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Banks--International--Analysis of Georgia's International Bank Agency Act

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COMMENT

BANKS—INTERNATIONAL—ANALYSIS OF GEORGIA'S INTERNATIONAL BANK AGENCY ACT

I. SCOPE

This article will examine Part V of the Financial Institutions Code of Georgia, the International Bank Agency Act,¹ and its interrelationship with Parts I and II of the Financial Institutions Code² governing domestic banking. The effect of the Foreign Corporations Chapter of the Corporation Code of Georgia³ on Part V of the Financial Institutions Code will also be considered. A comparison will be made between Part V of the Financial Institutions Code⁴ and the codes of New York⁵ and California⁶ relating to international banking.⁷ Attention will be given to problems which have arisen in other states and how these problems may relate to situations which could arise in Georgia.

II. PART V INTERNATIONAL BANKING CORPORATIONS AND BANK AGENCIES

For several years, Georgia has evidenced an interest in attracting foreign investments into the state. To facilitate this involvement in international trade the Georgia legislature enacted the International Bank Agency Act⁸ in 1972. When the 1974 General Assembly created the Financial Institutions Code, the 1972 International Bank Agency Act was revised with few changes and codified as Part V of the Financial Institutions Code.⁹ The purpose of this Act, is to allow banks chartered in a foreign country to enter the State of Georgia for the purpose of conducting a limited banking business.¹⁰ From the limitations placed on an international bank agency in the Act, the business which it is licensed to conduct will be of an international nature.

1. Ga. Laws, 1972, p. 1140, *codified as* Part V of the Financial Institutions Code, GA. CODE ANN. ch. 41A-33 (Rev. 1974). Part V and the International Bank Agency Act will be referred to interchangeably.

2. GA. CODE ANN. chs. 41A-1 to -26 (Rev. 1974).

3. GA. CODE ANN. ch. 22-14 (Rev. 1970).

4. GA. CODE ANN. ch. 41A-33 (Rev. 1974).

5. N.Y. BANKING LAW art. 5 (McKinney 1971).

6. CAL. FIN. CODE ch. 14 (West 1968).

7. California and New York were selected because for a number of years they have had regulations which have dealt with international banking.

8. Ga. Laws, 1972, p. 1140.

9. GA. CODE ANN. ch. 41A-33 (Rev. 1974).

10. A distinction is made between a local office, an agency, a branch, and a subsidiary bank. These differences will be discussed *infra*.

In expressing the regulations which would govern an international bank agency, Part V was specifically drawn to incorporate chapter 22-14 of the Corporation Code¹¹ as well as Parts I and II of the Financial Institutions Code.¹² An exception is made in Part V to exclude any provision in Part I or II which would clearly be applicable only to financial institutions organized under the laws of Georgia or the United States.¹³ This thus places an international bank agency under the same regulations as any other bank in Georgia except for certain important exceptions which will be discussed later.

Georgia Code section 41A-3304 (Rev. 1974) sets forth the requirements that an international bank must meet in order to open an agency in Georgia. This section requires that proof of the bank's financial condition¹⁴ be furnished and that an international bank furnish proof that it is chartered in a foreign country.¹⁵ It should be noted that section 41A-3304(b) prevents the issuance of a license to a bank chartered in any country which does not allow banks from the United States to operate in that country. Provision is also made in this section for suits to be filed against the bank by requiring the international bank to appoint the Department of Banking and Finance as its lawful attorney upon which process may be served.¹⁶ A certificate must be given by the international bank which specifies the name and address of the officer to whom such process may be sent.¹⁷ This allows residents and non-residents, under certain circumstances,¹⁸ to personally serve the bank agency and, under section 41A-3305(b), bring suit against it in Georgia.

Once the international banking agency is licensed, it may operate in Georgia, subject to the applicable provisions of the Financial Institution Code. While a bank chartered in Georgia is to have perpetual duration,¹⁹ the license under which an international banking agency operates is good only for one year.²⁰ The license may be renewed within 30 days of expiration.²¹ In the event that the international bank agency fails to comply with provisions of Part V, either its license will be revoked,²² or renewal will be

11. GA. CODE ANN. §41A-3303 (Rev. 1974).

12. GA. CODE ANN. §41A-3302 (Rev. 1974).

13. *Id.*

14. *See also* GA. CODE ANN. §41A-3306 (Rev. 1974), which prescribes what information must be given in the application for an international bank agency license.

15. GA. CODE ANN. §41A-3304 (Rev. 1974).

16. GA. CODE ANN. §41A-3304(a)(3)(i) (Rev. 1974).

17. GA. CODE ANN. §41A-3304(a)(3)(ii) (Rev. 1974).

18. *See* GA. CODE ANN. §41A-3304(b) (Rev. 1974), which specifies when a non-resident of Georgia may bring suit in Georgia against an international bank agency.

19. GA. CODE ANN. §41A-1201 (Rev. 1974).

20. GA. CODE ANN. §41A-3307(a) (Rev. 1974).

21. GA. CODE ANN. §41A-3307(b) (Rev. 1974).

22. GA. CODE ANN. §41A-3307(c) (Rev. 1974).

refused.²³ If this occurs, the license must be surrendered by the international bank agency within 24 hours after it receives written notice, and all business at that point must cease.²⁴

Part V also makes provisions for dissolution of the agency when the international banking corporation is dissolved in the jurisdiction of its incorporation.²⁵ Upon filing of the decree of dissolution, the Department will continue to act as the agent of the international banking corporation. Process may be served on the Department for the liabilities incurred by the international banking corporation in Georgia.²⁶ The Department then will mail such service of process to the international banking corporation.

III. APPLICATION OF PARTS I AND II OF THE FINANCIAL CODE

There are differences between the regulation and powers granted to a bank domiciled in Georgia and an international banking corporation licensed under Part V of the Financial Institutions Code. One such difference is the specific exclusion given international banking agencies from filing a biannual report as is required of domestic banks.²⁷ However, section 41A-3310(a) requires an international bank agency to file a written report showing its assets, liabilities, and other matters that the Department may prescribe. Section 41A-3309 sets forth what is to appear in the annual report.

The powers that an international bank agency has in Georgia are more limited than those given a state bank. According to section 41A-1102, an international bank agency is restricted to those powers stated in "Part VII of this code."²⁸ While an international bank agency is authorized to conduct a "general banking business," it is prohibited from exercising fiduciary powers or receiving deposits. It may maintain for the account of others credit balances incidental to, or arising out of, the exercise of its lawful powers.²⁹ Except for these limitations on the powers of an international bank agency, the powers granted to it under chapter 41A-13 are the same as those of a bank incorporated in Georgia. It should be noted that section 41A-1103(a) prevents state banks from exercising any fiduciary powers, thus permitting only trust companies and national banks to exercise such powers.³⁰

23. GA. CODE ANN. §41A-3307(b) (Rev. 1974).

24. GA. CODE ANN. §41A-3307(d) (Rev. 1974).

25. GA. CODE ANN. §41A-3311 (Rev. 1974).

26. GA. CODE ANN. § 41A-3311 (Rev. 1974).

27. GA. CODE ANN. §41A-309 (Rev. 1974).

28. The reference to Part VII is surely a mistake, since this part of the *Code* does not concern international banks. The reference should be to Part V of the Financial Institutions Code.

29. GA. CODE ANN. §41A-3307(e) (Rev. 1976).

30. GA. CODE ANN. §41A-1103 (Rev. 1974). Exceptions are also provided for trust compa-

A distinction is also made between the financial requirements of a bank that is domiciled in Georgia and those of an international bank agency. A bank incorporated in Georgia must have a minimum of capital stock of \$500,000.³¹ No requirement for capital stock is made of an international bank agency.³² Instead, the international banking corporation must assert in its application for a license that it has assets of \$50,000,000³³ in excess of its liabilities.³⁴ An international bank agency also is required to maintain at its Georgia office

currency, bonds, notes, debentures, drafts, bills of exchange or other evidence of indebtedness or other obligations payable in the United States or in United States funds or, with the prior approval of the department, in funds freely convertible into United States funds, in an amount which shall be not less than 108 per cent of the aggregate amount of liabilities . . . payable at or through its office in this State³⁵

Banks domiciled in Georgia and not members of the Federal Reserve System are required to maintain a reserve fund in an amount fixed by regulation of the Department but which is not to exceed 15% of their demand deposits.³⁶ Since an international bank agency can not accept demand deposits, the reserve requirement can not apply to it.

IV. APPLICATION OF THE FOREIGN CORPORATION CHAPTER

An international bank agency must comply with the provisions set out for the regulation of financial institutions as well as those provisions set out for the regulation of foreign corporations.³⁷ The Foreign Corporation

nies and corporations engaged in selling securities for philanthropic organizations. *Id.*

31. GA. CODE ANN. §41A-1901 (Rev. 1974) provides:

(a) Except as provided in subsection (b) and (c), the minimum capital stock of a bank or trust company shall be \$500,000.

(b) A bank or trust company whose registered office is located in a county with a population of less than 10,000 according to the last official United States census, shall have a minimum capital stock of \$250,000.

(c) A bank or trust company existing on April 1, 1975, with capital stock of less than that required by subsections (a) and (b) shall not be required to increase its capital stock above the minimum required by law prior to April 1, 1975.

32. This is the case unless section 41A-3302, which makes Parts I and II of the Financial Institutions Code applicable to an international bank agency, is interpreted to make the minimum capital provision of §41A-1901 applicable to an international bank agency.

33. This amount was originally set at \$1,000,000. Ga. Laws, 1972, p. 1143.

34. GA. CODE ANN. §41A-3306(a)(5) (Rev. 1974).

35. GA. CODE ANN. §41A-3308(a) (Rev. 1974).

36. GA. CODE ANN. §41A-1702(b)(2) (Rev. 1974).

37. GA. CODE ANN. §41A-3303 (Rev. 1974), makes the provisions of chapter 22-14 applicable to an international bank agency. One fact should be kept in mind when considering the application of the Foreign Corporation Chapter to the International Bank Agency Act. Any

Chapter makes certain basic provisions for the acquisition of a certificate to do business in the State of Georgia, the powers which a foreign corporation may exercise within the state, the termination of such powers, the regulation of the corporate name, and prescription for the maintenance of a registered office.

Part V of the Financial Institutions Code specifically states that "all of the provisions of Chapter 22-14, relating to foreign corporations, shall apply to all international bank agencies doing business in this State" ³⁸ However, section 22-1401 provides: "when another statute of this State requires foreign corporations of a particular class to qualify thereunder to transact business in this State, the requirements of such other statute shall govern." Thus, there arises a question as to which of the above mandates should be followed. This problem could be solved by applying the Foreign Corporation Chapter when there is no conflict, and applying Part V whenever a conflict between these two statutes does arise. It will be demonstrated that only minor overlapping of coverage and few conflicts exist between these two chapters.

Both chapters make provision for the issuance of a certificate. A comparison of what is required before a certificate is issued reveals that there is no conflict between these two chapters, but the Foreign Corporation Chapter makes more specific demands for certain types of information. The Assistant Director of the Georgia Department of Finance stated that only a few inquiries had been made concerning Part V of the Financial Institutions Code, so no official determination had been made as to which would govern. He suggested that section 22-1401 prevents any conflict from arising, since it states that where regulation is provided elsewhere, that regulation should govern. ³⁹ It would seem that in the issuance of a certificate to do business, the regulations set forth in Part V would be all that is required to issue a license to an international bank agency. He also noted that any information that was required under the Foreign Corporation Chapter could also be required by the Department under Part V. ⁴⁰

The Georgia Department of Banking and Finance is responsible for the enforcement of all regulations applicable to an international bank agency. ⁴¹ Thus, it will be up to the Department to determine which provisions of the Foreign Corporation Chapter apply to international bank agencies through

reference to the Secretary of State in the Foreign Corporation Chapter is to be considered as a reference to the Department of Banking and Finance.

38. GA. CODE ANN. §41A-3303 (Rev. 1974).

39. Telephone conversation with R. Moler, Assistant Director of the Georgia Department of Banking and Finance.

40. GA. CODE ANN. §41A-3304(a)(2) (Rev. 1974) would require an international banking corporation to furnish such information as the Department required.

41. GA. CODE ANN. §41A-301 (Rev. 1974).

section 41A-3303.⁴² There are several provisions of the Foreign Corporation Chapter which would have an effect on an international bank agency if applied under section 41A-3303.

One such provision is section 22-1401(b), which sets out activities that are not considered to constitute the transaction of business in Georgia.⁴³ Presumably, a foreign bank could conduct some business in Georgia without having to acquire a license if its activity was one of the activities which did not constitute the transaction of business. However, in considering what is the transaction of business, consideration must be given to the restrictions against engaging in the banking business.⁴⁴ The question thus would become whether the transaction was one excluded as not being a business transaction, for once a business transaction is found, there must be compliance with Part V of the Financial Institutions Code.

The Foreign Corporation Code would allow an international bank agency to exercise the same powers as a domestic corporation.⁴⁵ These powers do not seem to conflict with the powers allowed to an international bank agency as set out in Part V of the Financial Institutions Code.⁴⁶ The regulation of the name of an international bank agency would also be controlled by the Foreign Corporation Chapter.⁴⁷ One aspect of this provision is that it would allow suspension of an international bank agency's certificate to do business upon its failure to comply with the provisions for a change in name.⁴⁸

An area where the two statutes overlap is the requirement that there be maintenance of a registered office.⁴⁹ While section 41A-3306(a)(3) sanctions the initial location of a registered office, the Foreign Corporation Chapter provides that the registered office may be changed upon proper filing of information with the Secretary of State.⁵⁰ Presumably this section applies to an international bank agency and the necessary filing must be made with the Department of Banking and Finance rather than the Secretary of State.⁵¹

Section 22-1410 states that the registered agent of a foreign corporation may be served with process. This would supplement section 41A-3304(a)(3)(i), which allows the Department of Banking and Finance to be

42. This assumes that there are some provisions that are in the Foreign Corporation Chapter that are not applicable to an international bank agency. See text accompanying note 38 *supra*.

43. GA. CODE ANN. §22-1401(b) (Rev. 1970).

44. GA. CODE ANN. §41A-1102(a) (Rev. 1974).

45. GA. CODE ANN. §22-1402 (Rev. 1970).

46. GA. CODE ANN. §41A-3302, -3307(e), chs. 41A-12 and -13 (Rev. 1974).

47. GA. CODE ANN. §22-1403, -1404, -1413 (Rev. 1970).

48. GA. CODE ANN. §22-1404 (Rev. 1970).

49. GA. CODE ANN. §22-1408 (Rev. 1970).

50. GA. CODE ANN. §22-1409 (Rev. 1970).

51. GA. CODE ANN. §41A-3303 (Rev. 1974).

served. Section 22-1410 also sets out in greater detail which of the agency's agents may be served and, in the case of the Department being served, what procedure the Department should follow in addition to that provided for in section 41A-3304(a)(3)(ii).

While no provision is made in Part V of the Financial Code for a change by an international banking corporation in its corporate form, the Foreign Corporation Chapter does make such a provision. If the international banking corporation amends its articles of incorporation, it must file a copy of such amendment with the Department.⁵² If the corporation is involved in a merger, again, it must file with the Department.⁵³

Provision for revocation of the certificate of authority to do business is made in the Foreign Corporation Chapter.⁵⁴ While provisions are made for revocation of an international bank agency's license,⁵⁵ these provisions relate to revocation of the license for failure to comply with the Financial Code. The provisions in the Foreign Corporation Chapter would allow revocation for failure to comply with the various provisions set out in that chapter. Thus, an international bank agency's license could be revoked for failure to comply with either the Financial Code or Foreign Corporation Chapter.

V. THE NEW YORK AND CALIFORNIA CODES

Only a few states allow foreign banks to operate within their state,⁵⁶ but the number is increasing. California⁵⁷ and New York⁵⁸ both have legislation which permits a foreign corporation to conduct a banking business within their states.⁵⁹ Three forms have been derived under which an international bank could enter a state, and an international bank's activity will be limited according to the form adopted by the particular state. These forms consist of a representative office, an agency or branch, or a wholly—or partially—owned subsidiary corporation. A foreign bank may avoid a state's prohibition or regulation of foreign banking simply by conducting all of its transactions in interstate or foreign commerce. Thus, solicitations of business by correspondence could allow a bank to avoid all of a particu-

52. GA. CODE ANN. §22-1411 (Rev. 1970).

53. GA. CODE ANN. §22-1412, -1416 (Rev. 1970).

54. GA. CODE ANN. §22-1417 (Rev. 1970).

55. GA. CODE ANN. §41A-3307(c), -3310(a) (Rev. 1974).

56. According to Zwick, *The Regulation of Foreign Banks in the United States*, 4 NAT'L BANKING REV. 1, 19 (1966) [hereinafter cited as Zwick], in 1966 only New York, California, Hawaii, Oregon, and Massachusetts allowed foreign banks to operate within their jurisdictions.

57. CAL. FIN. CODE ch. 14 (West 1968).

58. N.Y. BANKING LAW art. 5 (McKinney 1971).

59. See Vestner, *Foreign Banking Regulations—A New York Viewpoint*, 91 BANK. L. J. 841 (1974).

lar state's regulations.⁶⁰ If a foreign banking corporation wished to open a permanent office within a state, then depending on the form or forms which that state would allow an international bank to take, it first must select the form in which to conduct business.

A representative office is an office which does not conduct any actual banking but merely operates in a public relations capacity and as a point of contact with the populace of the state. While California regulates this type of activity,⁶¹ New York does not. Georgia makes no specific provision for the regulation of a representative office within Part V of the Financial Institutions Code. However, an international banking corporation is prohibited from transacting a "banking business" without complying with Part V.⁶² In determining what "banking business" is for the purposes of Part V, section 41A-102(g) should be considered. This section defines what a bank is and, by so doing, describes various activities which constitute a "banking business." A second section to consider is the Foreign Corporation Chapter,⁶³ which describes what constitutes doing business in the State of Georgia.⁶⁴ While the activities normally conducted by a representative office would probably not be considered as conducting a "banking business" within the meaning of the Financial Institutions Code, the activity could be proscribed by the Foreign Corporation Chapter. Probably, the activity of a representative office would be found to be an activity not normally considered as constituting a transaction of business.⁶⁵

An international bank might open either an agency or a branch office. An agency may not take local deposits, make loans, or exercise fiduciary powers, while a branch office might be permitted to engage in such activities. Part V does not make any provision for the opening of a branch office. In fact, the exercise of fiduciary powers by an international bank agency is strictly prohibited.⁶⁶

A third method of entry into a state by a foreign bank would be to open a subsidiary corporation within the state, thereby incorporating a separate

60. See GA. CODE ANN. §22-1401(b) (Rev. 1970), which describes the activities that Georgia does not consider a transaction of business within the meaning of the Foreign Corporation Chapter.

61. CAL. FIN. CODE §1780-81 (West 1968).

62. GA. CODE ANN. §41A-3301(b) (Rev. 1974).

63. GA. CODE ANN. §22-1401 (Rev. 1970).

64. The reasons for considering this section are two-fold: First, section 41A-3303 of the Financial Institutions Code makes all provisions of the Foreign Corporation Chapter applicable to international banking and thus section 22-1401, which defines what constitutes doing business, would seem to be applicable in deciding what constitutes doing a "banking business" for the purposes of Part V. Second, even if section 22-1401 were not incorporated by reference, it would still govern in this area because of its designated purpose of regulating foreign corporations.

65. GA. CODE ANN. §22-1401(b) (Rev. 1970).

66. GA. CODE ANN. §41A-3307(e) (Rev. 1976).

legal entity within the state under the state's incorporation laws. This would allow a bank the greatest flexibility, since it would be, for all intents and purposes, a local bank. In Georgia, the Financial Code states how a bank or trust company may be incorporated.⁶⁷ If a subsidiary corporation were established, it would be necessary to comply with the requirements of the new Georgia provisions on bank holding companies,⁶⁸ the federal Bank Holding Act,⁶⁹ and other federal regulations.⁷⁰

The regulations imposed on an international bank agency by Georgia closely parallel New York's article 5 on Foreign Banking Corporations and National Banks.⁷¹ However, there are some differences between them. Georgia requires that an international bank agency comply with the Foreign Corporation Code and Parts I and II of the Financial Institutions Code, while article 5 of the New York Code makes no similar provision for the application of its foreign corporation article or its other banking articles. However, the New York statute on international banking is more detailed as to what is permissible. The licensing provisions are the same for both states except that New York requires \$1,000,000 of assets in excess of liabilities,⁷² while Georgia requires \$50,000,000 of assets in excess of liabilities.⁷³

The provisions for renewal of the license are also similar. Georgia allows a license to be renewed by the Department thirty days before its expiration.⁷⁴ New York sets out in more detail how such a decision to renew is to be made.⁷⁵ Georgia's provisions for when an international bank agency shall make reports are similar to New York's. Georgia provides for revocation of the international bank agency's license,⁷⁶ while New York provides that a fine of \$100 a day shall be levied until such report is made.⁷⁷ Georgia also provides that the making of a false statement in such report is grounds for the revocation of the international bank agency's license.⁷⁸ New York, on the other hand, would find such a false statement constitutes perjury.⁷⁹

The foregoing are only minor differences. The only major difference between the two laws is that New York's law allows the creation of a branch

67. GA. CODE ANN. ch. 41A-18 (Rev. 1974).

68. GA. CODE ANN. §13-207 (Rev. 1976).

69. 12 U.S.C.A. §1841-49 (Rev. 1969).

70. The scope of this article does not permit consideration of this aspect. For a discussion of this topic see McKenzie and McKenzie, *Penetration of the United States Market by a Foreign Bank*, 6 INT'L LAWYER 876 (1972).

71. N.Y. BANKING LAW art. 5 (McKinney 1971).

72. N.Y. BANKING LAW §201(4) (McKinney 1971).

73. GA. CODE ANN. §41A-3306(a)(5) (Rev. 1974). See note 33 *supra*.

74. GA. CODE ANN. §41A-3307(b) (Rev. 1974).

75. N.Y. BANKING LAW §26 (McKinney 1971).

76. GA. CODE ANN. §41A-3310 (Rev. 1974).

77. N.Y. BANKING LAW §204 and §125 (McKinney 1971).

78. GA. CODE ANN. §41A-3310 (Rev. 1974).

79. N.Y. BANKING LAW §204 (McKinney 1971).

office which is authorized to accept local deposits.⁸⁰ New York also would allow such a branch office to exercise fiduciary powers.⁸¹ Section 41A-3307(e) of the Georgia Code strictly forbids the taking of any local deposits or exercise of any fiduciary duties⁸² by an international bank agency and makes no provision for the establishment of a branch office or subsidiary which could perform these activities. Other than minor differences and the provision for the operation of a branch office, New York's foreign banking regulations are almost word for word the same as Georgia's International Banking Act.

The Georgia International Banking Act is also similar to the California legislation which governs a foreign bank conducting business within that state. California's Foreign Banking Chapter like Georgia's, requires compliance with the provisions governing foreign corporations.⁸³ Another similarity is the requirement that the superintendent be appointed as the foreign corporation's agent to receive service of process.⁸⁴

California regulates the opening of a representative office.⁸⁵ It also seems to permit the taking of local deposits by a foreign banking corporation.⁸⁶ There is, however, a Catch-22 requirement that before local deposits may be taken, the foreign banking corporation must obtain insurance from the Federal Deposit Insurance Corporation. This requirement cannot be met, because only banks incorporated within the state or incorporated as national banks are eligible to be insured.⁸⁷ Therefore, no foreign branch offices have been permitted to do business in California.

All foreign banking corporations doing business in California are required to keep assets from California business entirely separate from their other transactions outside of California.⁸⁸ The purpose behind such a requirement is to enable California creditors to have priority with respect to the assets of the bank, created by virtue of California business. Georgia does not have a like provision.

California also makes specific provision for foreign corporations, not engaged in banking in the state, to enforce loans and to buy and sell bonds. While Part V of the Georgia Financial Institutions Code makes no specific

80. N.Y. BANKING LAW §200 (McKinney 1971).

81. N.Y. BANKING LAW §201-b (McKinney 1971).

82. GA. CODE ANN. §41A-3307(e) (Rev. 1976).

83. CAL. FIN. CODE §1751(e) (West 1968).

84. CAL. FIN. CODE §1751(d) (West 1968).

85. See note 61, *supra*, and accompanying text.

86. CAL. FIN. CODE §1756.1 (West 1968).

87. 12 U.S.C.A. §1813(a) (Rev. 1969) defines a state bank as one being incorporated in that state; 12 U.S.C.A. §1815 (Rev. 1969) allows a state non-member bank to become a member of the F.D.I.C. Since an international bank is not incorporated under state statutes, it cannot become a member of the F.D.I.C.

88. CAL. FIN. CODE §1753 (West 1968).

89. CAL. FIN. CODE §1758 (West 1968).

provision for this, the Georgia Foreign Corporation Chapter would permit the activity to a limited extent.⁹⁰

VI. EFFECT

As previously demonstrated, the laws of New York and California in respect to international bank agencies are similar to Georgia's. Therefore, Georgia may expect to encounter problems similar to those experienced by these states.

The avowed purpose of the Georgia International Banking Act is to allow a foreign banking corporation to establish itself in Georgia for the purpose of conducting an international business.⁹¹ Such an international business could consist of dealing in letters of credit, discounting, acceptance, collections, foreign exchange, and the transfer of funds and remittances abroad. One of the purposes of the Georgia regulations is to protect Georgia citizens from any harm that might come from allowing such business to be conducted within the state.

The statute allows credit balances to be maintained. A problem arises as to whether the credit balances are actually credit balances or demand deposits being held as credit balances. The only way to determine this is by tight supervision of various reports to establish that what is listed as a credit balance is, in fact, a credit balance. Such a problem has been encountered in New York, with the result that New York's examiners, in recent years, have subjected the reports of international bank agencies to a very critical examination.⁹²

An international bank agency is permitted to issue letters of credit under Part V of the Financial Institutions Code. Problems can arise when a letter of credit is issued in the form of a guaranty.⁹³ In the usual situation, a buyer causes his bank to issue a letter of credit to cover some purchase of goods from a seller. The letter of credit commits the bank to pay a draft drawn by the seller upon proper presentment of the draft and a bill of lading on the goods. The letter of credit is payable regardless of whether the goods are accepted by the buyer. The bank in this case can go against the goods upon failure of the buyer to cover the letter of credit that was issued. Thus, there is security present to cover the bank's interest.

Under the guaranty letter of credit, a letter of credit will be enforceable upon the occurrence of a fixed condition. For example, the person who contracts with a builder to construct a building for him may request that

90. GA. CODE ANN. §22-1401 (Rev. 1974).

91. Telephone conversation with R. Moler, assistant director of the Georgia Department of Banking and Finance.

92. Zwick, *supra* note 56 at 8.

93. See Verkuil, *Bank Solvency and Guaranty Letters of Credit*, 25 STAN. L. REV. 716 (1973), for an in depth discussion of guaranty letters of credit.

the builder furnish some type of assurance that the job will be done properly. This assurance may take the form of a guaranty letter of credit that will become payable upon failure of the builder to perform properly. When the builder fails to perform, the letter of credit will be enforced. In this situation, the bank's interest is not secured by any property. In the case of an international bank agency, the lack of security is even less desirable, since events totally unrelated to its conducting business in Georgia could cause it to become insolvent.

One factor which contributes to the risk involved in dealing with letters of credit can be found in the fluctuation in the value of currencies. This can occur when a transaction takes place in two different countries, and requires the use of two currencies. The effect that such a change in currency could have would depend on the amount of time involved in the transaction and the amount of change between the values of the two currencies.⁹⁴ The difference in the value of currencies is a factor over which Georgia has no control except in enacting regulations intended to require enough capital reserves to cover an international bank agency's liabilities.

Georgia's International Bank Agency Act is designed to protect its citizens from any abuses that might come from allowing an international bank agency to enter Georgia and conduct a banking business. It is also designed to prevent an international bank agency from having an advantage over local banks. In providing for these purposes, Georgia borrowed extensively from New York's foreign banking statutes. Unfortunately for international banking corporations, Georgia's confidence in the New York statutory scheme was not complete. Georgia was unwilling to allow international banks to open branch offices which could take deposits. The only justification for such a failure would be to protect local banks; however, New York's permitting branch offices has not displayed any devastating effects on its banking system. Branch offices, like international bank agencies, would be subject to the same regulations that apply to local banks. The question arises as to whether there is justification for excluding branch offices and allowing international bank agencies.⁹⁵ New York's experience would seem to indicate otherwise. In any event, it is to be hoped that this restriction will not discourage international banks from locating in Georgia, for Georgia's growing international trade would certainly benefit from the services such banks could provide.

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94. See Harfield, *Legal Considerations in International Banking*, 91 *BANK. L. J.* 624, 629 (1974).

95. See Arnold, *Restrictions on Foreign Investment in Canadian Financial Institutions*, 20 *U. TOR. L. J.* 196 (1970), for a discussion on the reasoning behind Canada's decision to restrict foreign investment in Canadian financial institutions.