

FINANCE CODE

TITLE 3. FINANCIAL INSTITUTIONS AND BUSINESSES

SUBTITLE G. BANK HOLDING COMPANIES; INTERSTATE BANK OPERATIONS

CHAPTER 204. FOREIGN BANKS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 204.001. TRANSACTING BUSINESS. (a) A foreign bank may not transact business in this state except to the extent permitted by this chapter.

(b) Subsection (a) does not prohibit a foreign bank:

(1) from transacting business at a licensed federal branch or agency in this state in accordance with federal law;

(2) that does not maintain a branch or agency in this state or conduct business from an office or location in this state from making unsecured loans in this state or loans secured by liens on real or personal property located in this state, enforcing those loans in this state, or transacting trust business in this state, to the extent permitted by other law; or

(3) organized under the laws of a territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands, the deposits of which are insured by the Federal Deposit Insurance Corporation, from establishing and operating an interstate branch in this state in its capacity as a state bank pursuant to Chapter 203.

(c) For purposes of Subsection (a), a foreign bank is not considered to be transacting business in this state merely because a subsidiary or affiliate transacts business in this state, including business that a depository institution subsidiary or affiliate may lawfully conduct in this state as an agent for the foreign bank to the extent authorized by the laws of this state.

Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999.

Sec. 204.002. BOOKS, ACCOUNTS, AND RECORDS. Each Texas state branch, agency, or representative office shall maintain and make available appropriate books, accounts, and records

reflecting:

(1) all transactions effected by or on behalf of the office; and

(2) all other actions taken in this state by employees of the foreign bank located in this state to effect transactions on behalf of an office of the foreign bank located outside this state.

Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999.

Sec. 204.003. EXAMINATION; FEES. (a) The commissioner may make examinations of a Texas state branch, agency, or representative office as the commissioner considers necessary to determine whether the office is being operated in compliance with the laws of this state and in accordance with safe and sound banking practices. Sections 31.105-31.107 apply to the examinations.

(b) A foreign bank that maintains a Texas state branch, agency, or representative office shall pay fees to the commissioner in accordance with Section 201.005 or rules adopted under this subtitle.

Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999.

Sec. 204.004. REPORTS. (a) A foreign bank doing business in this state through a Texas state branch, agency, or representative office shall make written reports to the commissioner that:

(1) are in English;

(2) are submitted at the times and in the form specified by the commissioner or by rules adopted under this subtitle;

(3) are under oath of one of the foreign bank's officers, managers, or agents transacting business in this state;

(4) show the amount of the foreign bank's assets and liabilities, expressed in United States currency;

(5) with respect to a Texas state branch or agency, show the amount of the branch or agency's assets and liabilities, expressed in United States currency; and

(6) contain other information that the commissioner requires.

(b) A license or registration of a foreign bank under this chapter may be revoked or the foreign bank may be subject to an enforcement action under Chapter 35 if the foreign bank fails to make a report required under Subsection (a) or makes a material false or misleading statement in the report.

Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999.

Sec. 204.005. CHANGE OF CONTROL OF FOREIGN BANK. A foreign bank licensed to establish and maintain a Texas state branch or agency pursuant to Subchapter B, or which has registered a Texas representative office pursuant to Subchapter C, shall file with the commissioner a notice of change of control, in the form and containing the information the commissioner requires, not later than the 14th day after the date of a merger or other transaction that results or will result in a change of control.

Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999.

Sec. 204.006. OPERATIONS IN THIS STATE OF BANKS OWNED OR CONTROLLED BY FOREIGN BANKS AND OTHER FOREIGN PERSONS. (a) Except as provided in Subsection (b):

(1) the laws of this state governing the acquisition or ownership of interests in Texas banks or out-of-state banks seeking to establish and maintain interstate branches in this state do not prohibit ownership of those institutions by, or otherwise discriminate against, foreign banks or other foreign persons; and

(2) the laws of this state governing the powers and activities of Texas banks and out-of-state banks maintaining interstate branches in this state do not discriminate among those banks on the basis of their ownership or control by foreign banks or other foreign persons.

(b) Notwithstanding Subsection (a), the commissioner may apply the laws of this state governing the ownership, control, or operations of Texas banks, even if applicable specifically or

exclusively to foreign banks or other foreign persons, to the extent those laws are determined by the commissioner to be:

(1) substantially equivalent to or consistent with the standards or requirements governing the ownership, control, or operations of Texas banks by foreign banks or other foreign persons under applicable federal law; or

(2) otherwise consistent with the laws and policies of the United States, including its international agreements governing financial services.

Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999.

Sec. 204.007. ESTABLISHMENT OF INTERSTATE BRANCH IN THIS STATE BY AN OUT-OF-STATE FOREIGN BANK. (a) An out-of-state foreign bank may establish an interstate Texas state branch in the same manner as, and subject to the same criteria, standards, conditions, requirements, and procedures applicable to, the establishment of an interstate branch in this state by an out-of-state bank having the same home state in the United States, including by acquisition of or merger with a Texas bank, or establishment of a de novo branch in the manner provided by Section 203.002, notwithstanding another law of this state to the contrary other than Subsection (b).

(b) With respect to establishment of an initial interstate Texas state branch and subsequent intrastate branches of an out-of-state foreign bank, the commissioner:

(1) shall apply the same criteria, standards, conditions, requirements, and procedures applicable under Subchapter B to the establishment of an initial Texas state branch and subsequent intrastate branches in this state;

(2) may apply other criteria, standards, conditions, requirements, or provisions of the laws of this state that are determined by the commissioner to be substantially equivalent to or consistent with federal law generally applicable to the establishment of a branch in the United States by a foreign bank or specifically applicable to the establishment of a branch in the United States by the applicant foreign bank; and

(3) may allow an out-of-state foreign bank to:

(A) acquire or merge with another foreign bank maintaining a Texas branch or agency and after the acquisition or merger continue the operations as its own;

(B) acquire or establish an interstate Texas branch through another means not inconsistent with Section 5, International Banking Act (12 U.S.C. Section 3103); or

(C) convert a state agency to a state branch as provided by Section 204.008.

Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999.

Sec. 204.008. CONVERSION OF EXISTING OFFICE. (a) For purposes of this section, foreign bank offices in this state are divided into classes and ranked in ascending order as:

- (1) representative office;
- (2) Texas state agency; and
- (3) Texas state branch.

(b) A foreign bank may change a lower class office into a higher class office by applying for the higher class office pursuant to Section 204.101. On approval of the application to establish the higher class office and after all conditions to the approval have been fulfilled, the foreign bank may change the lower class office into the higher class office and the commissioner shall issue a license authorizing the bank to maintain the higher class office. The foreign bank shall promptly surrender any license or registration previously issued by the commissioner in connection with the lower class office.

(c) A foreign bank may change a higher class office into a lower class office by applying for approval to close the higher class office pursuant to Section 204.115. On approval of the application to close the higher class office and after conditions precedent to the closing have been fulfilled, the foreign bank may change the higher class office into the lower class office, and the commissioner shall issue a license or registration authorizing the bank to maintain the lower class office.

Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999.

SUBCHAPTER B. DIRECT BRANCH AND AGENCY OFFICES OF FOREIGN BANKS

Sec. 204.101. APPLICATION TO ESTABLISH BRANCH OR AGENCY.

(a) A foreign bank that desires to establish and maintain a Texas state branch or agency shall submit an application to the commissioner. The application must:

(1) be accompanied by all application fees and deposits required by applicable rules;

(2) be in the form specified by the commissioner;

(3) be subscribed and acknowledged by an officer of the foreign bank;

(4) have attached:

(A) a complete copy of the foreign bank's application to the Board of Governors of the Federal Reserve System under Section 7(d), International Banking Act (12 U.S.C. Section 3105(d));

(B) an authenticated copy of the foreign bank's certificate of formation and bylaws or other constitutive documents and, if the copy is in a language other than English, an English translation of the document, under the oath of the translator; and

(C) evidence of compliance with Section [201.102](#);

(5) be submitted when the federal application is submitted to the board of governors; and

(6) include on its face or in accompanying documents:

(A) the name of the foreign bank;

(B) the street address where the principal office of the Texas state branch or agency is to be located and, if different, the Texas state branch or agency's mailing address;

(C) the name and qualifications of each officer and director of the foreign bank who will have control of all or part of the business and affairs of the Texas state branch or agency;

(D) a detailed statement of the foreign bank's financial condition as of a date not more than 360 days before the date of the application; and

(E) other information that:

(i) is necessary to enable the commissioner to make the findings listed in Section 204.103;

(ii) is required by rules adopted under this subtitle; or

(iii) the commissioner reasonably requests.

(b) The finance commission may adopt rules prescribing abbreviated application procedures and standards applicable to applications by foreign banks that have already established an initial Texas state branch or agency to establish additional intrastate branches or agencies.

Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 575 (S.B. 804), Sec. 36, eff. June 14, 2013.

Sec. 204.102. HEARING AND DECISION ON APPLICATION. (a) After the application is complete and accepted for filing and all required fees and deposits have been paid, the commissioner shall determine from the application and the initial investigation whether the conditions set forth by Section 204.103 have been established. The commissioner shall approve the application or set the application for hearing.

(b) If the commissioner sets the application for hearing:

(1) the commissioner shall notify the Board of Governors of the Federal Reserve System that the application has been set for hearing as provided by federal regulations;

(2) the department shall participate as the opposing party; and

(3) the commissioner shall conduct the hearing and one or more prehearing conferences and opportunities for discovery as the commissioner considers advisable and consistent with applicable law.

(c) Information relating to the financial condition and business affairs of the foreign bank and financial information relating to its management and shareholders, except for previously

published statements and information, is confidential and may not be considered in the public portion of the hearing or disclosed by the commissioner or an employee of the department except as provided by Subchapter D, Chapter 31.

(d) The commissioner shall make a finding from the record of the hearing on each condition listed in Section 204.103 and enter an order granting or denying the license. If the license is denied, the commissioner shall inform the Board of Governors of the Federal Reserve System of the order and the reasons the federal application should be denied.

(e) The commissioner may make approval of an application conditional. The commissioner shall include any conditions in the order granting the license but may not issue the license until the Texas state branch or agency has received the approval of the Board of Governors of the Federal Reserve System. If the approval is conditioned on a written commitment from the applicant offered to and accepted by the commissioner, the commitment is enforceable against the applicant.

Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999.

Sec. 204.103. ISSUANCE OF LICENSE. (a) The commissioner shall issue a license to a foreign bank to establish and maintain a Texas state branch or agency if the commissioner finds after reasonable inquiry that:

(1) all members of the management of the Texas state branch or agency have sufficient banking experience, ability, standing, competence, trustworthiness, and integrity to justify a belief that the agency will operate in compliance with state law;

(2) the foreign bank has sufficient standing to justify a belief that the Texas state branch or agency will be free from improper or unlawful influence or interference with respect to the office's operation in compliance with state law; and

(3) the foreign bank is acting in good faith and the application does not contain a material misrepresentation.

(b) Each Texas state branch or agency shall post its license in a conspicuous place at its office. A license issued under this

subchapter is not transferable or assignable.

Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999.

Sec. 204.104. NO CONCURRENT FEDERAL BRANCH OR AGENCY. (a) A foreign bank licensed under this subchapter to establish and maintain a Texas state branch or agency may not concurrently maintain a federal branch or federal agency in this state.

(b) A foreign bank which maintains a federal branch or federal agency in this state may not concurrently be licensed under this subchapter to maintain a Texas state branch or agency.

Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999.

Sec. 204.105. POWERS OF BRANCH AND AGENCY. (a) A Texas state branch or agency is subject to this subtitle and other laws of this state applicable to banks as if the Texas state branch or agency were a Texas state bank unless:

(1) this chapter or a rule adopted under this subtitle provides otherwise; or

(2) the context of a provision or other information indicates that a provision applies only to a bank organized under the laws of a state or the United States.

(b) Among other exceptions to Subsection (a) that may be required or authorized by the commissioner provided by this subchapter or by rules adopted under this subtitle:

(1) a Texas state branch may not accept deposits of less than an amount equal to the standard maximum deposit insurance amount from citizens or residents of the United States, other than credit balances that are incidental to or arise out of its exercise of other lawful banking powers, unless the Federal Deposit Insurance Corporation determines that specific deposit taking activities in lesser amounts do not constitute domestic retail deposit activities requiring deposit insurance protection within the meaning of Section 6, International Banking Act (12 U.S.C. Section 3104);

(2) a Texas state agency may not accept deposits from

citizens or residents of the United States, other than credit balances that are incidental to or arise out of its exercise of other lawful banking powers, but may accept deposits from persons who are neither citizens nor residents of the United States; and

(3) a limitation or restriction based on the capital and surplus of a Texas state bank is considered to refer, as applied to a Texas state branch or agency, to the dollar equivalent of the capital and surplus of the foreign bank, and if the foreign bank has more than one Texas state branch or agency in this state, the business transacted by all the branches and agencies must be aggregated in determining compliance with the limitation.

(c) Subject to Subsections (a) and (b), a foreign bank licensed to transact business in this state through a Texas state branch or agency may:

(1) borrow and lend money with or without property as security;

(2) purchase, sell, and make loans regardless of whether the loans are secured by bonds or mortgages on real property;

(3) engage in a foreign exchange transaction;

(4) issue, advise, confirm, and otherwise deal with a letter of credit and pay, accept, or negotiate a draft drawn under a letter of credit;

(5) accept a bill of exchange or draft;

(6) buy or acquire and sell or dispose of a bill of exchange, draft, note, acceptance, or other obligation for the payment of money;

(7) maintain a credit balance of money received at the Texas state branch or agency incidental to or arising out of the exercise of its authorized activities in this state if the money is not intended to be a deposit and does not remain in the Texas state branch or agency after the completion of all transactions to which it relates;

(8) accept deposits to the extent permitted by Subsection (b);

(9) receive money for transmission and transmit the money from its authorized place of business in this state to any

other place;

(10) act as an indenture trustee or as a registrar, paying agent, or transfer agent, on behalf of the issuer, for equity or investment securities; and

(11) perform other activities that:

(A) are authorized by rules adopted to accomplish the purposes of this subtitle; or

(B) the commissioner determines are analogous or incidental to specific activities authorized by this section for a Texas state branch or agency.

(d) A foreign bank licensed to transact business in this state through a Texas state branch or agency may share the premises of the Texas state branch or agency with another authorized office of the foreign bank or a direct or indirect subsidiary of the foreign bank if the books and records of the Texas state branch or agency are kept separately from the books and records of the other office.

(e) For purposes of this section:

(1) "Resident of the United States" means:

(A) an individual residing in the United States;

(B) a corporation, partnership, association, or other entity organized in the United States; or

(C) a branch or office located in the United States of an entity that is not organized in the United States.

(2) "Standard maximum deposit insurance amount" means the amount of the maximum amount of deposit insurance as determined under the Federal Deposit Insurance Act (12 U.S.C. Section 1821).

Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 110 (H.B. 2007), Sec. 13, eff. September 1, 2007.

Acts 2017, 85th Leg., R.S., Ch. 915 (S.B. 1400), Sec. 4, eff. September 1, 2017.

Sec. 204.106. APPLICATION TO ACT AS FIDUCIARY. (a) Except as provided by Section 204.105(c)(10), a foreign bank may not act as

a fiduciary at a Texas state branch or agency except by obtaining a fiduciary license as provided by this section. A foreign bank that intends to act as a fiduciary at a Texas state branch or agency shall submit an application to the commissioner. The application must:

(1) be accompanied by all application fees and deposits required by applicable rules;

(2) be in the form specified by the commissioner;

(3) be subscribed and acknowledged by an officer of the foreign bank;

(4) describe in detail:

(A) the proposed fiduciary activities;

(B) the names and relevant expertise of its officers and employees that will conduct the fiduciary activities; and

(C) the manner in which the fiduciary activities will be captured in the books and records of the Texas state branch or agency with due regard for separation of beneficial and legal interests; and

(5) contain other information that:

(A) is necessary to enable the commissioner to make the findings required by Subsection (c);

(B) is required by rules adopted under this subtitle; or

(C) the commissioner reasonably requests.

(b) On or before the 60th day after the date the application is complete and accepted for filing and all required fees and deposits have been paid, the commissioner shall approve the application or set the application for hearing. If the commissioner sets the application for hearing, the department shall participate as the opposing party and the commissioner shall conduct the hearing and one or more prehearing conferences and opportunities for discovery as the commissioner considers advisable and consistent with applicable law.

(c) The commissioner may issue a license permitting the foreign bank to engage in fiduciary activities if the commissioner finds that the foreign bank will exercise its fiduciary powers in

accordance with the laws of this state and has sufficient fiduciary and accounting expertise and controls to protect beneficial interests under its control. The commissioner may make approval of an application conditional by including conditions and limitations in the order granting the license. If the approval is conditioned on a written commitment from the applicant offered to and accepted by the commissioner, the commitment is enforceable against the applicant.

(d) A foreign bank that obtains the approval of the commissioner under this section may engage in fiduciary activities at its Texas state branch or agency to the same extent and in the same manner as a Texas state bank could do so at the same location, subject to any conditions or limitations applicable to the license.

(e) The commissioner may initiate an enforcement action under Chapter 35 or may suspend or revoke the authority of a foreign bank to engage in fiduciary activities in this state in the same manner as a revocation of license under Section 204.118 if the commissioner finds in writing that:

(1) conditions exist related to the fiduciary activities of the foreign bank in this state which would authorize the commissioner to revoke or suspend its license pursuant to Section 204.117; or

(2) a fact or condition exists which, if it had existed at the time of the foreign bank's original notice to engage in fiduciary activities, would have resulted in the commissioner denying authority to engage in fiduciary activities.

Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999.

Sec. 204.107. FILING OF AMENDMENTS TO CERTIFICATE OF FORMATION. If the certificate of formation of a foreign bank licensed to maintain a Texas state branch or agency is amended, the foreign bank shall promptly file with the commissioner a copy of the amendment, duly authenticated by the proper officer of the country of the foreign bank's organization. The filing does not enlarge or alter the business the foreign bank is authorized to pursue in this state, authorize the foreign bank to transact business in this

state under a name other than the name set forth in its license, or extend the duration of its corporate existence.

Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 575 (S.B. 804), Sec. 37, eff. June 14, 2013.

Sec. 204.108. AMENDED LICENSE FOR BRANCH OR AGENCY. (a) A foreign bank licensed to establish and maintain a Texas state branch or agency shall apply to the commissioner for an amended license if it changes its corporate name, changes the duration of its corporate existence, or desires to pursue in this state other or additional purposes than those set forth in its prior application for the foreign bank's license or amended license then in effect.

(b) The requirements with respect to the form and contents of an application under Subsection (a), the manner of its execution, the issuance of an amended license, and the effect of the amended license are the same as in the case of an initial application for a license to establish and maintain a Texas state branch or agency.

Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999.

Sec. 204.109. RELOCATION OF OFFICE. (a) With the prior written approval of the commissioner, a foreign bank licensed to establish and maintain a Texas state branch or agency may relocate the branch or agency office. A foreign bank that intends to relocate a Texas state branch or agency office shall submit a letter to the commissioner describing the address of the proposed location, the reasons for relocation, and the manner of notifying its customers of the relocation.

(b) On or before the 30th day after the date the foreign bank's letter has been accepted for filing and any required fee has been paid, the commissioner shall approve or deny the relocation. The commissioner may not permit the foreign bank to relocate its Texas state branch or agency office if the commissioner finds that

the proposed location and the manner of relocation and notification will be deceptive or that the relocation will impede or tend to impede the foreign bank's depositors and creditors in this state. Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999.

Sec. 204.110. SEPARATE ASSETS. (a) Each foreign bank licensed to establish and maintain a Texas state branch or agency in this state shall keep the assets of its business in this state separate and apart from the assets of its business outside this state.

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

Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999.

Sec. 204.111. DISCLOSURE OF LACK OF DEPOSIT INSURANCE. Each foreign bank licensed to establish and maintain a Texas state branch or agency shall give notice that deposits and credit balances in the office are not insured by the Federal Deposit Insurance Corporation.

Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999.

Sec. 204.112. LIMITATIONS ON PAYMENT OF INTEREST ON DEPOSITS. A foreign bank licensed to establish and maintain a Texas state branch or agency is subject to the same limitations with respect to the payment of interest on deposits as a state bank that is a member of the Federal Reserve System.

Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999.

Sec. 204.113. PLEDGE OF ASSETS. (a) In accordance with

rules adopted under this subtitle, a foreign bank licensed to establish and maintain a Texas state branch or agency may be required to keep on deposit, with unaffiliated banks in this state that the foreign bank designates and the commissioner approves, money and securities pledged to the commissioner in an aggregate amount to be determined by the commissioner, valued at the lower of principal amount or market value, consisting of:

(1) dollar deposits;

(2) bonds, notes, debentures, or other legally created, general obligations of a state, an agency or political subdivision of a state, the United States, or an instrumentality of the United States;

(3) securities that this state, an agency or political subdivision of this state, the United States, or an instrumentality of the United States has unconditionally agreed to purchase, insure, or guarantee;

(4) securities issued or guaranteed by the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Agricultural Mortgage Corporation, or the Federal Farm Credit Banks Funding Corporation;

(5) obligations of or issued or guaranteed by the International Bank for Reconstruction and Development, the African Development Bank, the Asian Development Bank, the InterAmerican Development Bank, or the North American Development Bank; or

(6) other assets as may be permitted by rule.

(b) The assets deposited and the amount of the assets to be maintained under Subsection (a) are subject to the conditions and limitations the commissioner considers necessary or desirable for the maintenance of a sound financial condition, the protection of depositors, creditors, and the public interest in this state, and the support of public confidence in the business of the Texas state branch or agency. The commissioner may give credit to reserves required to be maintained with a federal reserve bank in or outside this state pursuant to federal law, in accordance with rules adopted under this subtitle.

(c) While a foreign bank continues business in the ordinary

course, the foreign bank may collect interest on the money and securities deposited under this section and from time to time exchange, examine, and verify the securities.

Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999.

Sec. 204.114. ASSET MAINTENANCE. (a) In accordance with rules adopted under this subtitle, a foreign bank licensed to establish and maintain a Texas state branch or agency shall at all times satisfy the ratio of branch or agency assets to liabilities determined by the commissioner, in the commissioner's sole discretion, to be necessary or desirable with respect to the foreign bank. The type of assets to be held in this state are specified by Subsection (b) and the type of liabilities to be included in the ratio are specified by Subsection (c).

(b) Assets to be held in this state for the purpose of satisfying the ratio of assets to liabilities:

(1) include:

(A) currency, bonds, notes, debentures, drafts, bills of exchange, or other evidences of indebtedness, including loan participation agreements or certificates;

(B) other obligations payable in the United States or in United States funds or, with the prior approval of the commissioner, in funds freely convertible into United States funds; and

(C) other assets the commissioner permits or as may be specified by rule; and

(2) exclude obligations of a person for money borrowed to the extent that the total of the obligations of the person exceeds 10 percent of total assets considered for purposes of this section.

(c) Liabilities included for purposes of calculating the ratio of assets to liabilities:

(1) include all liabilities of the foreign bank appearing in the books, accounts, or records of its Texas state branch or agency, including acceptances; and

(2) exclude amounts due and other liabilities to other

offices, agencies, branches, and wholly owned subsidiaries of the foreign bank, and other liabilities the commissioner determines. The existence of a nominal number of directors' shares outstanding does not cause a subsidiary to be considered less than wholly owned.

(d) Subject to rules adopted under this subtitle, the commissioner, in the commissioner's sole discretion, may vary the ratio of assets to liabilities required by this section for a foreign bank as may be necessary or desirable to reflect differences among Texas branches or Texas agencies because of:

(1) the financial condition of Texas branch or agency offices of the foreign bank;

(2) the financial condition of branch or agency offices of the foreign bank located in other states;

(3) the general economic conditions prevalent in the home country of the foreign bank; or

(4) the financial condition of the foreign bank itself, including:

(A) the financial condition of its branches and agencies located in other countries;

(B) the financial condition of its affiliated bank and nonbank subsidiaries in the United States; and

(C) the financial condition of the foreign bank on a worldwide consolidated basis or in its home country.

(e) For purposes of this section, assets must be valued at the lower of principal amount or market value. The commissioner may determine the value of a non-marketable security, loan, or other asset or obligation held or owed to the foreign bank or its Texas state branch or agency in this state. If the commissioner cannot determine the value of an non-marketable asset, the asset must be excluded from the ratio computation.

(f) The commissioner may require a foreign bank to deposit the assets required to be held in this state pursuant to this section with specific banks in this state designated by the commissioner if, because of the existence or the potential occurrence of unusual and extraordinary circumstances, the commissioner considers it necessary or desirable for the maintenance of a sound financial condition, the protection of

depositors, creditors, and the public interest in this state, and the maintenance of public confidence in the business of a Texas state branch or agency.

Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999.

Sec. 204.115. VOLUNTARY CLOSURE OF BRANCH OR AGENCY. (a) A foreign bank licensed to establish and maintain a Texas state branch or agency may not close the office without filing an application with, and obtaining the prior approval of, the commissioner. An application by a foreign bank under this section must be in the form and include the information the commissioner requires.

(b) The commissioner shall approve the application if the commissioner finds that the closing of the office will not be substantially detrimental to the foreign bank's depositors and creditors in this state. An application may be approved subject to conditions imposed by the commissioner for the continued protection of the foreign bank's depositors and creditors in this state, including a condition that the foreign bank pledge assets in the manner specified by Section 204.113 for a specified period of time.

(c) When an application by a foreign bank under this section has been approved and all conditions precedent to the closing have been fulfilled, the foreign bank may close the office and an officer, manager, or agent of the foreign bank shall deliver to the commissioner:

(1) all copies of examination reports or other property of the department;

(2) a statement under oath by an authorized officer, manager, or agent of the foreign bank that all deposit and other liabilities of the Texas state branch or agency to depositors and creditors in this state have been properly discharged by payment or pledge or otherwise assumed or retained by a financial institution;

(3) the license issued by the commissioner;

(4) an appropriate board resolution closing the Texas state branch or agency; and

(5) a statement of the location where the records of

the Texas state branch or agency will be kept after the closing.
Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999.

Sec. 204.116. ENFORCEMENT. The commissioner may initiate an enforcement action under Chapter 35 or a proceeding to revoke the license of a Texas state branch or agency if the commissioner by examination or other credible evidence finds that the foreign bank:

(1) does not currently meet the criteria established by this chapter for the original issuance of a license;

(2) has refused to permit the commissioner to examine its books, papers, accounts, records, or affairs in accordance with Sections 204.002 and 204.003;

(3) has failed to make a report required under this chapter or made a material false or misleading statement in the report;

(4) has violated this subtitle, another law or rule applicable to a foreign bank or a Texas state branch or agency, or a final and enforceable order of the commissioner or the finance commission;

(5) has misrepresented or concealed a material fact in the original application for license;

(6) has violated a condition of its license or an agreement between the foreign bank and the commissioner or the department; or

(7) conducts business in an unsafe and unsound manner.
Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999.

Sec. 204.117. PROCEDURE FOR REVOCATION. (a) Notice of a revocation proceeding must:

(1) be in the form of a proposed order;

(2) be served on the foreign bank by personal delivery or registered or certified mail, return receipt requested, to a director, officer, manager, or employee of the foreign bank at a Texas state branch or agency location, or to the registered agent of the foreign bank;

(3) state the effective date of the proposed order, which may not be before the 21st day after the date the proposed order is mailed or delivered except as otherwise provided in Section 204.118; and

(4) state the grounds for the proposed revocation with reasonable certainty.

(b) Unless the foreign bank requests a hearing in writing on or before the effective date of the proposed order, the order takes effect as proposed and is final and nonappealable.

(c) A hearing requested on a proposed order shall be held not later than the 30th day after the date the written request for hearing is received by the department unless the parties agree to a later hearing date. The department shall participate as the opposing party, and the commissioner shall conduct the hearing and one or more prehearing conferences and opportunities for discovery as the commissioner considers advisable and consistent with applicable statutes and rules. The foreign bank may not accept new business during the pendency of the hearing unless the commissioner gives prior written approval, except that it shall comply with any stricter requirements imposed by Section 7(e), International Banking Act (12 U.S.C. Section 3105(e)).

(d) Information relating to the financial condition and business affairs of the foreign bank, except previously published statements and information, is confidential and may not be considered in the public portion of the hearing or disclosed by the commissioner or an employee of the department except as provided by Subchapter D, Chapter 31.

(e) Based on the record, the commissioner shall issue or refuse to issue the proposed order. An issued order may contain modifications indicated by the record to be necessary or desirable, including modifications to impose penalties available under Chapter 35 in lieu of license revocation.

Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999.

Sec. 204.118. IMMEDIATE SUSPENSION OR REVOCATION. (a) If the commissioner finds that any of the factors set forth in Section

[204.116](#) are true with respect to a foreign bank licensed to maintain a Texas state branch or agency and that it is necessary for the protection of the interests of creditors of the foreign bank's business in this state or for the protection of the public interest that the commissioner immediately suspend or revoke the license of the foreign bank, the commissioner may issue, without notice and hearing, an order suspending or revoking the license of the foreign bank for a period of up to 90 days, pending investigation or hearing under Section [204.117](#).

(b) An order issued under this section shall be served on the foreign bank in the manner required by Section [204.117](#)(a)(2).
Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999.

Sec. 204.119. STATUS OF REVOKED LICENSE. Unless stayed by the district court that has jurisdiction over an appeal, a final order of the commissioner revoking a license is effective immediately and the foreign bank shall immediately cease all activity in this state requiring a license. Subject to Section [204.120](#), all functions requiring a license must be immediately transferred to a branch, affiliate, or agency of the foreign bank that is located outside of this state and that has the power to perform those functions under governing law. Continued activity in this state of an unlicensed foreign bank is subject to Subchapter C, Chapter [35](#).

Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 20 (S.B. [614](#)), Sec. 31, eff. September 1, 2019.

Sec. 204.120. SEIZURE AND LIQUIDATION. (a) If the commissioner finds that any of the factors set forth in Section [204.116](#) are true with respect to a foreign bank licensed to establish and maintain a Texas state branch or agency, the commissioner may by order immediately take possession of the property and business of the foreign bank in this state if that

action is necessary or desirable for the protection of the interests of the depositors and creditors of the foreign bank's business in this state or for the protection of the public. The commissioner shall retain possession until the foreign bank resumes business in this state or is finally liquidated, except that the commissioner may permit the foreign bank to resume business in this state on conditions the commissioner requires. An order issued under this section shall be served on the foreign bank in the manner required by Section 204.117(a)(2).

(b) As soon as practicable after taking possession of the property and business of a foreign bank pursuant to Subsection (a), the commissioner shall initiate a receivership proceeding by filing a copy of the order issued under this section in a district court in Travis County to be governed by Chapter 36 as if the foreign bank were a Texas state bank, except as otherwise provided by this section. Notwithstanding the priorities established by Chapter 36, the depositors and creditors of the Texas state branch or agency, arising out of transactions with and recorded on the books of the Texas state branch or agency, have an absolute preference and priority over the creditors of the foreign bank's offices located outside this state.

(c) An action initiated that seeks to directly or indirectly affect the assets of the Texas state branch or agency is considered to be an intervention in the receivership proceeding. Venue for an action instituted to effect, contest, or otherwise intervene in the liquidation of a Texas state branch or agency is in Travis County, except that on motion filed and served concurrently with or before the filing of the answer, the court may, on a finding of good cause, transfer the action to the county of the Texas state branch or agency location.

(d) The foreign bank may contest the commissioner's actions as provided by this subsection. On or before the 10th day after the date the commissioner has taken possession of the property and business of a foreign bank pursuant to Subsection (a), the foreign bank, acting through a majority of its directors, may intervene in the action filed by the banking commissioner to challenge the commissioner's closing of the foreign bank's Texas state branch or

agency and to enjoin the commissioner or other receiver from liquidating its assets. The court may issue an ex parte order restraining the commissioner or other receiver from liquidating the foreign bank's assets pending a hearing on the injunction. The commissioner or other receiver shall comply with the restraining order but may petition the court for permission to liquidate an asset as necessary to prevent its loss or diminution pending the outcome of the injunction. The commissioner or other receiver may not be required to post bond. The court shall hear this action as quickly as possible and shall give it priority over other business. The foreign bank or the commissioner or other receiver may appeal the court's judgment as in other civil cases, except that the commissioner or other receiver shall retain all seized foreign bank assets pending a final appellate court order even if the commissioner does not prevail in the trial court. If the commissioner prevails in the trial court, liquidation of the state trust company may proceed unless the trial court or appellate court orders otherwise. If liquidation is enjoined or stayed pending appeal, the trial court retains jurisdiction to permit liquidation of an asset as necessary to prevent its loss or diminution pending the outcome of the appeal.

(e) After the commissioner or other receiver has completed the liquidation of the property and business of a foreign bank, the commissioner or other receiver shall transfer any remaining assets to the foreign bank in accordance with the court's orders, except that:

(1) if the foreign bank has an office in another state of the United States that is in liquidation and the assets of the office appear to be insufficient to pay in full the creditors of that office, the court shall order the commissioner or other receiver to transfer to the liquidator of that office the amount of the remaining assets that appears to be necessary to cover the insufficiency; or

(2) if the foreign bank has two or more such offices in liquidation and the amount of remaining assets is less than the aggregate amount of insufficiencies with respect to the offices, the court shall order the commissioner or other receiver to

distribute the remaining assets among the liquidators of the offices in the manner the court finds equitable.

Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999.

Sec. 204.121. DISSOLUTION. (a) If a foreign bank licensed to maintain a Texas state branch or agency in this state is dissolved, has its authority or existence terminated or canceled in the jurisdiction of its incorporation, or has its authority to maintain a branch or agency in this state terminated by the Board of Governors of the Federal Reserve System under Section 7(e), International Banking Act (12 U.S.C. Section 3105(e)), an officer, manager, or agent of the foreign bank shall deliver to the commissioner:

(1) a certified copy of:

(A) a certificate of the official responsible for records of banking corporations of the foreign bank's jurisdiction of incorporation attesting to the occurrence of dissolution or of termination or cancellation of authority or existence;

(B) an order or decree of a court directing the dissolution of the foreign bank or the termination or cancellation of its authority or existence; or

(C) an order of the Board of Governors of the Federal Reserve System terminating its authority under Section 7(e), International Banking Act (12 U.S.C. Section 3105(e)); and

(2) the documents and information required by Section [204.115\(c\)](#).

(b) The filing of the certificate, order, or decree has the same effect provided by Section [204.119](#) as if the license issued under this subchapter were revoked by the commissioner as of the effective date of termination or cancellation specified in the certificate, order, or decree unless the commissioner orders an earlier effective date, subject to the procedural protections of Section [204.117](#) or [204.118](#).

Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999.

SUBCHAPTER C. REPRESENTATIVE OFFICES OF FOREIGN BANK

Sec. 204.201. REGISTRATION OF REPRESENTATIVE OFFICE.

(a) A foreign bank may establish a Texas representative office if the foreign bank files with the commissioner a verified statement of registration. A statement of registration must:

(1) be accompanied by all registration fees and deposits required by rule;

(2) be in the form specified by the commissioner;

(3) be subscribed and acknowledged by an officer of the foreign bank;

(4) contain as an exhibit or attachment:

(A) a copy of the foreign bank's notice or application submitted to the Board of Governors of the Federal Reserve System under Section 10, International Banking Act (12 U.S.C. Section 3107), and, when issued, the order or notification from the board of governors indicating that the representative office has been approved;

(B) an authenticated copy of the foreign bank's certificate of formation and bylaws or other constitutive documents and, if the copy is in a language other than English, an English translation of the document, under the oath of the translator; and

(C) evidence of compliance with Section [201.102](#);

(5) be submitted when the federal notice or application is submitted to the board of governors; and

(6) directly or in exhibits or attachments contain:

(A) the name of the foreign bank;

(B) the street address and post office address where each Texas representative office is to be located in this state;

(C) the name and qualifications of each officer and director of the foreign bank who will have charge of any aspect of the business and affairs of the Texas representative office;

(D) a complete and detailed statement of the financial condition of the foreign bank as of a date not more than 360 days before the date of the filing; and

(E) other information the commissioner requires.

(b) The finance commission may adopt rules prescribing abbreviated registration procedures and standards for foreign banks that have already established an initial Texas representative office to establish additional Texas representative offices.

(c) A foreign bank that maintains a Texas state or federal branch or agency in this state is not prohibited from establishing or maintaining one or more Texas representative offices.

Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 575 (S.B. 804), Sec. 38, eff. June 14, 2013.

Sec. 204.202. PLACE OF BUSINESS. A Texas representative office may engage in the business authorized by this subchapter at each place of business registered with the commissioner. A Texas representative office may change its location in this state by filing a notice with the commissioner containing the street address and post office address of the new location.

Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999.

Sec. 204.203. PERMISSIBLE ACTIVITIES OF REPRESENTATIVE OFFICE.

(a) A registered Texas representative office of a foreign bank may engage in:

(1) representational and administrative functions in connection with the banking activities of the foreign bank that:

(A) may include soliciting new business for the foreign bank, conducting research, acting as liaison between the foreign bank's head office and customers in the United States, performing preliminary and servicing steps in connection with lending, or performing back-office functions; and

(B) do not include contracting for any deposit or deposit-like liability, lending money, or engaging in any other banking activity for the foreign bank;

(2) making credit decisions if:

(A) the foreign bank also operates one or more branches or agencies in the United States;

(B) the loans approved at the representative office are made by a United States office of the bank; and

(C) the loan proceeds are not disbursed in the representative office; and

(3) other functions for or on behalf of the foreign bank or its affiliates, including operating as a regional administrative office of the foreign bank, but only to the extent that the functions are not banking activities and are not prohibited by applicable federal or state law.

(b) Repealed by Acts 2017, 85th Leg., R.S., Ch. 915 (S.B. 1400), Sec. 6, eff. September 1, 2017.

(c) Repealed by Acts 2017, 85th Leg., R.S., Ch. 915 (S.B. 1400), Sec. 6, eff. September 1, 2017.

(d) Repealed by Acts 2017, 85th Leg., R.S., Ch. 915 (S.B. 1400), Sec. 6, eff. September 1, 2017.

Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 915 (S.B. 1400), Sec. 5, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 915 (S.B. 1400), Sec. 6, eff. September 1, 2017.

Sec. 204.204. ENFORCEMENT. The commissioner may initiate an enforcement action under Chapter 35 or a proceeding to revoke the registration of a representative office if the commissioner by examination or other credible evidence finds that the foreign bank:

(1) has refused to permit the commissioner to examine the books, papers, accounts, records, or affairs of a Texas representative office in accordance with Sections 204.002 and 204.003;

(2) has violated this subtitle, another law or rule applicable to a foreign bank or a Texas representative office, or a final and enforceable order of the commissioner or the finance commission;

(3) has misrepresented or concealed a material fact in the original registration;

(4) has violated a condition of an agreement between the foreign bank and the commissioner, a bank supervisory agency, or another state regulatory agency; or

(5) conducts business in an unsafe and unsound manner.
Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999.

Sec. 204.205. PROCEDURE FOR REVOCATION. (a) Notice of a revocation proceeding must:

(1) be in the form of a proposed order;

(2) be served on the foreign bank by personal delivery or registered or certified mail, return receipt requested, to a director, officer, or employee of the foreign bank at a Texas representative office location, or to the registered agent of the foreign bank;

(3) state the effective date of the proposed order, which may not be before the 21st day after the date the proposed order is mailed or delivered; and

(4) state the grounds for the proposed revocation with reasonable certainty.

(b) Unless the foreign bank requests a hearing in writing on or before the effective date of the proposed order, the order takes effect as proposed and is final and nonappealable.

(c) A hearing requested on a proposed order shall be held not later than the 30th day after the date the written request for hearing is received by the commissioner unless the parties agree to a later hearing date. The department shall participate as the opposing party, and the commissioner shall conduct the hearing and one or more prehearing conferences and opportunities for discovery as the commissioner considers advisable and consistent with applicable statutes and rules. During the pendency of the hearing and unless the commissioner gives prior written approval, the foreign bank may not accept new business from this state.

(d) Information relating to the financial condition and business affairs of the foreign bank, except previously published

statements and information, is confidential and may not be considered in the public portion of the hearing or disclosed by the commissioner or an employee of the department except as provided by Subchapter D, Chapter 31.

(e) Based on the record, the commissioner shall issue or refuse to issue the proposed order. An issued order may contain modifications indicated by the record to be necessary or desirable, including modifications to impose penalties available under Chapter 35 in lieu of revocation of registration.

Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999.

Sec. 204.206. EFFECT OF REVOKED REGISTRATION. A foreign bank that has had its registration under this subchapter revoked shall cease all activities in this state. Continued activity in this state of an unregistered foreign bank is subject to Subchapter C, Chapter 35.

Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999.

Sec. 204.207. DISSOLUTION. (a) If a foreign bank with a registered Texas representative office is dissolved, has its authority or existence terminated or canceled in the jurisdiction of its incorporation, or has its authority to maintain its Texas representative office terminated by the Board of Governors of the Federal Reserve System under Section 10(b), International Banking Act (12 U.S.C. Section 3107(b)), an officer, manager, or agent of the foreign bank shall deliver to the commissioner a certified copy of:

(1) a certificate of the official responsible for records of banking corporations of the foreign bank's jurisdiction of incorporation attesting to the occurrence of dissolution or of termination or cancellation of authority or existence;

(2) an order or decree of a court directing the dissolution of the foreign bank or the termination or cancellation of its authority or existence; or

(3) an order of the Board of Governors of the Federal

Reserve System terminating its authority under Section 10(b), International Banking Act (12 U.S.C. Section 3107(b)).

(b) The filing of the certificate, order, or decree has the same effect under Section [204.206](#) as if the registration made under this subchapter were revoked by the commissioner.

Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999.