

## ACT 191

S. B. 35.

A Bill for an Act Relating to International and Foreign Banking Corporations.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 178 of the Revised Laws of Hawaii 1955, as amended, is hereby amended by adding thereto a new part to be appropriately numbered and to read as follows:

**“PART—**

**INTERNATIONAL AND FOREIGN BANKING CORPORATIONS**

**“§ 178-..... Definitions.** As used in this part, unless the context otherwise requires, ‘corporation’ means a corporation organized pursuant to this part, ‘director’ means the director of regulatory agencies, and ‘bank’ has the meaning used in section 178-2.

**“§ 178-..... Application for authority to organize; purposes; contents; fee.** Any number of natural persons, not less than five, at least three of whom shall be residents of the State, may file an application with the director for authority to organize a corporation for the purpose of engaging in international or foreign banking or other international or foreign financial operations, or in banking or other financial operations in a dependency or insular possessions of the United States, either directly or through the agency, ownership, or control of local institutions in foreign countries, or in such dependencies or insular possessions as provided by this part, and to act when required by the Secretary of the Treasury of the United States as fiscal agents of the United States. The applicants shall pay to the director at the time of application a fee of \$150, which fee shall in no case be refunded. No person shall organize such a corporation until authority for that purpose has been obtained from the director. The application shall be made in the manner and shall contain the information set forth in section 178-14.

**“§ 178-..... Hearing and investigation; ruling of the director.** Within ten days after filing of the application the director shall set the time and place for the hearing of the application.

“The provisions of section 178-16 are hereby made applicable to the hearing, investigation, and ruling of the director on the application, for which purpose any reference therein to ‘bank’ or ‘banking business’ shall be deemed to refer to the corporation and its business covered by this part; provided, however, that the words therein: ‘to command the confidence of the community in which the proposed bank is to be located’ shall not be applicable.

**“§ 178-..... Articles of incorporation; filing; time limit.** Within sixty days after authority to organize has been finally granted, the incorporators shall file articles of incorporation and pay to the director the organization and filing fees required by law.

**“§ 178-..... Refusal of approval after authorization; grounds.** If, after the approval of the application for authority to organize, it appears to the director that the articles of incorporation or that the organization or proposed manner of conducting business does not comply with the terms and requirements of law, he may refuse to approve the articles of incorporation.

**“§ 178-..... Incorporators; number; articles; execution; contents.** When authorized in writing by the director as provided in this part any number of natural persons, not less than five, of whom at least three shall be residents of this State, may associate themselves by articles of incorporation and establish a corporation for the purpose set forth in this part upon the terms and conditions and subject to the liabilities prescribed herein, and not otherwise.

“All of the provisions of section 178-19 shall apply to the execution, acknowledgment, filing, and contents of the articles of incorporation, for which purpose any reference therein to ‘bank’ shall be deemed to refer to the corporation covered by this part; except that in lieu of item (b) in the second paragraph of said section 178-19, the articles shall specify the place or places where its operations are to be carried on, and the place in this State where its main office or branch office is to be located, which place shall be specifically designated so as to be readily found, or street and number in the city or town.

**“§ 178-..... Approval of articles; transaction of business during organization; application for charter; commencement of business.** All of the provisions of section 178-20 to section 178-23 shall apply to any corporation covered by this part, and any reference therein to ‘bank’ or ‘banking business’ shall be deemed to refer to the corporation or its business covered by this part.

**“§ 178-..... Corporate powers.** Each corporation shall have power, under such rules and regulations as the director may prescribe:

“(a) To purchase, sell, discount, and negotiate, with or without its endorsement or guaranty, notes, drafts, checks, bills of exchange, accept-

ances, including bankers' acceptances, cable transfers, and other evidences of indebtedness; to purchase and sell, with or without its endorsement or guaranty, securities, including the obligation of the United States or of any state thereof but not including shares of stock in any corporation except as herein provided; to accept bills or drafts drawn upon it subject to such limitations and restrictions the director may impose; to issue letters of credit; to purchase and sell coin, bullion, and exchange; to borrow and to lend money; to issue debentures, bonds, and promissory notes under such general conditions as to security and such limitations as the director may prescribe, but in no event having liabilities outstanding thereon at any one time exceeding ten times its capital stock and surplus; to receive deposits outside of the United States and to receive only such deposits in this State or in any other state of the United States as may be incidental to or for the purpose of carrying out transactions in foreign countries or dependencies or insular possessions of the United States.

“(b) Generally, to exercise such powers as are incidental to the powers conferred by this part or as may be usual, in the determination of the director, in connection with the transaction of the business of banking or other financial operations in the countries, colonies, dependencies, or possessions in which it shall transact business and not inconsistent with the power specifically granted herein. Nothing contained in this part shall be construed to prohibit the director, under his power to prescribe rules and regulations, from limiting the aggregate amount of liabilities of any or all classes incurred by the corporation and outstanding at any one time. Whenever a corporation receives deposits in the United States authorized by this part it shall carry reserves in such amounts as the director may prescribe, but in no event less than ten per centum of its deposits.

“(c) To establish and maintain for the transaction of its business branches or agencies in foreign countries, their dependencies or colonies, and in any state of the United States, and in the dependencies or insular possessions of the United States, at such place as may be approved by the director and under such rules and regulations as he may prescribe, including any state of the United States, or countries or dependencies not specified in the articles of incorporation.

“(d) With the consent of the director to purchase and hold stock or other certificates of ownership in any other corporation organized under the provisions of this part, or under the laws of the United States, or under the laws of any foreign country or a colony or dependency thereof, or under the laws of any state, dependency or insular possession of the United States but not engaged in the general business of buying or selling goods, wares, merchandise, or commodities in the United States, and the transacting any business in the United States except such as in the judgment of the director may be incidental to its international or foreign business.

“§ 178-..... **Maximum investment in one corporation.** Except with the approval of the director, no corporation shall invest in any one corporation an amount in excess of ten per centum of its own capital and surplus,

except in a corporation engaged in the business of banking, when 15 per centum of its capital and surplus may be so invested.

**“§ 178-..... Acquisition of stock in competing corporation.** No corporation shall purchase, own, or hold stock or certificates of ownership in any other corporation organized under this part or under the laws of any state which is in substantial competition therewith, or which holds stock or certificates of ownership in corporations which are in substantial competition with the purchasing corporation.

**“§ 178-..... Purchase of stock in liquidation of debt; disposal.** Nothing contained in this part shall prevent corporations from purchasing and holding stock in any corporation where such purchase shall be necessary to prevent a loss upon a debt previously contracted in good faith; and stock so purchased or acquired in corporations shall within nine months from such purchase be sold or disposed of at public or private sale.

**“§ 178-..... Conduct of business in the United States; authorization to commence business.** No corporation shall carry on any part of its business in the United States except such as, in the judgment of the director, shall be incidental to its international or foreign business. Except such as is incidental and preliminary to its organization no corporation shall exercise any of the powers conferred by this part until it has been duly authorized by the director to commence business as a corporation organized under the provisions of this part.

**“§178-..... Commerce or trade in commodities; forfeiture of license.** No corporation shall engage in commerce or trade in commodities except as specifically provided in this part, nor shall it either directly or indirectly control or fix or attempt to control or fix the price of any such commodities. The license of any corporation violating this section shall be subject to forfeiture as provided in this part.

**“§ 178-..... Control of commodity prices; penalty for violation.** It shall be unlawful for any director, officer, agent, or employee of any corporation to use or to conspire to use the credit, the funds, or the power of the corporation to fix or control the price of any commodities, and any such person violating this section shall be liable to a fine of not less than one thousand dollars (\$1,000) and not exceeding five thousand dollars (\$5,000) or imprisonment not less than one year and not exceeding five years, or both, in the discretion of the court.

**“§178-..... Minimum capital stock; amount paid in.** No corporation shall be organized with a capital stock of less than \$750,000, twenty-five per cent of which must be paid in before the corporation may be authorized to begin business, and the remainder of the capital stock of the corporation shall be paid in installments of at least ten per centum of the whole amount to which the corporation shall be limited as frequently as one installment at the end of each succeeding two months from the time of the commencement of its business operations until the whole of the capital stock shall be paid in.

**“§ 178-..... General corporation laws; when applicable.** All corporations organized pursuant to this part shall be subject to the general corporation laws of the State in every case in which the provisions of this part do not apply.

**“§ 178-..... Investments by banks.** Any bank may invest in the stock of any corporation organized under the provisions of this part, but the aggregate amount of stock held in all corporations engaged in business of the kind described in this part shall not exceed ten per centum of the subscribing bank’s capital and surplus.

**“§ 178-..... Stock ownership.** A majority of the shares of the capital stock of any corporation shall at all times be held and owned by one or more state or national banks authorized to do business in Hawaii.

**“§ 178-..... Power of director to take possession; grounds.** Whenever it shall appear to the director that any corporation has violated the provisions of its articles of incorporation or any law of this State, or is conducting its business in an unsafe or unauthorized manner, or if the capital of any such corporation is impaired, or if the corporation shall refuse to submit its books, papers and concerns to the inspection of any bank examiner of the department of regulatory agencies or if any officers thereof shall refuse to be examined upon oath touching the concerns of the corporation or if the corporation shall suspend payment of its obligations, or if from any examination or report provided for by this part the director shall have reason to conclude that the corporation is in an unsound or unsafe condition to transact the business for which it is organized, or that it is unsafe and inexpedient for it to continue business, or if any corporation shall neglect or refuse to observe any order of the director, the director may forthwith take possession of the property and business of such corporation and retain such possession until such corporation shall resume business, or its affairs be finally liquidated as provided by this chapter for the liquidation of banks.

**“§ 178-..... Deposit of funds; designation of depository.** No corporation shall deposit any of its funds with any bank except in a federal reserve bank, unless such bank has been designated a depository for the corporation’s funds by a vote of a majority of the directors of the corporation, and unless such bank has been approved by the director as a depository for the purposes of this section. The maximum amount of the corporation’s funds that may be deposited in such bank shall be determined by the director.

**“§ 178-..... Holding own shares.** No corporation shall be the holder of any shares of its own capital stock unless such stock shall have been taken to prevent loss upon a debt previously contracted in good faith, and stock so acquired shall, within 12 months from the time of its acquisition, be sold or disposed of at public or private sale.

**“§ 178-..... Discount to enable person to pay for or hold shares; forfeiture for violation.** No corporation shall, either directly or indirectly, make any discount to any person for the purpose of enabling him to pay for

or hold shares of its stock either subscribed for or purchased by him. Any corporation making any such discount shall forfeit to the director twice the amount of such discount.

**“§ 178-..... Entry of assets on books.** No corporation shall by any system of accounting or any device of bookkeeping, directly or indirectly enter any of its assets upon its books in the name of any other person, or under any title or designation that is not truly descriptive thereof.

**“§ 178-..... Books and records; violation of director’s order; penalty.** Every corporation shall conform its methods of keeping its books and records to such orders in respect thereto as have been made and promulgated by the director. Any corporation that refuses or neglects to obey such order shall be subject to a penalty of one hundred dollars (\$100) for each day it so refuses or neglects.

**“§ 178-..... Annual stockholders’ meeting.** Every corporation shall hold a meeting of its stockholders annually upon a date fixed in its by-laws at its main office, or if its main office is to be located outside of this State, at its branch or other office in this State.

**“§ 178-..... Record of stockholders, directors, and reports.** Every corporation shall keep at its main office, or if its main office is to be located outside this State, at its branch or other office in this State, books containing the names and addresses of all stockholders thereof, and the names and addresses of the members of its board of directors together with copies of all reports made by it to the director.

**“§ 178-..... Reports.** Every corporation shall make such reports to the director as he may from time to time require, which shall be in such form and filed at such date as may be prescribed by the director and shall, if required by him, be verified in such manner as he may prescribe.

**“§ 178-..... Failure to report; forfeiture.** If any corporation shall fail to make any report required by this part on or before the day designated for the making thereof, or shall fail to include therein any matter required by the director, it shall forfeit to the director the sum of one hundred dollars (\$100) for every day that such report shall be delayed or withheld, and for every day that it shall fail to report any such omitted matter, unless the time therefor shall have been extended by the director.

**“§ 178-..... Dividends; portion of net profits carried to surplus.** The directors of any corporation may, semiannually, declare a dividend of so much of the net profits of the corporation as they shall judge expedient, but each corporation shall, before the declaration of a dividend, carry one-tenth of its net profits of the preceding half year to its surplus fund until the surplus shall amount to 20 per centum of its capital stock.

**“§ 178-..... Discounting by officer or employee of loan refused by corporation; forfeiture.** No officer, director, clerk or other employee of any corporation, and no person in any way interested or concerned in the management of its affairs, shall as individuals discount, or directly or indirectly, make any loan upon any note or other evidence of debt, which he

shall know to have been offered for discount to such corporation, and to have been refused. Every person violating the provisions of this section, shall, for each offense, forfeit to the director twice the amount of the loan which he shall have made.

**“§ 178-..... Loans to officers or employees; forfeiture.** No officer, director, clerk or other employee of any corporation shall borrow, directly or indirectly, from such corporation any sum of money without the written approval of a majority of the board of directors thereof filed in the office of such corporation or embodied in a resolution adopted by a majority vote of such board exclusive of the director to whom the loan is made. If an officer, director, clerk or other employee of any such corporation shall own or control a majority of the stock of any other corporation a loan to that corporation shall be considered as a loan to such officer, director, clerk or other employee. Every person violating this section shall, for each offense, forfeit to the director twice the amount which he shall have borrowed.

**“§ 178-..... Offenses; penalty.** Every officer, director, clerk, employee or agent of any corporation who embezzles, abstracts, or willfully misapplies any of the moneys, funds, credits, securities, evidence of indebtedness or assets of any character of such corporation, or who, without authority from the directors, issues or puts forth any certificate of deposit, draws any order or bill of exchange, makes any acceptance, assigns any note, bond, debenture, draft, bill of exchange, mortgage, judgment, or decree, or who makes any false entry in any book, report, or statement of such corporation with intent, in either case, to injure or defraud such corporation or any other company, body politic or corporate, or any individual person, or to deceive any officer of such corporation, the director, or any agent or examiner appointed to examine the affairs of any such corporation; and every receiver of any corporation and every clerk or employee of such receiver who shall embezzle, abstract, or willfully misapply or wrongfully convert to his own use any moneys, funds, credits, or assets of any character which may come into his possession or under his control in the execution of his trust or the performance of the duties of his employment; and every such receiver or clerk or employee of such receiver who shall, with intent to injure or defraud any person, body politic or corporate, or to deceive or mislead the director or any agent or examiner appointed to examine the affairs of such receiver, make any false entry in any books, report, or record of any matter connected with the duties of such receiver; and every person who with like intent aids or abets any officer, director, clerk, employee, or agent of any corporation, or receiver or clerk or employee of such receiver as aforesaid in any violation of this part shall upon conviction thereof be imprisoned for not less than two years nor more than 10 years, and may also be fined not more than five thousand dollars (\$5,000), in the discretion of the court.

**“§ 178-..... Misrepresentation of state liability for bonds or obligations of corporation; penalty.** Whoever being connected in any capacity with any corporation represents in any way that the State is liable for the payment of any bond or other obligation, or the interest thereon, issued or

incurred by any corporation, or that the State incurs any liability in respect of any act or omission of the corporation shall be punished by a fine of not more than ten thousand dollars (\$10,000) and by imprisonment for not more than five years.

**“§ 178-..... Application of parts I and II.** Insofar as not inconsistent with the provisions of this part, all of the provisions of parts I and II of this chapter shall apply in the same manner, as nearly as may be, to the corporations, persons, matters and things covered by this part.

**“§ 178-..... Corporation deemed foreign corporation for purposes of chapter 127.** A corporation organized and doing business pursuant to the provisions of this part shall be deemed a ‘financial corporation’ for the purposes of chapter 127.”

SECTION 2. This Act shall take effect January 2, 1968.

(Approved June 4, 1967.)