WEST VIRGINIA CODE CHAPTER 31A ARTICLE 8F

WV Legislature

§31A-8F-1. Legislative purpose.

(a) This article shall be known and may be cited as the "West Virginia International Banking Act".

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

(c) This article is intended:

(1) To authorize banking activities and operations in West Virginia by foreign banks having separately capitalized and domestically chartered banks in the United States through branches of such domestic banks in this state;

(2) To authorize agency and representative offices in this state of foreign banks; and

(3) To ensure that the banking laws and rules of this state otherwise apply to foreign banks, and to West Virginia and out-of-state banks and bank holding companies that are owned or controlled by foreign banks, in a manner consistent with the laws and policies of the United States governing the operations in this country of foreign banks.

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§31A-8F-2. Definitions.

For purposes of this article:

(a) The term "agency office" or "direct agency office" means an office of a foreign bank that is exercising the powers set forth and authorized by sections seven and eleven of this article.

(b) The term "bank supervisory agency" means:

(1) The office of the comptroller of the currency, the federal deposit insurance corporation, the board of Governors of the federal reserve system and any successor to these agencies;

(2) Any agency of another state with primary responsibility for chartering and supervising banks; and

(3) Any agency of a country (including any colonies, dependencies, possessions or political subdivisions thereof) other than the United States with primary responsibility for supervising banks.

(c) The term "federal agency" means an agency of a foreign bank that is licensed by the comptroller of the currency pursuant to the provisions of Section 4 of the federal International Banking Act, 12 U.S.C. §3102.

(d) The term "foreign bank" means any company organized under the laws of a foreign country that engages directly in the business of banking. The term includes foreign commercial banks, foreign merchant banks and other foreign institutions that engage in banking activities usually in connection with the business of banking in the countries where such foreign institutions are organized or operating.

(e) The term "federal branch" means a branch of a foreign bank that is licensed by the comptroller of the currency pursuant to the provisions of Section 4 of the federal International Banking Act, 12 U.S.C. §3102.

(f) The term "federal International Banking Act" means the federal International Banking Act of 1978, as amended, 12 U.S.C. §§3101 et seq.

(g) The term "foreign person" means a natural or juridical person who is a citizen or national of one or more countries (including any colonies, dependencies or possessions of such countries) other than the United States.

(h) The term "Interstate Banking and Branching Efficiency Act" means the federal Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Public Law No. 103-328, 108 Stat. 2338-2381 (September 29, 1994) (codified at various sections of Title 12, U.S.C.).

(i) The term "interstate branch" means a branch of a bank or a branch of a foreign bank, as the context may require, which is established after September 29, 1994, pursuant to the

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authority contained in the Interstate Banking and Branching Efficiency Act, outside the home state of the bank or foreign bank. In the case of a foreign bank, the term shall not include a limited branch.

(j) The term "limited branch" means a branch of a foreign bank that accepts only such deposits as would be permissible for a corporation organized under Section 25a of the federal Reserve Act in accordance with the provisions of Section 5 (a)(7) of the federal International Banking Act, 12 U.S.C. §3103(a)(7).

(k) The term "out-of-state bank" means a bank organized under the laws of the United States having its main office in a state other than West Virginia or organized under the laws of a state other than West Virginia, which is authorized to engage in the business of banking including the taking of insured retail deposits. For purposes of this definition "state" shall include the District of Columbia and any territory of the United States, Puerto Rico, Guam, the Virgin Islands and American Samoa.

(l) The term "representative office" shall have the same meaning as is set forth in Section 1(b)(15) of the federal International Banking Act, 12 U.S.C. §3101(15), and the term "West Virginia representative office" shall mean any such office that is located in this state.

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§31A-8F-3. General regulation authority; language; U.S. general accounting principles.

(a) The commissioner is authorized and empowered to issue such rules and orders to perform his or her duties and functions under this article and to administer and carry out the provisions and purposes of this article and to prevent evasions thereof.

(b) It shall be required that all banks, including foreign banks, operating offices in this state use or make available on request the English language version of any customer contract or agreement when the customer is a United States corporation, citizen or resident. Upon demand of the commissioner of banking any bank or financial affiliate in West Virginia under the jurisdiction of the commissioner of banking shall provide at their own expense the translation of any document or record it holds into the English language. Unless otherwise provided for West Virginia licensed domestic banking institutions, all foreign banking offices licensed under the provisions of this article shall abide by U.S. general accounting principles in the maintenance of their financial records.

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§31A-8F-4. Operations in this state of banks owned or controlled by foreign banks and other foreign persons.

(a) The laws and rules of this state governing the acquisition or ownership of controlling or other interests in West Virginia banks or in out-of-state banks seeking to establish and maintain one or more interstate branches in this state shall not generally prohibit ownership of such institutions by, or otherwise discriminate against, foreign banks or other foreign persons.

(b) Notwithstanding the provisions of subsection (a) of this section, the commissioner is authorized to apply any standards or requirements of the laws and rules of this state governing the ownership, control or operations of West Virginia banks, including residency requirements for directors of West Virginia state-chartered banks, even if applicable specifically or exclusively to foreign banks or other foreign persons, to the extent such standards or requirements are determined by the commissioner to be either:

(1) Substantially equivalent to, or consistent with, the standards or requirements governing the ownership, control or operations of state or national banks in West Virginia by foreign banks or other foreign persons under applicable United States federal laws or regulations; or

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

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§31A-8F-5. Branches by domestic subsidiary banks owned by a foreign bank.

An out-of-state bank which is a domestic subsidiary of, or controlled by a foreign bank, may establish branches in this state through merger, de novo entry or the acquisition of branches on the same terms as any other bank sharing that same home state pursuant to articles eight-d and eight-e of this chapter.

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§31A-8F-6. Authority of affiliated bank or branch to act as agent for a foreign bank.

(a) A West Virginia bank or branch of any out-of-state bank owned or controlled by a foreign bank may at its main or branch offices in West Virginia receive deposits, renew time deposits, close loans, service loans and receive payments on loans and other obligations as an agent for any depository institution affiliate of such foreign bank, including branch, agency and other offices of that same foreign bank located in other states, generally in accordance with the same terms, conditions, procedures and requirements that are applicable under the laws and rules of this state to such agency activities that may be conducted by West Virginia state banks.

(b) Notwithstanding any other provision of the laws or rules of this state no foreign controlled bank, branch or agency office shall be authorized by this article to accept retail deposits on behalf of a foreign bank or branch which is not authorized to take federally insured deposits, nor to act as agent on behalf of any affiliated foreign bank other than its controlling foreign bank or one which has been licensed to transact business in this state pursuant to this article.

(c) A bank or branch of any bank owned or controlled by a foreign bank may not at its main or branch offices in West Virginia:

(1) Conduct any activity as an agent under this section which such office is prohibited from conducting as a principal under any applicable federal or state law, including, but not limited to, the acceptance of impermissible deposits; or

(2) As a principal, have an agent conduct any activity under this section which such office is prohibited from conducting under any applicable federal or state law, including but not limited to the acceptance of impermissible deposits.

(d) Any agency relationship permitted under this section involving a depository institution affiliate or other affiliate of such foreign bank shall in any event be on terms that are consistent with safe and sound banking practices and all applicable rules and orders of the commissioner.

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§31A-8F-7. Direct agency offices of foreign banks; necessity of licensure.

(a) A foreign bank may directly transact certain banking business in this state as permitted under this article upon obtaining a license to establish and maintain a West Virginia state agency office.

(b) Subsection (a) of this section does not prohibit:

(1) Any foreign bank which establishes and maintains a federal agency or federal branch in this state from transacting at such federal agency or federal branch such banking business as it may be authorized to transact under applicable federal laws and rules; or

(2) Any foreign bank which does not maintain a branch or agency office in West Virginia from making or enforcing loans in this state including loans secured by liens on real or personal property located in this state, as long as such lending is not conducted from an office in this state, and the loan, if a consumer loan, is governed by West Virginia law.

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§31A-8F-8. Application to establish and maintain an agency office; contents.

A foreign bank seeking to establish and maintain a West Virginia state agency office shall submit an application to the West Virginia board of banking and financial institutions. Such application shall contain:

(a) The same information as required by the board of Governors of the federal reserve system for an application to establish an agency in the United States;

(b) An instrument irrevocably appointing the West Virginia Secretary of State or his or her successors in office to be such foreign bank's agent, representative and attorney to receive service of any lawful judicial and administrative process; and

(c) Such additional information as the board or commissioner may require.

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§31A-8F-9. Application to establish and maintain an agency office; manner of filing and determination.

(a) A foreign bank making an application under this article for a license to establish and maintain a West Virginia state agency shall deliver to the West Virginia board of banking and financial institutions:

(1) At least two duplicate originals of the foreign bank's application on the form prescribed by the board;

(2) At least two copies of its charter or articles of incorporation and all amendments thereto, duly authenticated by the proper officer of the country of such foreign bank's organization together with translation of such documents if they are in a language other than English, which translation is attested to for accuracy before a notary public or other verifying official;

(3) A letter or resolution from its governing body or chief executive officer guaranteeing that the foreign bank's entire capital and surplus is and shall be available for all liabilities and obligations of its agency office doing business in this state;

(4) An application fee of $1,000 payable by check or money order to the West Virginia board of banking and financial institutions;

(5) A document granting power of attorney in favor of the person designated to be in charge of the business and affairs of the proposed office; and

(6) Proof of fidelity bond coverage for active officers and employees, and the oath of the managing officer of the West Virginia office(s) to obey state banking laws as would be required were the institution a bank incorporated in this state.

(b) The board may approve issuance of a license to a foreign bank to establish and maintain a West Virginia state agency office if it finds:

(1) That the foreign bank is of sound financial standing;

(2) That the management of the foreign bank and the proposed management of the West Virginia state agency office are adequate and are of good reputation and character;

(3) That the convenience and needs of persons to be served by the proposed West Virginia state agency office will be promoted;

(4) That the foreign bank has committed to allocate and assign to its agency office within this state a capital equivalency deposit of not less than the greater of $500,000 or five percent of the total liabilities of the agency, excluding accrued expenses, intercompany liabilities and any amounts due the foreign bank: Provided, That the board may in its discretion require a higher deposit amount or rate to ensure the agency office's financial safety or soundness;

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(5) That the proposed office is not being formed for other than legitimate motives and purposes;

(6) That the bank supervisory agency of the foreign bank's country of organization does not object to the application;

(7) That the applicant has submitted a legal opinion indicating that the proposed agency office will be permissible under both the laws of the foreign bank's country of organization and the United States; and

(8) That the foreign bank has complied with this section and satisfies such other standards as the board may establish by rule.

(c) If the board after investigation, notice and hearing determines to issue a license to a foreign bank to establish and maintain a West Virginia state agency office, it shall issue a written order granting the application and authorize the commissioner of banking on its behalf upon payment of all fees required under this article to:

(1) Endorse on each document filed as part of the application the word "Filed", and the date of the filing thereof and return to the foreign bank a copy of each document so endorsed;

(2) File in the office of the commissioner of banking one of the duplicate originals of the application and copies of the charter or articles of incorporation and amendments thereto; and

(3) Issue a license to establish and maintain a West Virginia state agency office to such foreign bank.

(d) Each license issued to a foreign bank to establish and maintain a West Virginia state agency shall state fully the name of the foreign bank to which such license is issued, the place of business for the licensee's office and all such other information as the commissioner may require.

(e) The board may, by rule or order, prescribe abbreviated application procedures and standards applicable to applications by foreign banks that have already established an initial West Virginia state agency office, subsequently to establish additional intrastate West Virginia state agency offices, as the case may be.

(f) Each licensee must register with the West Virginia Secretary of State as a foreign corporation qualified to do business in this state and provide proof of such registration to the commissioner of banking prior to conducting business under its license.

WV Legislature

§31A-8F-10. No concurrent maintenance of federal branches or agencies.

(a) No foreign bank which is licensed under this article to establish and maintain a West Virginia state agency shall concurrently maintain a federal branch or federal agency office in this state.

(b) No foreign bank which maintains a federal branch or federal agency office in this state shall concurrently be licensed under this article to maintain a West Virginia state agency office.

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§31A-8F-11. Powers of a foreign bank agency office.

(a) A West Virginia state agency office of a foreign bank established under this article may engage in the business of making loans and guaranteeing obligations for the financing of the international movement of goods and services and for all operational needs including working capital and short-term operating needs and for the acquisition of fixed assets. In addition, such agency may also:

(1) Borrow funds from banks and other financial institutions;

(2) Buy and sell foreign exchange;

(3) Receive checks, bills, drafts, acceptances, notes, bonds, coupons and other securities for collection abroad and collect such instruments in the United States for customers abroad;

(4) Hold securities for safekeeping for, or buy and sell securities upon the order and for the risk of, customers abroad;

(5) Act as paying agent for securities issued by foreign governments or other organizations organized under foreign law and not qualified under the laws of the United States, or any state or the District of Columbia to do business in the United States;

(6) In order to prevent the loss on debts previously contracted, an agency may acquire shares in a corporation: Provided, That the shares are disposed of as soon as practicable, but in no event later than two years from the date of acquisition;

(7) Issue letters of credit and create acceptances; and

(8) Conduct activities which are necessary and incidental to the above-enumerated power: Provided, That the commissioner maintains the authority to determine whether the power or activity sought or undertaken is necessary and incidental.

(b) No West Virginia state agency office may take deposits on behalf of any affiliated bank or other depository institution.

(c) Any loan limitation or restriction based on the capital stock and surplus of a bank shall be deemed to refer, as applied to a West Virginia state agency, to the United States dollar equivalent of the capital and stock surplus of the parent foreign bank, and not to the capital equivalency deposit in section twenty-eight of this article.

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§31A-8F-12. Representative office of foreign banks; necessity of licensure.

(a) No foreign bank shall establish or maintain a West Virginia state representative office unless the foreign bank is licensed by the commissioner to maintain a West Virginia representative office.

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

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§31A-8F-13. Representative office; application.

(a) The application for a license to establish and maintain a West Virginia representative office shall be in writing under oath and shall be in such form and contain such information as the commissioner may require by regulation or order. The application shall be accompanied by a fee of $250.

(b) Each application to establish and maintain a West Virginia representative office shall include an instrument irrevocably appointing the West Virginia Secretary of State or his or her successors in office to be such foreign bank's agent, representative and attorney to receive service of any lawful judicial and administrative process.

WV Legislature

§31A-8F-14. Representative office; factors for approval of application.

(a) A foreign bank making an application for a license to establish and maintain a West Virginia representative office shall deliver to the commissioner two (or more as the commissioner may require in writing) duplicate originals of the foreign bank's application.

(b) The commissioner may issue a license to a foreign bank to establish and maintain a West Virginia representative office if he or she finds:

(1) That the foreign bank is of sound financial standing;

(2) That the management of the foreign bank and the proposed management of the West Virginia representative office are adequate and are of good reputation and character;

(3) That the proposed office is not being formed for other than legitimate motives and purposes; and

(4) That the convenience and needs of persons to be served by the proposed West Virginia representative office will be promoted.

(c) If the commissioner determines to issue a license to a foreign bank to establish and maintain a West Virginia representative office, he or she shall, when all fees have been paid as required under this article:

(1) Endorse on each duplicate original of the application the word "Filed", and the date of the filing thereof and return to the foreign bank one such duplicate original so endorsed;

(2) File in his or her office one of such duplicate originals of the application; and

(3) Issue a license to establish and maintain a West Virginia representative office to such foreign bank.

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

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§31A-8F-15. Representative office; permissible activities.

(a) A foreign bank which is licensed to establish and maintain a West Virginia representative office may, subject to such rules as the commissioner may prescribe, engage in the following activities:

(1) Solicitation for loans and in connection therewith the assembling of credit information, making of property inspections and appraisals, securing of title information, preparing of applications for loans including making recommendations with respect to action thereon, soliciting of investors to purchase loans from the foreign bank and searching for such investors to contract with the foreign bank for servicing of such loans;

(2) The solicitation of new business;

(3) The conduct of research; and

(4) Back office administrative functions as may be more specifically defined in rules issued by the commissioner.

(b) Any other activity which the foreign bank seeks to conduct at such office shall be subject to the prior written approval of the commissioner upon finding that the character of such other business is such that the granting of the authority would not facilitate evasions of this article or chapter or the rules or orders lawfully made hereunder.

WV Legislature

§31A-8F-16. Posting of license.

Each foreign bank which is licensed to establish and maintain a West Virginia state agency or West Virginia representative office shall post its license in a conspicuous place at the office.

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§31A-8F-17. Licenses not transferable.

No license issued by the commissioner in accordance with this article shall be transferable or assignable.

WV Legislature

§31A-8F-18. Amended license to establish and maintain a direct agency office or representative office.

(a) A foreign bank which is licensed to establish and maintain a West Virginia state agency or West Virginia representative office must secure an amended license if it changes its corporate name, changes corporate control, 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 under this article for a license, by making application therefor to the commissioner.

(b) The requirements with respect to the form and contents of an application under subsection (a) of this section, the manner of its execution, the filing of duplicate originals thereof with the commissioner, the issuance of an amended license and the effect thereof shall be the same as in the case of an initial application for a license to establish and maintain a West Virginia state agency or West Virginia representative office, except as may be provided by the commissioner in the case of a change of control which results merely from a corporate reorganization.

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§31A-8F-19. Change of control of foreign bank.

A foreign bank which is licensed to establish and maintain a West Virginia state agency or West Virginia representative office shall file with the commissioner a written notice and request an amended license under section eighteen of this article no later than fourteen calendar days after the foreign bank becomes aware of any acquisition of control of the foreign bank or the bank merges with another foreign or domestic bank.

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§31A-8F-20. Relocation of office; written notice necessary.

No foreign bank which is licensed to establish and maintain a West Virginia state agency or West Virginia representative office shall relocate any office unless the foreign bank provides prior written notice to the commissioner and the commissioner has approved such relocation in writing.

WV Legislature

§31A-8F-21. Examination; payment of fees.

(a) A West Virginia state agency or West Virginia representative office shall be subject to examination by the commissioner at intervals and in a manner as he or she shall establish by rule or order. Unless otherwise provided by rule or order the examinations may be conducted annually.

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

(1) Have full access to the offices, books, accounts and records of each office located in this state as well as all of the books, accounts and records maintained in this state of any office not located in this state of such foreign bank; and

(2) Have authority to require the attendance of and to examine under oath all persons whose testimony may be required relative to the activities of such office.

(c) A foreign bank which is licensed to establish and maintain a West Virginia state agency or West Virginia representative office shall be assessed a reasonable fee for the expenses incurred by the commissioner in making an examination of the office.

(d) A foreign bank which is licensed to establish and maintain a West Virginia state agency or West Virginia representative office shall be subject to all reasonable fees and expenses in such amounts as the commissioner may require by rule or order.

(e) The commissioner may require a West Virginia state agency or West Virginia representative office to be audited by an independent accountant licensed to practice by the State of West Virginia. The accountant must have knowledge and experience with respect to auditing books of international corporations. The audit must be based on generally accepted accounting standards without limitation on its scope. The cost of the audits must be paid by the foreign bank.

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§31A-8F-22. Supervision and enforcement.

(a) The commissioner shall have all of the powers granted to him or her by the laws of this state to the extent appropriate to enable him or her to supervise each West Virginia state agency or West Virginia representative office.

(b) If, after notice and a hearing, the commissioner finds that any person has violated any provision of this article or any regulation or order issued under this article, he or she may, in addition to any other remedy or action available to the commissioner under the laws of this state, seek a civil penalty in an amount in accordance with this chapter and rules thereunder.

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

(1) Enter into cooperative, coordinating or information-sharing agreements with any other bank supervisory agency or any organization affiliated or representing one or more bank supervisory agencies;

(2) With respect to periodic examination or other supervision of a foreign bank that maintains a West Virginia state agency or West Virginia representative office, accept reports of examinations performed by, and reports submitted to, other bank supervisory agencies in lieu of conducting examinations, or of receiving reports, as might otherwise be required under this article;

(3) Enter into joint examinations or joint enforcement actions with any other bank supervisory agency having concurrent jurisdiction over any foreign bank: Provided, That the commissioner may at any time take any actions independently if the commissioner determines that the actions are necessary or appropriate to carry out his or her responsibilities under this article and to ensure compliance with the laws of this state;

(4) Enter into contracts with any bank supervisory agency having concurrent regulatory or supervisory jurisdiction over a foreign bank maintaining a West Virginia state agency or West Virginia representative office, to engage the services of such agency's examiners at a reasonable rate of compensation or provide the services of the commissioner's examiners at a reasonable rate of compensation: Provided, That any such contract shall be deemed excluded from the requirements of article three, chapter five-a of this code; and

(5) Assess supervisory and examination fees that shall be payable by foreign banks maintaining a West Virginia state agency or West Virginia representative office in connection with the commissioner's performance of his or her duties under this article and in accordance with rules adopted by the commissioner.

(d) Supervisory or examination fees assessed by the commissioner in accordance with the provisions of this article may be shared with other bank supervisory agencies or any organizations affiliated with or representing one or more bank supervisory agencies in

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accordance with agreements between the commissioner and such agencies or organizations.

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§31A-8F-23. Reports.

(a) Each foreign bank which is licensed to establish and maintain a West Virginia state agency or West Virginia representative office shall file with the commissioner such reports as and when the commissioner may require.

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

WV Legislature

§31A-8F-24. Confidentiality of examination reports.

All reports of examinations and other records relating to the financial condition of any foreign bank, branch, agency office or representative office shall be confidential and subject to subpoena in the same manner as those examinations and records of other financial institutions pursuant to section four, article two of this chapter.

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§31A-8F-25. Books, accounts and records.

Each foreign bank which is licensed to establish and maintain a West Virginia state agency or West Virginia representative office shall maintain or make available at any such office appropriate books, accounts and records in the English language reflecting: (i) All transactions effected by or on behalf of such office; and (ii) all actions taken in this state by employees of the foreign banking corporation located in this state to effect transactions on behalf of any office of the foreign bank located outside this state.

WV Legislature

§31A-8F-26. Separate assets.

(a) Each foreign bank which is licensed to establish and maintain a West Virginia state agency in this state shall keep the assets of its business in this state separate and apart from the assets of its business outside this state as though the West Virginia office was conducted as a separate and distinct entity.

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

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§31A-8F-27. Disclosure of lack of federal deposit insurance.

Each foreign bank which is licensed to establish and maintain a West Virginia state agency shall clearly and conspicuously disclose that moneys held by or credit balances in such office are not insured by the federal deposit insurance corporation.

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§31A-8F-28. Capital equivalency deposit.

(a) Each foreign bank which is licensed to establish and maintain a West Virginia state agency office shall keep on deposit with an unaffiliated West Virginia bank(s) as the foreign bank may designate and the commissioner may approve, the capital equivalency deposit required by section nine of this article in the form of interest-bearing stocks and bonds, notes, debentures or other obligations of the United States or any agency or instrumentality thereof, or guaranteed by the United States, or of this state, or of a city, county, town, village, school district, or instrumentality of this state or guaranteed by this state, or dollar deposits or obligations of the international bank for reconstruction and development, or obligations issued by the Interamerican development bank, or obligations of the Asian development bank, or obligations issued by the African development bank, or other assets as the commissioner may by rule or order permit, based upon principal amount or market value, whichever is lower, in the case of the above-described securities, and subject to the limitations as he or she shall prescribe.

(b) The West Virginia bank designated to hold the assets in deposit shall issue a written receipt addressed and delivered to the commissioner reciting that the deposit is being held for the sole benefit of the United States domiciled creditors of the foreign bank's West Virginia state agency office and that the deposit is subject to the commissioner's order without offset for the payment of the creditors. For the purpose of this subsection, the term "creditor" shall not include any other offices, branches, subsidiaries or affiliates of the foreign bank.

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

(d) The commissioner in his or her discretion may require additional capital equivalency deposits if: (I) The financial condition of either the office(s) or the foreign bank warrants such additional protection; or (ii) other circumstances exist which may impair the office(s) or foreign bank's safety or soundness.

(e) West Virginia state agency offices must maintain a capital equivalency ledger showing the amount of net liabilities requiring capital equivalency coverage for each business day. On the last day of business of each month the average daily balance shall be computed, and based upon this computation, an increase in the deposit, if necessary to maintain the deposit at the level required by this section, shall be made. Any such required increase must be made within the first two business days of the following month. For foreign banks having more than one agency office in this state, the deposit required shall be determined on an aggregate basis for all such agency offices in this state. If securities comprise all or part of the deposit, and interest rate changes or a decline in credit quality of the security results in the depreciation of its market value, the security shall be replaced with an instrument that qualifies under subsection (a) of this section or other appropriate action shall be taken to ensure the capital equivalency deposit is adequately maintained.

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§31A-8F-29. Voluntary closure of agency or representative office; application.

(a) No foreign bank which is licensed to establish and maintain a West Virginia state agency or West Virginia representative office shall close the office without filing an application with, and obtaining the prior approval of, the commissioner. The failure of an agency or representative office to remain open to the public for business at least six hours per day four days per week (excluding legal holidays) shall, unless previous approval for lesser hours has been granted by the commissioner, constitute a closing, and may result in a suspension or revocation of license.

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

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

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