

(j) Receivership over assets of foreign bank in United States

(1) Whenever the Comptroller revokes a foreign bank's authority to operate a Federal branch or agency or whenever any creditor of any such foreign bank shall have obtained a judgment against it arising out of a transaction with a Federal branch or agency in any court of record of the United States or any State of the United States and made application, accompanied by a certificate from the clerk of the court stating that such judgment has been rendered and has remained unpaid for the space of thirty days, or whenever the Comptroller shall become satisfied that such foreign bank is insolvent, he may, after due consideration of its affairs, in any such case, appoint a receiver who shall take possession of all the property and assets of such foreign bank in the United States and exercise the same rights, privileges, powers, and authority with respect thereto as are now exercised by receivers of national banks appointed by the Comptroller.

(2) In any receivership proceeding ordered pursuant to this subsection (j), whenever there has been paid to each and every depositor and creditor of such foreign bank whose claim or claims shall have been proved or allowed, the full amount of such claims arising out of transactions had by them with any branch or agency of such foreign bank located in any State of the United States, except (A) claims that would not represent an enforceable legal obligation against such branch or agency if such branch or agency were a separate legal entity, and (B) amounts due and other liabilities to other offices or branches or agencies of, and wholly owned (except for a nominal number of directors' shares) subsidiaries of, such foreign bank, and all expenses of the receivership, the Comptroller or the Federal Deposit Insurance Corporation, where that Corporation has been appointed receiver of the foreign bank, shall turn over the remainder, if any, of the assets and proceeds of such foreign bank to the head office of such foreign bank, or to the duly appointed domiciliary liquidator or receiver of such foreign bank.

(Pub. L. 95-369, §4, Sept. 17, 1978, 92 Stat. 610; Pub. L. 102-242, title II, §§202(b), (c), 203(b), Dec. 19, 1991, 105 Stat. 2290, 2291; Pub. L. 106-569, title XII, §1234, Dec. 27, 2000, 114 Stat. 3037.)

Editorial Notes

REFERENCES IN TEXT

For definition of "this chapter", referred to in subsec. (b), see References in Text note set out under section 3101 of this title.

The National Bank Act, referred to in subsec. (b), is act June 3, 1864, ch. 106, 13 Stat. 99, which is classified principally to chapter 2 (§21 et seq.) of this title. For complete classification of this Act to the Code, see References in Text note set out under section 38 of this title.

Section 3104 of this title, referred to in subsec. (g)(1), was in the original a reference to section 6 of Pub. L. 95-369, which enacted section 3104 of this title and amended sections 1813, 1815, 1817, 1818, 1820, 1821, 1822, 1823, 1828, 1829b, and 1831b of this title.

AMENDMENTS

2000—Subsec. (b). Pub. L. 106-569 redesignated cls. (2) to (4) as (1) to (3), respectively, and struck out former

cl. (1) which read as follows: "the requirements of section 481 of this title shall be met with respect to a Federal branch or agency if it is examined at least once in each calendar year;"

1991—Subsec. (a). Pub. L. 102-242, §202(b), inserted heading, designated existing provisions as par. (1) and inserted heading, and added par. (2).

Subsec. (b). Pub. L. 102-242, §203(b), inserted at end: "The Comptroller of the Currency shall coordinate examinations of Federal branches and agencies of foreign banks with examinations conducted by the Board under section 3105(c)(1) of this title and, to the extent possible, shall participate in any simultaneous examinations of the United States operations of a foreign bank requested by the Board under such section."

Subsec. (h). Pub. L. 102-242, §202(c), amended heading, designated existing provisions as par. (1), inserted par. (1) heading, redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, and added par. (2).

Statutory Notes and Related Subsidiaries

STUDY AND REPORT ON SUBSIDIARY REQUIREMENTS FOR FOREIGN BANKS

Pub. L. 102-242, title II, §215, Dec. 19, 1991, 105 Stat. 2304, as amended by Pub. L. 102-550, title XVI, §1604(a)(14), Oct. 28, 1992, 106 Stat. 4083, directed Secretary of the Treasury, jointly with Board of Governors of the Federal Reserve System and in consultation with Comptroller of the Currency, Federal Deposit Insurance Corporation, and Attorney General, to conduct a study of whether foreign banks should be required to conduct banking operations in United States through subsidiaries rather than branches and, not later than 1 year after Dec. 19, 1991, to transmit to Congress a report on the results of the study.

§ 3103. Interstate banking by foreign banks

(a) Interstate branching and agency operations

(1) Federal branch or agency

Subject to the provisions of this chapter and with the prior written approval by the Board and the Comptroller of the Currency of an application, a foreign bank may establish and operate a Federal branch or agency in any State outside the home State of such foreign bank to the extent that the establishment and operation of such branch would be permitted under section 36(g) of this title or section 1831u of this title if the foreign bank were a national bank whose home State is the same State as the home State of the foreign bank.

(2) State branch or agency

Subject to the provisions of this chapter and with the prior written approval by the Board and the appropriate State bank supervisor of an application, a foreign bank may establish and operate a State branch or agency in any State outside the home State of such foreign bank to the extent that such establishment and operation would be permitted under section 1828(d)(4) or 1831u of this title if the foreign bank were a State bank whose home State is the same State as the home State of the foreign bank.

(3) Criteria for determination

In approving an application under paragraph (1) or (2), the Board and (in the case of an application under paragraph (1)) the Comptroller of the Currency—

(A) shall apply the standards applicable to the establishment of a foreign bank office in

the United States under section 3105(d) of this title;

(B) may not approve an application unless the Board and (in the case of an application under paragraph (1)) the Comptroller of the Currency—

(i) determine that the foreign bank's financial resources, including the capital level of the bank, are equivalent to those required for a domestic bank to be approved for branching under section 36 of this title and section 1831u of this title; and

(ii) consult with the Secretary of the Treasury regarding capital equivalency; and

(C) shall apply the same requirements and conditions to which an application for an interstate merger transaction is subject under paragraphs (1), (3), and (4) of section 1831u(b) of this title.

(4) Operation

Subsections (c) and (d)(2) of section 1831u of this title shall apply with respect to each branch and agency of a foreign bank which is established and operated pursuant to an application approved under this subsection in the same manner and to the same extent such provisions of such section apply to a domestic branch of a national or State bank (as such terms are defined in section 1813 of this title) which resulted from a merger transaction under such section 1831u of this title.

(5) Exclusive authority for additional branches

Except as provided in this section, a foreign bank may not, directly or indirectly, acquire, establish, or operate a branch or agency in any State other than the home State of such bank.

(6) Requirement for a separate subsidiary

If the Board or the Comptroller of the Currency, taking into account differing regulatory or accounting standards, finds that adherence by a foreign bank to capital requirements equivalent to those imposed under section 36 of this title and section 1831u of this title could be verified only if the banking activities of such bank in the United States are carried out in a domestic banking subsidiary within the United States, the Board and (in the case of an application under paragraph (1)) the Comptroller of the Currency may approve an application under paragraph (1) or (2) subject to a requirement that the foreign bank or company controlling the foreign bank establish a domestic banking subsidiary in the United States.

(7) Additional authority for interstate branches and agencies of foreign banks, upgrades of certain foreign bank agencies and branches

Notwithstanding paragraphs (1) and (2), a foreign bank may—

(A) with the approval of the Board and the Comptroller of the Currency, establish and operate a Federal branch or Federal agency or, with the approval of the Board and the appropriate State bank supervisor, a State branch or State agency in any State outside the foreign bank's home State if—

(i) the establishment and operation of such branch or agency is permitted by the State in which the branch or agency is to be established; and

(ii) in the case of a Federal or State branch, the branch receives only such deposits as would be permitted for a corporation organized under section 25A of the Federal Reserve Act [12 U.S.C. 611 et seq.]; or

(B) with the approval of the Board and the relevant licensing authority (the Comptroller in the case of a Federal branch or the appropriate State supervisor in the case of a State branch), upgrade an agency, or a branch of the type referred to in subparagraph (A)(ii), located in a State outside the foreign bank's home State, into a Federal or State branch if—

(i) the establishment and operation of such branch is permitted by such State; and

(ii) such agency or branch—

(I) was in operation in such State on the day before September 29, 1994; or

(II) has been in operation in such State for a period of time that meets the State's minimum age requirement permitted under section 1831u(a)(5) of this title.

(8) Continuing requirement for meeting community credit needs after initial interstate entry by acquisition

(A) In general

If a foreign bank acquires a bank or a branch of a bank, in a State in which the foreign bank does not maintain a branch, and such acquired bank is, or is part of, a regulated financial institution (as defined in section 803 of the Community Reinvestment Act of 1977 [12 U.S.C. 2902]), the Community Reinvestment Act of 1977 [12 U.S.C. 2901 et seq.] shall continue to apply to each branch of the foreign bank which results from the acquisition as if such branch were a regulated financial institution.

(B) Exception for branch that receives only deposits permissible for an Edge Act corporation

Paragraph (1) shall not apply to any branch that receives only such deposits as are permissible for a corporation organized under section 25A of the Federal Reserve Act [12 U.S.C. 611 et seq.] to receive.

(9) Home State of domestic bank defined

For purposes of this subsection, the term "home State" means—

(A) with respect to a national bank, the State in which the main office of the bank is located; and

(B) with respect to a State bank, the State by which the bank is chartered.

(b) Continuance of lawful interstate banking operations previously commenced

Unless its authority to do so is lawfully revoked otherwise than pursuant to this section, a foreign bank, notwithstanding any restriction or limitation imposed under subsection (a) of this

section, may establish and operate, outside its home State, any State branch, State agency, or bank or commercial lending company subsidiary which commenced lawful operation or for which an application to commence business had been lawfully filed with the appropriate State or Federal authority, as the case may be, on or before July 27, 1978. Notwithstanding subsection (a), a foreign bank may continue to operate, after September 29, 1994, any Federal branch, State branch, Federal agency, State agency, or commercial lending company subsidiary which such bank was operating on the day before September 29, 1994, to the extent the branch, agency, or subsidiary continues, after September 29, 1994, to engage in operations which were lawful under the laws in effect on the day before September 29, 1994.

(c) Determination of home State of foreign bank

For the purposes of this section—

(1) in the case of a foreign bank that has any branch, agency, subsidiary commercial lending company, or subsidiary bank in more than 1 State, the home State of the foreign bank is the 1 State of such States which is selected to be the home State by the foreign bank or, in default of any such selection, by the Board; and

(2) in the case of a foreign bank that does not have a branch, agency, subsidiary commercial lending company, or subsidiary bank in more than 1 State, the home State of the foreign bank is the State in which the foreign bank has a branch, agency, subsidiary commercial lending company, or subsidiary bank.

(d) Clarification of branching rules in case of foreign bank with domestic bank subsidiary

In the case of a foreign bank that has a domestic bank subsidiary within the United States—

(1) the fact that such bank controls a domestic bank shall not affect the authority of the foreign bank to establish Federal and State branches or agencies to the extent permitted under subsection (a); and

(2) the fact that the domestic bank is controlled by a foreign bank which has Federal or State branches or agencies in States other than the home State of such domestic bank shall not affect the authority of the domestic bank to establish branches outside the home State of the domestic bank to the extent permitted under section 36(g) of this title or section 1828(d)(4) or 1831u of this title, as the case may be.

(Pub. L. 95-369, § 5, Sept. 17, 1978, 92 Stat. 613; Pub. L. 103-328, title I, §§ 104, 107(f), Sept. 29, 1994, 108 Stat. 2354, 2361; Pub. L. 106-102, title VII, § 732, Nov. 12, 1999, 113 Stat. 1478.)

Editorial Notes

REFERENCES IN TEXT

For definition of “this chapter”, referred to in subsec. (a)(1), (2), see References in Text note set out under section 3101 of this title.

The Community Reinvestment Act of 1977, referred to in subsec. (a)(8)(A), is title VIII of Pub. L. 95-128, Oct. 12, 1977, 91 Stat. 1147, which is classified generally to chapter 30 (§2901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2901 of this title and Tables.

Section 25A of the Federal Reserve Act, referred to in subsec. (a)(7)(A)(ii), (8)(B), popularly known as the Edge Act, is classified to subchapter II (§611 et seq.) of chapter 6 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 611 of this title and Tables.

AMENDMENTS

1999—Subsec. (a)(7). Pub. L. 106-102 amended heading and text of par. (7) generally. Prior to amendment, text read as follows: “Notwithstanding paragraphs (1) and (2), a foreign bank may, with the approval of the Board and the Comptroller of the Currency, establish and operate a Federal branch or Federal agency or, with the approval of the Board and the appropriate State bank supervisor, a State branch or State agency in any State outside the foreign bank’s home State if—

“(A) the establishment and operation of a branch or agency is expressly permitted by the State in which the branch or agency is to be established; and

“(B) in the case of a Federal or State branch, the branch receives only such deposits as would be permissible for a corporation organized under section 25A of the Federal Reserve Act.”

1994—Subsec. (a). Pub. L. 103-328, §§ 104(a), 107(f), inserted heading and substituted provisions consisting of pars. (1) to (9) for former provisions relating to limitations on interstate banking by foreign banks.

Subsec. (b). Pub. L. 103-328, § 104(b), inserted at end “Notwithstanding subsection (a), a foreign bank may continue to operate, after September 29, 1994, any Federal branch, State branch, Federal agency, State agency, or commercial lending company subsidiary which such bank was operating on the day before September 29, 1994, to the extent the branch, agency, or subsidiary continues, after September 29, 1994, to engage in operations which were lawful under the laws in effect on the day before September 29, 1994.”

Subsec. (c). Pub. L. 103-328, § 104(d), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “For the purposes of this section, the home State of a foreign bank that has branches, agencies, subsidiary commercial lending companies, or subsidiary banks, or any combination thereof, in more than one State, is whichever of such States is so determined by election of the foreign bank, or, in default of such election, by the Board.”

Subsec. (d). Pub. L. 103-328, § 104(c), added subsec. (d).

§ 3104. Insurance of deposits

(a) Objective

In implementing this section, the Comptroller and the Federal Deposit Insurance Corporation shall each, by affording equal competitive opportunities to foreign and United States banking organizations in their United States operations, ensure that foreign banking organizations do not receive an unfair competitive advantage over United States banking organizations.

(b) Deposits of less than amount equal to the standard maximum deposit insurance amount

No foreign bank may establish or operate a Federal branch which receives deposits of less than an amount equal to the standard maximum deposit insurance amount unless the branch is an insured branch as defined in section 3(s) of the Federal Deposit Insurance Act [12 U.S.C. 1813(s)], or unless the Comptroller determines by order or regulation that the branch is not engaged in domestic retail deposit activities requiring deposit insurance protection, taking account of the size and nature of depositors and deposit accounts.