

## **INFORMATION RELATIVE TO A CERTIFICATE OF AUTHORITY TO DO TRUST BUSINESS IN NEW JERSEY**

Attached are copies of excerpts of various New Jersey statutes that deal with out of state banks and the process to do trust business in New Jersey. Statutes can be found at <http://www.njleg.state.nj.us/>. Specific statutes can be found at *NJSA 17:9A-316B et seq.*

For an out of state bank to register to do trust business in New Jersey the following should be provided to the Commissioner of Banking and Insurance in letter format:

- 1) An opinion that a New Jersey institution would be permitted to transact trust business in the jurisdiction in which the out of state bank has its principal office without unduly burdensome conditions or restrictions;
- 2) A copy of its certificate of incorporation and all amendments certified by its president or a vice president and attested under its corporate seal;
- 3) Proof of adequate insurance coverage in connection with the volume of transactions and nature of its business;
- 4) A certificate executed by its president or vice president and attested under its corporate seal that it will comply with all the requirements of the laws of New Jersey and it will provide the Commissioner with copies of any amendment or changes to its certificate of incorporation so long as it shall have a certificate of authority;
- 5) A power of attorney, executed by its president or vice president and attested under its corporate seal, authorizing the commissioner and his successors in office to accept service of process in any action relating to any estate or trust administered under the laws of this State;
- 6) Proof that the foreign bank is authorized by the laws under which it is incorporated to act as trustee, testamentary trustee, fiduciary, executor or guardian,
- 7) Proof that the entity has capital and surplus of not less than \$1 million.

Currently, by regulation, certificates of authority for foreign banks are issued biennially on April 1 (the current biennial period expires on March 31, 2015). The current biennial fee to register as a foreign bank is \$1,000; to file a copy of its certificate of incorporation is \$100; for filing a statement of its financial condition is \$50; filing a power of attorney is \$25. (Total \$1,175). The \$50 fee for filing the statement of financial condition may be waived if the statement of condition is available on the web site of the bank's federal regulator. Checks should be payable to the "Treasurer, State of New Jersey".

Forward material to:

State of New Jersey  
Department of Banking and Insurance  
Applications and Corporate Filings  
P. O. Box 040  
Trenton, NJ 08625-0040

If you have any questions or need additional information, please call Chief Examiner Richard Poliner at 609-292-7272 ext. 50062.

# **INFORMATION RELATIVE TO THE ESTABLISHMENT OF TRUST OFFICE IN NEW JERSEY BY A FOREIGN BANK**

Pursuant to *NJSA 17:9A-20.5b* a foreign bank may establish a trust office in this State, if the foreign bank files with the commissioner an application to register the trust office. The application may be submitted in to the Commissioner of Banking and Insurance in letter format:

To establish a trust office the application shall contain:

- 1) The name of the foreign bank and the location of the proposed trust office;
- 2) A copy of the resolution adopted by its board authorizing the establishment of the trust office;
- 3) Evidence that it is in good standing in its home state;
- 4) Satisfactory evidence that the entity has complied with any applicable requirements of its bank supervisory agency regarding the establishment and maintenance of a trust office;
- 5) An opinion that a New Jersey institution would be permitted to transact trust business in the jurisdiction in which the out of state bank has its principal office without unduly burdensome conditions or restrictions;
- 6) The foreign bank has obtained or has made application to obtain a certificate of authority to transact trust business in New Jersey in accordance with the provisions of *NJSA 17:9A-316B* et seq.

## **APPLICABLE EXCERPTS FROM THE NEW JERSEY STATUTES**

### **17:9A-1. Definitions**

1. As used in this act, and except as otherwise expressly provided in this act:

- (2) "Banking institution" shall mean a bank, an out-of-state bank having a branch office in this State, an out-of-county bank having a branch office in this State, savings bank, and a national banking association having its principal or a branch office in this State:
- (8) "Fiduciary" shall include trustee, executor, administrator, receiver, guardian, assignee, and every other person occupying any other lawful office or employment of trust;
- (12) "Qualified bank" shall mean:
  - (a) A bank or an out-of-State bank with a branch office in New Jersey which has heretofore been authorized or which shall hereafter be authorized to exercise any of the powers authorized by section 28 of P.L.1948, c.67 (C.17:9A-28);
  - (b) A savings bank which has heretofore been authorized or which shall hereafter be authorized to exercise any of the powers authorized by section 28 of P.L.1948, c.67 (C.17:9A-28); and

- (c) A national banking association having its principal or a branch office in this State authorized to act as a fiduciary;
- (20) "Foreign bank" means a company, other than a banking institution, organized under the laws of the United States, another state, or a foreign government, which is authorized by the laws under which it is organized to exercise some or all of the powers specified in paragraph (4) of section 24 of P.L.1948, c.67 (C.17:9A-24), paragraphs (4), (5) and (13) of section 25 of P.L.1948, c.67 (C.17:9A-25), and paragraphs (3) through (9), inclusive, of section 28 of P.L.1948, c.67 (C.17:9A-28);
- (28) "Trust office" means an office, unit, station, facility, or space at a fixed location, other than a principal office, however designated, at which business that may be conducted at the principal office may be transacted and the primary activities conducted include the transaction of trust business as defined in paragraph (2) of subsection D of section 316 of P.L.1948, c.67 (C.17:9A-316), but at which no deposits may be taken other than assets to be held in trust.

**17:9A-316. Limitations on transaction of business by foreign banks in this State**

- 316. A. Except as otherwise provided pursuant to section 1 of P.L.1989, c.245 (C.17:9A-19.2) and sections 37 through 86 of P.L.1996, c.17 (C.17:9A-418 through C.17:9A-467), no foreign bank organized under the laws of a foreign government shall transact any business in this State.
- B. A foreign bank organized under the laws of the United States or another state may not transact business in this State other than trust business. Before transacting trust business in this State, a foreign bank shall secure from the commissioner a certificate of authority to transact trust business. The commissioner shall not issue a certificate of authority to a foreign bank unless a qualified bank is permitted to transact trust business in the jurisdiction in which the foreign bank has its principal office without unduly burdensome conditions or restrictions.
- D(2) For the purposes of this section, "trust business" means holding out to the public by advertising, solicitation or other means that a person or entity is available to perform any of the services of a trustee or fiduciary in this State or another state, and includes acting as a trustee, testamentary trustee, fiduciary, executor or guardian or exercising any of the powers specified in paragraphs (3) through (9) of section 28 of P.L.1948, c.67 (C.17:9A-28).

**17:9A-318. Application for certificate of authority**

318. A foreign bank desiring to secure a certificate of authority to transact business in this State shall make application to the commissioner therefor and file with the application
- (1) a copy of its certificate of incorporation, and all amendments thereto, certified by its president or a vice-president and attested under its corporate seal by its secretary, an assistant secretary, its cashier or an assistant cashier;
  - (2) proof of adequate insurance coverage in connection with the volume of transactions and nature of its business;
  - (3) (Deleted by amendment, P.L.1999, c.159).
  - (4) a certificate executed by its president or a vice-president and attested under its corporate seal by its secretary, an assistant secretary, its cashier or an assistant cashier, that, so long as it shall have a certificate of authority,
    - (a) it will comply with all the requirements of the laws of this State which shall be applicable from time to time to the transaction of its business in this State;

(b) it will, promptly following adoption, submit to the commissioner a copy of each amendment or other change in its certificate of incorporation, certified and attested as provided in paragraph (1) of this section;

(c) (Deleted by amendment, P.L.1999, c.159).

(5) a power of attorney, executed by its president or vice-president and attested under its corporate seal by its secretary, an assistant secretary, its cashier or an assistant cashier, authorizing the commissioner and his successors in office to accept service of process upon the foreign bank in any action or proceeding against it affecting or relating to any estate or trust administered under the laws of this State, with respect to which it shall act in a fiduciary capacity specified in section 316; such power of attorney shall provide that service of any such process upon the commissioner shall have the same force and validity as if served upon the foreign bank, and that the authority therein granted shall be irrevocable and shall continue in force indefinitely, notwithstanding the expiration, revocation or surrender of the certificate of authority or renewal thereof;

(6) (Deleted by amendment, P.L.1999, c.159).

L.1948, c.67, s.318; amended 1999, c.159, s.7.

#### **17:9A-319. Issuance, denial of certificate of authority**

319. A. Within 60 days following the receipt of the application of a foreign bank for a certificate of authority to transact business in this State, the commissioner shall issue the certificate or make an order denying the application.

B. The commissioner shall issue the certificate if he is satisfied from the application submitted to him, or otherwise,

(1) that the foreign bank is authorized by the laws under which it is incorporated to act as trustee, testamentary trustee, fiduciary, executor or guardian;

(2) that the foreign bank has capital and surplus of not less than one million dollars; and

(3) that the foreign bank has complied in good faith with all of the requirements of section 318.

C. Before issuing or denying a certificate of authority, the commissioner may require a foreign bank which makes application for a certificate of authority to submit to him additional information, in such form and manner as he may require.

L.1948, c.67, s.319; amended 1999, c.159, s.8.

#### **17:9A-322. Certificate of authority to continue in force**

322. A certificate of authority issued to a foreign bank shall continue in force, unless revoked by the commissioner or surrendered by the foreign bank. The commissioner may adopt regulations establishing requirements for periodic renewal of a certificate of authority, and for notification to the commissioner if a foreign bank named in a certificate of authority desires to surrender the certificate or merges with or is acquired by another financial institution or company. Failure to provide any notification required by regulations promulgated by the commissioner shall be grounds for revocation of the certificate.

**(Please note that regulations WERE adopted requiring renewal of the certificate every two years. In advance of the renewal period, all registered foreign banks with outstanding certificates of authority are contacted with information regarding renewal.)**