

# ACT 273

# INTERNATIONAL FINANCIAL CENTER ACT

On September 25, Puerto Rico enacted Act No. 273 of 2012, also known as the "International Financial Center Regulatory Act" (the "Act"). The Act provides tax exemptions to businesses engaged in eligible activities in Puerto Rico. To avail from such benefits, a business needs to become an International Financial Entity ("IFE") by applying for a permit and license and obtaining a tax exemption decree.

## Eligibility

An IFE may be any person, that is not an individual, and that is incorporated or organized under the laws of Puerto Rico, the United States, or any other country.

Any person interested in organizing an IFE needs to file an application for a permit with the Office of the Commissioner of Financial Institutions, pay a non-refundable application fee of \$5,000 and must comply with all of the requirements established in the "Bank Secrecy Act," if applicable. Once a permit is issued, the IFE may be organized subject to the following requirements:

- The amount of its authorized capital stock shall not be less than \$5 million and at least \$250,000 shall be fully paid at the time the license is issued; and
- The IFE shall employ a minimum of 4 persons at its business office or offices in Puerto Rico. The IFE may request a discretionary waiver to lower said employment requirement.

Once the IFE is organized and the Commissioner receives the organization certification by the Puerto Rico State Department, the IFE may apply for a license. A certified copy of the articles of incorporation and other corporate documents will be required for the IFE license to be issued.

The Act provides a list of permitted and prohibited transactions in which the IFE may engage. Permitted transactions will be specified in the IFE's license.

## Permitted Transactions

With the Commissioner's approval, the IFE may:

- Participate in syndicated non-conforming loans with local banks. This activity will be permitted for the year 2012 and the following 5 calendar years;
- Acquire classified or non-performing/ distressed loans from local banks. This activity will be permitted for the year 2012 and the following 2 calendar years. However, the sale of any

property that served as guarantee for said loans could be performed after such period, that is, after December 31, 2014;

- Accept deposits from foreign persons;
- Accept properly collateralized deposits or borrow duly secured money from the Governmental Development Bank and the Economic Development Bank; and
- Establish branches outside of Puerto Rico, in the United States mainland and its possessions, or in other foreign countries.

Some other permitted transactions are:

- To make or place deposits in, and otherwise give money as a loan to the Governmental Development Bank, the Economic Development Bank, any other IFE or any other bank;
- To make, procure, place, guarantee or provide loan servicing to foreign persons, with some exceptions;
- To issue, confirm, give notice, negotiate or refinance letters of credit, provided that the client and the beneficiary requesting the letter of credit is not a domestic person;
- To issue, confirm, give notice, negotiate, or refinance letters of credit in transactions for the financing of exports, even if the beneficiary is a domestic person;
- To discount, rediscount, deal or otherwise trade in money orders, bills of exchange and similar instruments, provided that the drawer and the original debtor, is not a domestic person;
- To invest in securities, stocks, notes and bonds of the Government of Puerto Rico;
- To carry out any permitted transaction in the currency of any country, or in gold or silver, and to participate in foreign currency trade;
- To underwrite, distribute, and otherwise trade in securities, notes, debt instruments, drafts and bills of exchange issued by a foreign person for final purchase outside of Puerto Rico;
- To engage in any financial activity outside of Puerto Rico, which would be allowed by a bank holding company or by a foreign subsidiary of a United States bank;
- To act as fiduciary (executor, administrator, etc.) after obtaining a special permit from the Commissioner, provided, that such fiduciary services shall not be offered to, nor inure to the benefit of domestic persons;
- To acquire and lease personal property at the request of a lessee who is a foreign person;
- To trade securities outside of Puerto Rico, on behalf of foreign persons;

- To act as a clearinghouse in relation to financial contracts or instruments from foreign persons;
- To organize, manage and provide management services to financial entities located outside of Puerto Rico, such as investment companies and mutual funds, provided that the shares or participation in the capital of such companies are not distributed directly by the IFE to domestic persons;
- To participate in granting and securing loans originated and/or secured by the Governmental Development Bank and the Economic Development Bank;
- To finance, through loans or financial securities, projects in those areas of priority for the Government of Puerto Rico, in those cases designated as extraordinary by the Secretary of the Treasury and the Commissioner; and
- To provide financial services, such as asset management, management of investment alternatives, management of activities related to private capital investment, management of coverage funds or high risk funds, management of pools of capital, trust management that serves to convert different groups of assets into securities, and escrow accounts management services.

### Prohibited Transactions

On the other hand, some of the prohibited transactions are:

- To accept deposits or borrow money from domestic persons, except from the Governmental Development Bank, the Economic Development Bank and other IFEs;
- Except as otherwise permitted by the Act, to make, procure, place, secure, or provide loan servicing, unless all loan proceeds are used outside of Puerto Rico;
- To issue, confirm, or give notice of letters of credit, unless all proceeds of the letter of credit are used outside of Puerto Rico, and the issuer and the beneficiary are foreign persons;
- To discount bills of exchange, unless all the proceeds of the bills of exchange will be used outside of Puerto Rico and the drawer and the beneficiary are foreign persons;
- To purchase or hold any of its own capital stock, except when previously authorized by the Commissioner;
- Except when previously authorized in writing by the Commissioner, to grant any kind of financing or credit to any of its employees or stockholders; and
- To, directly or indirectly, underwrite, place, insure or reinsure risks or objects that reside, are located or will be executed in Puerto Rico.

### Tax Exemptions

- 4% fixed income tax rate;
- 100% exclusion of interest, financing charges or participation in partnerships benefits, which will not be considered gross income from Puerto Rico sources; therefore, will not be subject to taxation or withholding provisions for non-residents of Puerto Rico;
- 6% fixed income tax rate on dividends and pro-rate share of benefits of the corresponding International Financial Entity ("IFE") for shareholders or partners of an IFE that are residents of Puerto Rico;

- 100% tax exemption on all real and personal property belonging to an IFE; and
- 100% tax exemption on the payment of municipal license taxes.

Also, for as long as the Act is in effect, 7.5% of the funds collected from an IFE's income tax will be deposited in the Special Fund for the Development of Export and Promoter Services of the Department of Economic Development and Commerce, created by the "Export Services Act" to promote growth of services and other eligible businesses in Puerto Rico.

### Tax Exemption Decree

The IFE may submit copy of its license to the Secretary of the Department of Economic Development and Commerce of Puerto Rico, and may request issuance of a tax decree that provides full detail of tax rates and conditions mandated by the Act. The decree will be considered a contract between the Government of Puerto Rico and the IFE. Once the IFE obtains the tax exemption decree, the benefits granted will be secured during the term of the decree irrespective of any changes in the applicable Puerto Rico tax laws. The decree will be effective during a period of 15 years. Two extensions of 15 years each may be available.

### Puerto Rico Income Taxes

An international financial entity operating in Puerto Rico under the Act by means of a Puerto Rico entity should not be subject to any taxes (such as a tollgate tax or other similar taxes) on its income from its eligible activities in Puerto Rico, other than the Puerto Rico income tax rate established in the tax decree and taxes imposed on dividends to the exempt business' shareholders residing in Puerto Rico. Upon repatriation, the distributed income would be subject to the tax imposed by the jurisdiction in which the owners of the Puerto Rico entity reside, if any

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