

(S. B. 394)

(No. 110-2013)

(Approved September 23, 2013)

AN ACT

To amend Sections 2, 3, and 7, add a new Section 8, renumber current Sections 8, 9, 10, 11, and 12 as Sections 9, 10, 11, 12, and 13, respectively, add a new Section 14 and renumber current Sections 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, and 26 as Sections 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, and 28, respectively, of Act No. 52 of August 11, 1989, as amended, known as the “International Banking Center Regulatory Act,” for the purpose of adjusting its provisions to the current reality and enable the Office of the Commissioner of Financial Institutions to carry out its duties of supervising, overseeing, and regulating said industry in Puerto Rico.

STATEMENT OF MOTIVES

The purpose of this legislative piece is to amend Act No. 52 of August 11, 1989, as amended, known as the “International Banking Center Regulatory Act,” to adjust it to the current reality faced by international banking entities and facilitate the use and administration of said Act.

To achieve such purposes, this Act amends Section 2 of Act No. 52, *supra*, to arrange definitions in alphabetical order and add other definitions.

During the past years, the banking industry has increased its security and supervision standards in connection with money laundering. For such reason, it is necessary to impose the same standards on international banking entities.

The amendments incorporated herein are directed to regulate and adjust our Act so as to provide that every international banking entity shall be required to comply with the applicable federal laws.

Furthermore, it is necessary to expressly clarify that the Commissioner is empowered to order examinations or special investigations when, in his/her judgment, it is appropriate and, that the applicant or licensee shall be responsible for defraying the costs of such special investigation or examination.

Also, a new Section is added to clarify and separate the provisions that apply to new license applications from those that apply to license renewals.

Currently, Act No. 52, *supra*, does not contain a specific provision regarding the fines that the Commissioner is authorized to impose for violations of the Act. This Bill also includes an amendment to make such authority uniform with other laws under the OCIF's jurisdiction so that the Commissioner of Financial Institutions may impose and collect fines of not more than \$10,000 for each violation of the Act, and of up to \$5,000 for each day an order issued by him/her is not complied with.

Lastly, this Act amends the subsection regarding the confidentiality of the information provided to the Commissioner of Financial Institutions by international banking entities in order to enable the Commissioner to share such information with other law enforcement agencies.

Aware of the importance of establishing and maintaining a safe and reliable banking industry in Puerto Rico, this Legislative Assembly deems it necessary to enact innovative legislation at the local level so that Puerto Rico is on a par with countries committed to protect their citizens and, to require international banking entities to comply with applicable federal laws.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Section 1. - Section 2 of Act No. 52 of August 11, 1989, as amended, is hereby amended to read as follows:

“Section 2.- Definitions.-

For purposes of this Act, the following terms are defined as set forth below:

(a) Bank Secrecy Act.- means the ‘Bank Secrecy Act,’ as amended, 31 U.S.C. §§ 5311 *et seq.* and 12 U.S.C. Sections 1818(s), 1829(b), and 1951-1959, or any law succeeding or amending it.

(b) Commissioner.- means the Commissioner of Financial Institutions of Puerto Rico.

(c) International Banking Entity.- means any person, other than an individual, incorporated or organized under the laws of Puerto Rico, the United States, or a foreign country, or a unit of such person, to which a license has been issued pursuant to Section 7 of this Act.

(d) United States.- means the United States of America, any state of the United States, the District of Columbia, and every possession, territory, political subdivision, and agency thereof, excluding Puerto Rico.

(e) Insolvency.- refers to the financial condition in which an international banking entity may find itself or the person of which an international banking entity is a unit, when it is unable to pay its debts when they become due or when its paid-in capital has been reduced to less than one-third (1/3).

(f) OFAC.- means the Office of Foreign Asset Control of the United States Department of the Treasury.

(g) Person.- means an individual, corporation, partnership, association, unit, trust or estate, syndicate or enterprise of any kind, government or political subdivision or agency thereof.

(h) Domestic Person.- means any natural person who is a resident of Puerto Rico or a person incorporated or organized under the laws of Puerto Rico, or a person whose principal place of business is located in Puerto Rico, and the Government or any political subdivision or agency of the Commonwealth of Puerto Rico.

(i) Foreign Person.- means any person other than a domestic person.

(j) Puerto Rico.- means the Commonwealth of Puerto Rico and every political subdivision and agency thereof.

(k) Resident of Puerto Rico.- any person established in Puerto Rico with a defined purpose or interest, the nature of which requires a lengthy stay on the Island, shall be deemed to be a resident of Puerto Rico for purposes of this Act. Such person must make Puerto Rico his/her home temporarily, even when his/her intention is to return to his/her domicile outside of Puerto Rico after the purpose or interest that originally brought him/her to Puerto Rico has been terminated or abandoned. Such person shall be deemed to be a resident of Puerto Rico as of the day he/she establishes his/her residence in Puerto Rico, even though temporarily.

An essential requirement for any person to be deemed a resident of Puerto Rico pursuant to the previous paragraph is to be subject to the Puerto Rico income tax law as if he/she were a resident of Puerto Rico.

(l) Unit.- includes any subdivision or branch of any person other than an individual, whose business and operations are segregated from the other business and operations of such person, as required by this Act.

(m) USA Patriot Act.- means the ‘Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act,’ as amended, 115 Stat. 272 (2001).”

Section 2. - Section 3 of Act No. 52 of August 11, 1989, as amended, is hereby amended to read as follows:

“Section 3.- Authority and Duties of the Commissioner.-

(a) The Commissioner shall:

(1) ...

(10) suspend, dismiss, or otherwise sanction any director, official, employee, agent, or individual acting in a similar capacity for an international banking entity, who violates, or voluntarily or negligently allows another person to

violate Section 2 *et seq.* of this Act, its regulations, order, or any provision of the certificate of incorporation, partnership agreement or any written document establishing the international banking entity; provided, that any individual who is suspended, dismissed, or sanctioned may request a hearing pursuant to the regulations provided for in Section 24 of this Act;

(11) conduct studies and investigations, on petition of any interested party or on his/her own motion, of authorized matters or on apparent violations of this Act or the Regulations of the Commissioner, and in doing so, he/she may require the necessary, pertinent, and critical information to achieve such purposes, as well as any other investigations as are necessary for the proper administration of the Act or the Regulations of the Commissioner. For purposes of this Subsection, the applicant or licensee shall be responsible for defraying the costs of any special investigation ordered by the Commissioner. Any examination or investigation shall be kept confidential except as provided in Section 21 of this Act; and

(12) take actions and grant remedies as are necessary to enforce the provisions of this Act or the regulations thereunder.

...”

Section 3.- A new Section 8 is hereby added to Act No. 52 of August 11, 1989, as amended, to read as follows:

“Section 8.- License Renewal.-

(a) Every license shall remain in effect until its expiration, which shall be on the anniversary date of the original license.

(b) Every license renewal application shall be submitted within thirty (30) days before the expiration date of each license. It shall contain:

(1) A description of any material change in the information provided to OCIF in the initial license application;

(2) Evidence that the licensee maintains the capital required by the Commissioner as provided in Section 5 of this Act, computed in accordance with generally accepted accounting principles;

(3) A statement, as provided in the Regulations of the Commissioner, undersigned by the chief executive officer or any other executive officer expressly authorized by the Board of Directors of the concerned institution, certifying:

a) That the international banking entity has implemented the necessary and appropriate procedures and systems to comply with the provisions of the 'Bank Secrecy Act';

b) A statement acknowledging the entity's management responsibility to establish in such entity, and to maintain and comply with the Bank Secrecy Act Compliance Program;

c) That the necessary policies and procedures have been adopted in the entity to comply with the provisions of OFAC, as applicable; and

d) Any other related information that the Commissioner may require by regulations.

(c) Annual license fees totaling five thousand dollars (\$5,000) for each office, by cashier's check, certified check, postal or bank money order, payable to the Secretary of the Treasury. The Commissioner may extend the license renewal period.

(d) If the licensee fails to file the license renewal application and/or fails to pay the applicable fees within the established term or during any additional term that the Commissioner authorizes, if any, it shall be understood that the licensee intends to surrender the license to operate an international banking entity, and shall follow the process established therefor by Regulations, and may not continue operating such business.”

Section 4.- Current Sections 8, 9, 10, 11, and 12 are hereby renumbered as Sections 9, 10, 11, 12, and 13.

Section 5. - A new Section 14 is hereby added to Act No. 52 of August 11, 1989, as amended, to read as follows:

“Section 14.- Responsibilities of the Holders of a License to Operate an International Banking Entity.-

Every holder of an International Banking Entity license shall:

(a) Adopt written business policies and procedures to ensure that the international banking entity complies with the applicable state and federal laws, including this Act, the Bank Secrecy Act, and the USA Patriot Act;

(b) Faithfully comply with the applicable state and federal laws and the regulations applicable to the international banking entity, including this Act, the Bank Secrecy Act, and the USA Patriot Act;

(c) File currency transaction or suspicious activity reports required by the Bank Secrecy Act and the USA Patriot Act, when necessary;

(d) Follow the practice rules and procedures that are necessary in the business to meet the requirements of OFAC, as applicable.”

Section 6.- Sections 14, 15, 16, and 17 are hereby renumbered as Sections 16, 17, 18, and 19.

Section 7.- Current Section 18 is hereby amended and renumbered as Section 20, to read as follows:

“Section 20.- Penalties.-

...

(e) The Commissioner is hereby authorized to:

(1) Impose and collect administrative fines of not less than one hundred dollars (\$100) nor more than ten thousand dollars (\$10,000) for each violation of the provisions of this Act or of the rules and regulations that may be promulgated thereunder;

(2) Order restitution or refund of payments received in violation of the provisions of this Act or any rules or regulations that may be promulgated thereunder or any other remedy that he/she may deem necessary to achieve the purposes of this Act;

(3) Impose and collect administrative fines, which shall not be less than one hundred dollars (\$100) or more than five thousand dollars (\$5,000), for each day the international banking entity fails to meet the requirements or carry out the orders of the Commissioner.”

Section 8.- Current Section 19 is hereby amended and renumbered as Section 21, to read as follows:

“Section 21.- Confidentiality.-

(a) The information that the international banking entity provides to the Commissioner under the provisions of Section 1 *et seq.* of this Act and the regulations adopted thereunder by the Commissioner shall be kept confidential, except:

(1) When disclosure of such information is required by law or judicial order, or

(2) through a formal petition of a domestic or foreign government agency in the exercise of its supervisory function, when the Commissioner has grounds to believe that it is in the best public interest. In such case, the information shall be delivered under a binding agreement with the concerned government entity of maintaining the confidentiality of said information. Provided, that the exception under paragraph (2) above shall under no circumstances be extended to information regarding clients of the international banking entity, unless there is a formal petition by any domestic or U.S. government agency acting in accordance with the powers granted under this Act.

(b) The requirements under any federal or Puerto Rico law in connection with the privacy or confidentiality of any information or material provided to the Office of the Commissioner of Financial Institutions, and any privilege arising from any federal or Puerto Rico law, including the rules of any federal or Puerto Rico court with regard to said information or material shall continue to apply to such information or material after said information or material is revealed to the Office of the Commissioner of Financial Institutions. Said information and material may be shared with any official of a federal or Puerto Rico agency who has authority to oversee the banking industry, without precluding the protections of privileges or confidentiality provided under federal and Puerto Rico laws.

(c) This Section shall not apply to information or material related to the employment history of any official or orders issued by the Commissioner to any licensee.”

Section 9.- Sections 20, 21, 22, 23, 24, 25, and 26 are hereby renumbered as Sections 22, 23, 24, 25, 26, 27, and 28, respectively, of Act No. 52 of August 11, 1989, as amended.

Section 10.- Effectiveness

This Act shall take effect immediately after its approval.

CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 110-2013 (S. B. 394)** of the **2nd Regular Session** of the **17th Legislative Assembly of Puerto Rico**:

AN ACT to amend Sections 2, 3, and 7, add a new Section 8, renumber current Sections 8, 9, 10, 11, and 12 as Sections 9, 10, 11, 12, and 13, respectively, add a new Section 14 and renumber current Sections 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, and 26 as Sections 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, and 28, respectively, of Act No. 52 of August 11, 1989, as amended, known as the “International Banking Center Regulatory Act,” for the purpose of adjusting its provisions to the current reality and enable the Office of the Commissioner of Financial Institutions to carry out its duties of supervising, overseeing, and regulating said industry in Puerto Rico.

has been translated from Spanish to English and that the English version is correct.

In San Juan, Puerto Rico, on this 29th day of May, 2015.

Juan Luis Martínez Martínez
Acting Director