
Eliminating Corporate Shadow Banking Act of 2019 (S. 2839)

ILC Loophole is Closed

The bill closes the industrial loan company loophole by changing the definition of “bank” under Section 2 of the Bank Holding Company Act of 1956 (BHCA). Under the bill, an “industrial company or an industrial bank or other similar institution” would no longer be exempted from the definition of “bank.” Therefore, these entities' parent companies would be subject to the oversight, supervision, and other provisions of the BHCA, including the restriction that the entity that owns or controls the bank can only be engaged in activities that are closely related to banking or financial in nature.

Existing ILC Holding Companies Must Register with the Fed

Any company controlling an ILC as of Oct. 1, 2019, that is not already a bank holding company or a savings and loan holding company must register with the Federal Reserve as a Covered Industrial Bank Holding Company, or CIBHC. All CIBHCs and their subsidiaries (other than an ILC) must file financial reports of condition with the Federal Reserve, be subject to Section 3 of the BHCA regarding Board approval of mergers and acquisitions, and be subject to examination.

Commercial Activities Prohibited Unless Grandfathered

No industrial bank may be controlled by a commercial firm except grandfathered institutions. The term “commercial firm” means any entity that derives any amount of revenue from activities that are not financial in nature.

Grandfathered Institutions

An industrial bank that became an insured depository institution (IDI) before Oct. 1, 2019, and with respect to which there is no change in control after Sept. 30, 2019, except a corporate reorganization, would be grandfathered and therefore permitted to continue commercial affiliations that existed on that date. The same would be true of a CIBHC that became a CIBHC by virtue of acquiring control of an industrial bank before Oct. 1, 2019, that did not acquire control of any other IDI after Oct. 1, 2019, and with respect to which there is no change in control of any IDI subsidiary after Oct. 1, 2019. Furthermore, each industrial bank subsidiary of a grandfathered commercial firm would be restricted to engaging only in activities in which the industrial bank was engaged on Oct. 1, 2019, and would be subject to branching restrictions.

Transition Period

Any CIBHC that failed to comply with the restrictions in the bill would have to divest its ownership of each industrial bank subsidiary within a two-year period.

CIBHC Responsibilities and No Foreign Bank Ownership of ILCs

CIBHCs must serve as a source of financial and managerial strength to their subsidiary banks and must conduct their operations in an a safe and sound manner. No foreign bank may acquire control of an industrial bank. CIBHCs would be subject to enforcement actions under the Bank Holding Company Act as well as the Federal Deposit Insurance Act.