

700 Corporation Law for State Banks and Trust Companies

705 Procedures Governing Applications to Open Branch Offices Outside the State of Delaware

Formerly Regulation No.: 5.771.0005

Effective Date: January 12, 1998

This regulation establishes procedures for the consideration and determination of applications under §771(a) of Title 5 of the **Delaware Code** for permission to open branch offices outside of the State of Delaware.

1.0 Branch Offices In the United States Outside the State of Delaware

1.1 Application

1.1.1 An application to open a branch office in the United States outside the State of Delaware pursuant to Section 771(a) of Title 5 of the **Delaware Code** shall be in writing and shall include the following:

1.1.1.1 Name of applying bank or trust company.

1.1.1.2 Location of proposed branch, including address.

1.1.1.3 The name, address and phone number of the person(s) to whom inquiries may be directed.

1.1.1.4 Explanation of the necessity for the opening of the branch.

1.2 Fee

1.2.1 The application shall be accompanied by a non-refundable investigation fee of two hundred and fifty dollars (\$250.00). Checks shall be made payable to the Office of the State Bank Commissioner.

1.3 Notice

1.3.1 Upon notification by the Commissioner that the application to open a branch office in the United States outside the State of Delaware conforms to the requirements for applications pursuant to Section 771(a) of Title 5 of the **Delaware Code** and this regulation, the applicant shall cause a single notice of such application to be published in a newspaper of general circulation in the locality of the proposed branch. The notice shall provide a brief synopsis of the application, and state that interested persons may present their views in writing to the Office of the State Bank Commissioner, and shall be in a form to be approved by the Commissioner before publication.

1.4 Additional Information, Investigation and Hearing

1.4.1 In addition to the documents filed in accordance with this regulation, the Commissioner at his discretion may require additional information, conduct an investigation, or hold a public hearing in accordance with the Administrative Procedures Act, Chapter 101 of Title 29 of the **Delaware Code**.

1.5 Decision

1.5.1 No earlier than 20 days after publication of the Notice described in section I.C. of this regulation, the Commissioner shall issue a written Order approving or disapproving the application.

1.6 Certificate of Authority

1.6.1 A Certificate of Authority shall be issued by the Commissioner for each approved branch office in the United States outside the State of Delaware.

1.7 Time to Open Approved Branch Office In the United States Outside the State of Delaware

1.7.1 Branch offices in the United States outside the State of Delaware approved in accordance with Section 771(a) of Title 5 of the **Delaware Code** and this regulation shall open within one year of the date when the Commissioner issues the Certificate of Authority. The Commissioner may upon review of the application for such branch extend the initial

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opening date to a date greater than one year. Any Certificate of Authority issued by the Commissioner shall be void and of no effect at the expiration of the time prescribed for the opening of the branch unless the branch is actually opened for business.

2.0 Branch Offices in Foreign Countries

2.1 This section applies to applications under §771(a) of Title 5 of the **Delaware Code** for permission to open branch offices in foreign countries where the applicant has no existing foreign branch office.

2.1.1 Application

2.1.1.1 An application to open a branch office in a foreign country pursuant to § 771(a) of Title 5 of the **Delaware Code** shall be in writing, signed by the President of the applicant, and include the following information.

2.1.1.1.1 Name of the applying bank or trust company.

2.1.1.1.2 Location (city and country) of the proposed branch, including the address, if available.

2.1.1.1.3

2.1.1.1.3.1 Existing representation in the foreign country, if any;

2.1.1.1.3.2 Reasons for the proposed branch, including the ways in which it is believed the branch would further the development of the applying bank or trust company's international or foreign business.

2.1.1.1.4 The type of business to be conducted and types of services to be offered, including:

2.1.1.1.4.1 Volume of business now conducted through subsidiaries or parents for customers in the proposed market;

2.1.1.1.4.2 Whether any existing or planned future business will be transferred to the proposed branch, indicating the volume and type of such business;

2.1.1.1.4.3 Whether the branch will engage in trust activities, and whether that business will be conducted on behalf of customers in the United States.

2.1.1.1.5

2.1.1.1.5.1 Where appropriate, if there has been more than a 25% change in the Bank's (and its affiliates') consolidated exposure in the country of the proposed branch from that reported in the most recently filed Federal Reserve Board Country Exposure Report (F.R. 2036), show the consolidated direct and indirect exposure to borrowers from this country. The exposure in question is both: (a) cross-border exposure (which may be calculated for this purpose by adding the figures under columns 4, 10 and 12 of the form and subtracting the sum of columns 9 and 11); and (b) local currency exposure (column 18 of the form);

2.1.1.1.5.2 If projections indicate that at the end of the third year of operations of the proposed branch, the direct and indirect exposure, as calculated above, will increase by more than 25% from present levels and this amount is greater than 10% of consolidated capital, show the projected consolidated country exposure.

2.1.1.1.6 Estimated start-up costs and projected balance sheets and income statements for at least three years, or until the break-even point is reached if longer.

2.1.1.1.7 Management of the proposed branch.

2.1.1.1.8 Description of the competitive situation in the foreign country, including representation of other U.S. financial institutions, any existing representation of applicant, its subsidiaries, or parent bank holding company.

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- 2.1.1.1.9 Status of foreign government approvals, if any.
- 2.1.1.1.10 A summary of the bank or trust company's experience in international banking or trust activities, including the volume and character of present international business, a description of the foreign or international department, the number of its staff, and background of its officers.
- 2.1.1.1.11 Details of any locally imposed capital requirements and any other special requirements relating to the utilization of capital funds.
- 2.1.2 Fee
 - 2.1.2.1 The application shall be accompanied by a non-refundable investigation fee of two hundred and fifty dollars (\$250.00). Checks shall be made payable to the Office of the State Bank Commissioner.
- 2.1.3 Notice
 - 2.1.3.1 Upon receipt of any application pursuant to Section II of this regulation, the State Bank Commissioner will afford notice of the filing of such application to such persons as he deems appropriate.
- 2.1.4 Additional Information
 - 2.1.4.1 In addition to the foregoing, the State Bank Commissioner may, in a particular case, request any additional information he deems appropriate.
- 2.1.5 Decision
 - 2.1.5.1 The Commissioner shall issue a written Order approving or disapproving the application.
- 2.1.6 Certificate of Authority
 - 2.1.6.1 If, on the basis of the information submitted, the State Bank Commissioner concludes that the application for the proposed branch office in a foreign country should be approved, he shall issue a Certificate of Authority permitting such office to be opened; such Certificate may contain such conditions as the State Bank Commissioner deems appropriate.
- 2.1.7 Time to Open Approved Branch Office In a Foreign Country
 - 2.1.7.1 Branch offices in foreign countries approved in accordance with Section 771(a) of Title 5 of the **Delaware Code** and this regulation shall open within one year of the date when the Commissioner issues the Certificate of Authority. The Commissioner may upon review of the application for such branch extend the initial opening date to a date greater than one year. Any Certificate of Authority issued by the Commissioner shall be void and of no effect at the expiration of the time prescribed for the opening of the branch unless the branch is actually opened for business.

1 DE Reg. 867 (01/01/98)