

Chapter 18a
Utah Foreign Depository Institutions Act

Part 1
Title, Definitions, and Application of Law

7-18a-101 Title.

This chapter is known as the "Utah Foreign Depository Institutions Act."

Enacted by Chapter 63, 1996 General Session

7-18a-102 Definitions.

As used in this chapter:

- (1) "Agency" means a place of business of a foreign depository institution located in this state that is authorized to exercise the powers permitted in Section 7-18a-301.
- (2) "Branch," when used in reference to a foreign depository institution, means a place of business of a foreign depository institution located in this state that is authorized to exercise the powers permitted in Section 7-18a-301.
- (3) "Foreign person" means a person who is a citizen or national of a country, including any colony, dependency, or possession of such country, other than the United States.
- (4) "Representative office" means a place of business of a foreign depository institution located in this state that is authorized to exercise powers permitted in Section 7-18a-301.

Enacted by Chapter 63, 1996 General Session

7-18a-103 Application of Utah Revised Business Corporation Act.

A foreign depository institution authorized to transact business in this state through an agency, branch, or representative office shall comply with Title 16, Chapter 10a, Utah Revised Business Corporation Act.

Enacted by Chapter 63, 1996 General Session

7-18a-104 Application of Utah Financial Institutions Act.

A foreign depository institution authorized under Section 7-18a-201 to transact business in this state through an agency, branch, or representative office is subject to this title.

Enacted by Chapter 63, 1996 General Session

Part 2
Authorization Required to Conduct Business

7-18a-201 Authorization required to transact business as a foreign depository institution agency, branch, or representative office.

- (1) It is unlawful for a foreign depository institution to transact business in this state unless it transacts business through an agency, branch, or representative office authorized by the department or an agency of the federal government.

- (2) Notwithstanding Subsection (1), a foreign depository institution that is not authorized to transact business through an agency, branch, or representative office in this state may make or enforce loans made in this state secured by liens on real or personal property located in this state.
- (3) A foreign depository institution authorized to transact business through an agency, branch, or representative office in this state may transact business as an agent for an affiliated depository institution in accordance with Section 7-1-716.
- (4) For purposes of Subsection (1), a foreign depository institution is not considered to be transacting business in this state solely because a subsidiary or affiliate transacts business in this state, including business that any depository institution subsidiary or affiliate may lawfully conduct in this state as an agent for the foreign depository institution in accordance with the laws of this state.

Enacted by Chapter 63, 1996 General Session

7-18a-202 Application and fee to establish, relocate, or discontinue a foreign depository institution agency, branch, or representative office -- Certificate of authority.

- (1) To obtain a certificate of authority to transact business through an agency, branch, or representative office in this state, a foreign depository institution shall:
 - (a) comply with Section 7-1-708;
 - (b) provide a copy and an accurate English translation of the foreign depository institution's articles of incorporation, or equivalent, that evidences authority to transact business as a depository institution;
 - (c) provide satisfactory evidence that the foreign depository institution has complied with the laws of the chartering country authorizing the foreign depository institution to engage in the business of a depository institution;
 - (d) irrevocably designate the commissioner as the foreign depository institution's agent for service of process;
 - (e) provide a written certificate of designation that specifies the name and address of the person to whom the commissioner shall forward any process that has been served; and
 - (f) pay to the department a filing fee as required by Subsection 7-1-401(6).
- (2) The written certificate of designation, required in Subsection (1)(e) may be changed from time to time by filing a new certificate of designation.
- (3) To obtain authorization to relocate an authorized agency, branch, or representative office in this state, a foreign depository institution shall comply with Section 7-1-708.
- (4)
 - (a) To obtain authorization to discontinue an agency, branch, or representative office in this state, a foreign depository institution shall comply with Section 7-1-709.
 - (b) Upon notice of authorization to discontinue an agency, branch, or representative office and the satisfaction of all conditions precedent to discontinuance, the foreign depository institution may close the agency, branch, or representative office and promptly surrender to the commissioner the certificate of authority.
- (5) If the commissioner authorizes a foreign depository institution to transact business through an agency, branch, or representative office in this state, the commissioner shall issue a certificate of authority that states:
 - (a) fully the name of the foreign depository institution to which the certificate of authority is issued;
 - (b) the address at which the agency, branch, or representative office of the foreign depository institution is to be located;

- (c) the authority granted to the foreign depository institution;
 - (d) the effective and expiration dates of the certificate of authority; and
 - (e) any other information required by the commissioner.
- (6) Each foreign depository institution agency, branch, or representative office shall display the certificate of authority issued by the commissioner in a conspicuous place at the place of business specified in the certificate.
- (7) A certificate of authority is neither transferable nor assignable.

Enacted by Chapter 63, 1996 General Session

7-18a-203 No concurrent maintenance of agencies or branches.

- (1) A foreign depository institution authorized under this chapter to transact business through an agency or branch may not concurrently transact business in this state through an agency or branch authorized under federal law.
- (2) A foreign depository institution authorized under federal law to transact business through an agency or branch in this state may not concurrently transact business through an agency or branch authorized under this chapter.
- (3) A foreign depository institution authorized to transact business through an agency may not concurrently transact business through a branch in this state.
- (4) A foreign depository institution authorized to transact business through a branch may not concurrently transact business through an agency in this state.
- (5) Subsections (1) through (4) do not prohibit a foreign depository institution authorized to transact business through an agency or branch in this state from transacting business through a representative office.

Enacted by Chapter 63, 1996 General Session

7-18a-204 Filing of amendments to articles of incorporation.

- (1) If a foreign depository institution authorized by this state to transact business in this state through an agency, branch, or representative office amends its articles of incorporation, the institution shall file with the department a copy and an accurate English translation of the amendment authenticated by the appropriate officer of the chartering country.
- (2) Without obtaining an amended certificate of authority under Section 7-18a-205, the filing of the amendment may not:
- (a) enlarge or alter the purpose for which the foreign depository institution is authorized to transact business in this state;
 - (b) authorize the foreign depository institution to transact business in this state under any name other than the name set forth in the certificate of authority issued by the department; or
 - (c) extend the duration of the foreign depository institution's corporate existence.

Enacted by Chapter 63, 1996 General Session

7-18a-205 Amended certificate of authority to establish an agency, branch, or representative office.

- (1) A foreign depository institution authorized by this state to transact business in this state through an agency, branch, or representative office shall secure an amended certificate of authority if it:
- (a) changes its corporate name;
 - (b) changes the duration of its corporate existence; or

- (c) desires to expand or contract the purposes set forth in the foreign depository institution's prior application for certificate of authority.
- (2) An application for an amended certificate of authority shall be filed with the department in a form prescribed by the commissioner.

Enacted by Chapter 63, 1996 General Session

7-18a-206 Change of control of foreign depository institution.

A foreign depository institution authorized by this state to transact business through an agency, branch, or representative office in this state shall file with the commissioner a notice, in such form and containing such information as the commissioner may prescribe, no later than 14 days after the change of control of the foreign depository institution.

Enacted by Chapter 63, 1996 General Session

7-18a-207 Annual renewal of certificate of authority.

- (1) A foreign depository institution may renew a certificate of authority, issued under Section 7-18a-202, to transact business in this state through an agency, branch, or representative office in a form prescribed by the commissioner.
- (2) The application for renewal shall be submitted to the department no later than 60 days before the expiration of the certificate of authority.
- (3) The certificate of authority may be renewed by the commissioner upon a determination, with or without examination, that the foreign depository institution:
 - (a) is in a safe and sound condition; and
 - (b) has complied with applicable provisions of the law.
- (4) An application for renewal of certificate of authority shall be accompanied by the annual fee required by Subsection 7-1-401(5).

Amended by Chapter 260, 2000 General Session

**Part 3
Powers**

7-18a-301 Powers of an agency, branch, or representative office of a foreign depository institution.

- (1) Subject to the limitations set forth in Subsections (2) and (3), and notwithstanding any other law of this state, a foreign depository institution authorized by this state to transact business through an agency or branch shall transact business with the same rights, privileges, and powers as a Utah depository institution and shall be subject to all the same duties, restrictions, penalties, liabilities, conditions, and limitations that would apply under the laws of this state to a Utah depository institution.
- (2) The general rights, powers, and privileges of a foreign depository institution authorized by this state to transact business through an agency or branch set forth in Subsection (1) are limited to the following:
 - (a) An agency may not accept any 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 powers,

but it may accept deposits from persons who are neither citizens nor residents of the United States.

- (b) An agency may pay checks or loan money.
 - (c) A branch operating in this state may not accept from citizens or residents of the United States deposits, other than credit balances that are incidental to or arise out of its exercise of other lawful powers, of less than \$100,000.
 - (d) An agency or branch is not required to maintain federal deposit insurance.
 - (e) After considering the applicable limitations on the retail deposit-taking powers and privileges of an agency or branch of a foreign depository institution, the commissioner may, by rule or order, modify the applicability to an agency or branch, of any law of this state that is generally applicable to insured depository institutions doing business in this state.
 - (f) The commissioner may adopt such additional standards, conditions, or requirements, or modify the applicability of any existing standards, conditions, or requirements, by rule or order, as the commissioner may consider necessary to ensure the safety and soundness and the protection of creditors of the operations of an agency or branch of a foreign depository institution in this state.
- (3) A foreign depository institution authorized by this state to transact business through a representative office may only:
- (a) engage in loan production office activities authorized by Section 7-1-715;
 - (b) solicit new business;
 - (c) conduct research; or
 - (d) perform administrative functions expressly permitted by rule or order.

Amended by Chapter 378, 2010 General Session

7-18a-302 Trust business.

A foreign depository institution may not engage in the trust business, as defined in Section 7-5-1, in this state.

Enacted by Chapter 63, 1996 General Session

**Part 4
Operation**

7-18a-401 Separate assets.

- (1) Each foreign depository institution authorized to transact business in this state through an agency or branch shall keep the assets of its business in this state separate and apart from the assets of its business outside this state.
- (2) The creditors of a foreign depository institution authorized to transact business in this state through an agency or branch arising out of transactions with, and recorded on the books of, the agency or branch shall be entitled to absolute preference and priority over the creditors of the foreign depository institution's offices located outside this state with respect to the assets of the foreign depository institution in this state.

Enacted by Chapter 63, 1996 General Session

7-18a-402 Disclosure of lack of deposit insurance.

Each foreign depository institution authorized to transact business in this state through an agency or branch shall give notice to the customers of the foreign depository institution, as prescribed by rule or order, that deposits and credit balances in the agency or branch are not insured by a federal deposit insurance agency.

Enacted by Chapter 63, 1996 General Session

7-18a-403 Asset maintenance.

- (1) Each foreign depository institution authorized to transact business in this state through an agency or branch shall hold assets in this state consisting of currency, bonds, notes, debentures, drafts, bills of exchange, or other evidences of indebtedness, including loan participation agreements or certificates, or other obligations that are payable:
 - (a) in the United States in United States funds; or
 - (b) with the prior approval of the commissioner, in funds freely convertible into United States funds.
- (2) The amount of assets required in Subsection (1) shall be in an amount not less than 108% of the aggregate amount of liabilities of the foreign depository institution appearing in the books, accounts, or records of its agency or branch located in this state, including acceptances, but excluding amounts due and other liabilities to other offices, agencies, or branches of, and wholly owned, except for a nominal number of directors' shares, subsidiaries of, the foreign depository institution, and such other liabilities as the commissioner shall determine.
- (3) For the purposes of this section, the commissioner:
 - (a) shall value marketable securities at principal amount or market value, whichever is lower;
 - (b) may determine the value of any non-marketable bond, note, debenture, draft, bill of exchange, other evidence of indebtedness or other asset or obligation held by or owed to the foreign depository institution in this state; and
 - (c) in determining the amount of assets for the purpose of computing the above ratio of assets to liabilities in Subsection (2), may exclude in whole or in part any particular asset.
- (4) The commissioner may require a foreign depository institution to deposit the assets required to be held in this state pursuant to this section with a Utah depository institution 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:
 - (a) for the maintenance of a sound financial condition;
 - (b) for the protection of depositors, creditors, and the public interest; or
 - (c) to maintain public confidence in the business of an agency or branch.
- (5) The assets held to satisfy the ratio of assets to liabilities prescribed by this section, shall include obligations of any person for money borrowed from an agency or branch of a foreign depository institution authorized to transact business in this state only to the extent that the total of these obligations of any person are not more than 10% of the assets considered for purposes of this section.

Enacted by Chapter 63, 1996 General Session

Part 5
Possession of Foreign Depository Institutions by Commissioner

7-18a-501 Supervisory actions by commissioner.

A foreign depository institution authorized by this state to transact business in this state through an agency, branch, or representative office is subject to supervisory actions by the commissioner under Chapter 2, Possession of Depository Institution by Commissioner, or Chapter 19, Acquisition of Failing Depository Institutions or Holding Companies, if the commissioner, with or without an administrative hearing, finds:

- (1) any of the circumstances set forth in Section 7-2-1;
- (2) that the foreign depository institution is transacting business in or outside this state in an unsafe and unsound manner;
- (3) that the foreign depository institution or its agency, branch, or representative office is in an unsafe and unsound condition;
- (4) that the foreign depository institution has ceased to operate its agency, branch, or representative office without the prior approval of the commissioner as required in Section 7-18a-202;
- (5) that the foreign depository institution or its agency or branch has suspended payment of its obligations, has made an assignment for the benefit of its creditors, or has admitted in writing its inability to pay its debts as they become due;
- (6) that the foreign depository institution or its agency or branch has applied for an adjudication of bankruptcy, reorganization, arrangement, or other relief under any foreign or domestic bankruptcy, reorganization, insolvency, or moratorium law, or that any person has applied for any such relief under such law against the foreign depository institution and the foreign depository institution has by any affirmative act approved of or consented to such action or such relief has been granted;
- (7) that a receiver, liquidator, or conservator has been appointed for the foreign depository institution, or that any proceeding for such an appointment or any similar proceeding has been initiated in the chartering country;
- (8) that the foreign depository institution's existence or authority to transact depository institution business under the laws of the chartering country has been suspended or terminated; or
- (9) that any fact or condition exists that, if it had existed at the time when the foreign depository institution applied for a certificate of authority to transact business through an agency, branch, or representative office in this state, would have been grounds for denying the application.

Enacted by Chapter 63, 1996 General Session

7-18a-502 Distribution of balance of assets.

- (1) This section supersedes Subsection 7-2-15(3).
- (2) When the commissioner has paid claims of each depositor and creditor of the foreign depository institution's agency or branch in this state whose claims have been proved and allowed the full amount of the claim, the commissioner shall transfer any remaining assets to the foreign depository institution in accordance with orders issued by the court.
- (3)
 - (a) Notwithstanding Subsection (2), if the foreign depository institution 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 to transfer to the liquidator of that office the amount of any remaining assets as appears to be necessary to cover the insufficiency.

- (b) If the foreign depository institution has two or more offices in a state other than this state and the assets of each office appear to be insufficient to pay in full the creditors of each office, 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 to distribute the remaining assets among the liquidators of the offices in a manner the court finds equitable.

Enacted by Chapter 63, 1996 General Session