Tel Aviv, Israel
	14. Lloyds Bank International Ltd.	London, England
	15. Standard Chartered Bank Ltd.	London, England
Representative Offices	1. Banco Internacional de Costa Rica	San José, Costa Rica
	2. Bank of Tokyo Ltd.	Tokyo, Japan

Source: Division of Banking, Office of Comptroller, State of Florida, Tallahassee.

TABLE 2

FOREIGN BANK APPLICATIONS PENDING APPROVAL AS OF JUNE 30, 1980

Status	Foreign Banks	City and Country of Origin
Agency	Banco de Vizcaya, S.A.	Bilbao, Spain
	Israel Discount Bank, Ltd.	Tel Aviv, Israel

Source: Division of Banking, Office of Comptroller, State of Florida, Tallahassee.

V. CONCLUSION

As follows from the preceding discussion, the recently introduced state legislation places state agencies on a competitive basis vis-a-vis federal agencies. By extending to state agencies the powers that a federal agency is authorized to exercise, state legislators have reaffirmed their determination to promote Florida as a center of international commerce and finance. This is further evidenced by the more liberal definition of capital equivalency reserves as well as the elimination of usury ceiling rates and the intangible and documentary stamp taxes on international loans. In Florida, at least, the IBA may be said to have attained its intended objective: to promote, at the agency level, a vigorous and competitive dual banking system.

APPENDIX

EXHIBIT 1

COMPARISON OF STATE OF ILLINOIS, NEW YORK STATE, NEW YORK CITY, GEORGIA AND FLORIDA INCOME AND OTHER LOCAL TAXES*

Assumption:

A. Hypothetical new foreign loan (qualifies as "eligible loan" under Section 585 of the Internal Revenue Code) $10,000,000

Gross interest income at 10% 1,000,000

Less: Maximum allowable addition to reserve for bad debts for Federal income tax purposes (1.2% of $10,000,000) (1) (120,000)

Federal taxable income attributable to new loan before state income tax deductions $ 880,000

B.

i. *Tax rates:*

State	Income or franchise tax	Individual income tax
Illinois	4%	Yes
New York State (2)	12%	Yes
New York City (2)	13.823%	Yes
Georgia	6%	Yes
Florida (3)	5%	No

ii. *Intangible tax*

Florida $1.00 per $1,000 of just valuation.

iii. *Documentary stamp tax*

Florida—$0.15 per $100 or fraction thereof. Indebtedness of foreign obligor is exempt.

C. Deduction for Federal income tax purposes of state and city income taxes will equal current tax payable.

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* James L. Horan, "Florida Taxation," presentation given in New York City to the Committee of Banking Institutions on Taxation. Peat, Marwick, Mitchell & Co., November 15, 1979.

EXHIBIT 1—Continued

COMPARISON OF STATE OF ILLINOIS, NEW YORK STATE, NEW YORK CITY, GEORGIA AND FLORIDA INCOME AND OTHER LOCAL TAXES

	Loan made in Chicago, Illinois	Loan made in New York City		Loan made in Atlanta, Georgia	Loan made in Miami, Florida
	Illinois	New York State	New York City	Georgia	Florida
Federal taxable income:					
Attributable to new loan before state income tax deductions	$880,000	880,000	880,000	880,000	880,000
Illinois exemption	(1,000)	—	—	—	—
Florida exclusion of net foreign source income	—	—	—	—	880,000
New York City income tax	—	(121,642)	—	—	—
Taxable income	$879,000	758,358	880,000	880,000	—
Tax—income	35,160	91,003	121,642	52,800	—
Intangible tax	—	—	—	1,000(5)	9,880(4)
Documentary stamp	—	—	—	—	—
Less Federal income benefit at 46%	(16,174)	(41,861)	(55,955)	(24,748)	(4,545)
Tax net of Federal income tax benefit	$ 18,986	49,142	65,687	29,052	5,335
Total state and city taxes, net of Federal income tax benefit	$ 18,986	114,829	29,052	5,335	
Effective rate of state and city taxes on gross interest	1.899%	11.483%		2.905%	.5335%

(1) For purposes of New York State and City taxation, net income is computed without regard to the Federal bad debt deduction, but in lieu thereof, a deduction is allowed for worthless debts charged off during the year. For purposes of this comparison, however, it is assumed that the charge-off is equal to the Federal bad debt deduction.

(2) Assumes the bank pays New York taxes based on net income rather than outstanding capital stock or the minimum state or city tax.

(3) Statutory rate is 5% reduced by a credit of up to 40%. An effective tax rate of zero is applicable to foreign source income since foreign source income is excluded from Florida taxation.

(4) Florida intangible tax based on just value of intangible as of January 1, $10,000,000 less 1.2% reserve for bad debts.

(5) Although it may be possible to reduce the just value of the loan by the reserve for bad debt, there is no specific provision in the Georgia tax statutes that allows this reserve to be taken into consideration in computing just value.