




GOVERNMENT OF PUERTO RICO
OFFICE OF THE COMMISSIONER OF FINANCIAL INSTITUTIONS

CIRCULAR LETTER CFI CC-2023-001

TO: All International Banking Entities (“IBEs”) and International Financial Entities (“IFEs”) under the regulation and supervision of the Office of the Commissioner of Financial Institutions (the “OCFI”)

FROM: Natalia Zequeira-Diaz, Esq., Commissioner 

DATE: May 1, 2023

RE: Compliance with the unencumbered assets requirement of the IBE Act and the IFE Act

I. Authority

This circular letter is issued pursuant to the authority conferred to the Commissioner of Financial Institutions by:

- (i) Act No. 4 of October 11, 1985, as amended, known as the “Office of the Commissioner of Financial Institutions Act” (hereinafter, “Act No. 4”);
- (ii) Act No. 52 of August 11, 1989, as amended, known as the “International Banking Center Regulatory Act” (the “IBE Act”);
- (iii) Act No. 273-2012, as amended, known as the “International Financial Center Regulatory Act”, (the “IFE Act”); and
- (iv) Regulation No. 5653 of July 23, 1997, as amended, known as “Regulation of the International Banking Center Regulatory Act” (“Regulation No. 5653”) promulgated under the IBE Act.

II. Legal Base

1. Act No. 4

Act No. 4 entrusts the Office of the Commissioner of Financial Institutions (“OCFI”) with the main responsibility of supervising the financial institutions that operate or do business in Puerto Rico, including the international banking entities (“IBEs”) organized under the IBE Act and international financial entities (“IFEs”) organized under the IFE Act.

Article 10 of Act No. 4, codified in 7 L.P.R.A. §2010, as is here pertinent provides as follows:

§ 2010. Commissioner—Powers

(a) The Commissioner, in addition to the powers and faculties transferred hereby, shall have the power and authority to:

(1) ...

(2) ..., approve ... such... orders, resolutions, and determinations needed to comply with this act. ...

2. Section 3 of the IBE Act

Section 3 of the IBE Act, codified at 7 L.P.R.A. §232a, provides as follows:

§232a. Authority and duties of the Commissioner

(a) The Commissioner shall:

(1) Adopt, and may thereafter, from time to time, repeal, amend, **or supplement** rules and regulations in order to comply with the provisions of this Act, ...

[Emphasis added].

In addition, Section 10 of the IBE Act, codified at 7 L.P.R.A. §232g, provides for the requirement of a guarantee in favor of the Commissioner of Financial Institutions to be posted by IBEs, as follows:

§ 232g. Unencumbered assets, capital, shares of capital stock.

(a) Every international banking entity shall possess not less than three hundred thousand dollars (\$300,000) of unencumbered assets or acceptable financial securities, or that lesser sum that, by request of the interested party, the Commissioner authorizes, when the type of business or powers that the international banking entity intends to exercise or other circumstances thus merit it, in the [judgment] of the Commissioner. The unencumbered assets shall be physically located in Puerto Rico and subject to the requirements regarding the same provided by the regulations of the Commissioner. ...

3. The IFE Act

Article 8 of the IFE Act, codified at 7 L.P.R.A. §3087, provides for the requirement of a guarantee in favor of the Commissioner of Financial Institutions to be posted by IFEs, as follows:

§ 3087. License

(a) At his/her discretion and under the terms and conditions he/she may deem necessary as established by an administrative determination to such effect, the Commissioner may issue to the applicants a license to operate an international financial institution upon receipt of:

(1) ...

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...

(7) as a requirement to obtain a license, in addition to the initial paid-in capital, every international financial institution shall possess not less than three hundred thousand dollars (\$300,000) of unencumbered assets or acceptable financial securities, or that lesser sum that, at the request of the interested party, the Commissioner authorizes, when the type of business or powers that the international financial institution intends to exercise or other circumstances that, in the judgment of the Commissioner, so warrant. The unencumbered assets shall be physically located in Puerto Rico and subject to the requirements regarding the same provided by the regulations of the Commissioner; ...

4. Regulation No. 5653

Regulation No. 5653 was adopted by the OCFI under the IBE Act and was originally applicable to IBEs. Article 27 of the IFE Act provides that regulations enacted under the IBE Act apply to the organization and governance of international financial entities until such a time as regulations are enacted under the IFE Act. No regulations have been adopted under the IFE Act. Thus, Regulation No. 5653 is presently applicable to the IBEs and IFEs.

As is here pertinent, Article 5.5 and 5.6 of Regulation No. 5653 provides as follows:

ARTICLE 5. ORGANIZATION

Every IBE must meet the following requirements in its organization:

1. ...

...

5. It shall possess and maintain in Puerto Rico at least three hundred thousand dollars (US \$300,000) in unencumbered assets or financial guarantees acceptable to the Commissioner. Such guarantees may consist of deposits in the Government Development Bank for Puerto Rico [...] or in banks authorized to do business in Puerto Rico, subject to withdrawal with the written consent of the Commissioner, or bonds and obligations of the Government of Puerto Rico, its municipalities, or instrumentalities. The Commissioner may establish other financial instruments, terms, and conditions for compliance with this requirement. Upon request of a party, the Commissioner may approve the withholding of unencumbered assets or guarantees in Puerto Rico for an amount less than \$300,000, in which case, Article 5B of this Regulation shall be binding.

6. The securities or other financial instruments held by the IBE in compliance with the requirement in paragraph (5) of this Article, shall have, at all times, an aggregate market value equal to or greater than the amount of unencumbered assets that the IBE shall finally withhold in Puerto Rico. The books of the IBE shall reflect, at all times, the marked to market value of such securities or financial instruments. In case of

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detriment or loss of value of such instruments, the IBE shall immediately provide for this deficiency.

III. Purpose

This Circular Letter is addressed to IBEs and IFEs, as defined above.

The purpose of this Circular Letter is to supplement the provisions of Section 3 of the IBE Act, Article 8(7) of the IFE Act, and Articles 5.5 and 5.6 of Regulation No. 5653, in order to designate additional financial institutions that are eligible to have custody of the unencumbered assets required by the IBE Act and the IFE Act, which may be posted in the manner of deposits or securities pledged in favor of the OCFI.

IV. Designation of additional financial institutions as eligible to hold unencumbered assets in favor of the OCFI.

By means of this Circular Letter, we designate the following financial institutions as eligible to have custody of the unencumbered assets required by the provisions of Section 3 of the IBE Act, Article 8(7) of the IFE Act, and Articles 5.5 and 5.6 of Regulation No. 5653:

1. Securities broker-dealers duly authorized to do business in Puerto Rico authorized to have custody of assets which comprise the unencumbered assets mentioned above. The unencumbered assets must be held in an account opened in a broker dealer registered in Puerto Rico with its principal office or branch(es) located in Puerto Rico.
2. Banks organized in states of the United States of America with deposits insured by the Federal Deposit Insurance Corporation and that are authorized by the OCFI to accept deposits in Puerto Rico; and
3. Other financial institutions including, but not limited to, credit unions (“cooperativas de ahorro y crédito”) organized under the laws of Puerto Rico, upon request of an IBE or an IFE, pursuant to an administrative determination (“ruling”) issued by the Commissioner of Financial Institutions.

V. Effectiveness

This Circular Letter will become effective on the date of its issuance.