



The Commonwealth of Massachusetts
Office of the Commissioner of Banks
One South Station
Boston, Massachusetts 02110

JANE SWIFT
GOVERNOR

THOMAS J. CURRY
COMMISSIONER

March 15, 2002

Aaron H. Johnson
The Boston Consulting Group
53 State Street
Boston, Massachusetts 02109

Dear Mr. Johnson:

This letter is in response to your correspondence dated October 19, 2001 to the Division of Bank's (the "Division") in which you request an opinion relative to a bank chartered by a foreign country providing services to United States' financial institutions in connection with various aspects of the mortgage business.

In your letter you state that you are working with a large bank in India which is considering offering what you term "outsourcing" services to the mortgage industry. Your client would provide services to mortgage companies or banks that are either originating mortgage loans or which own the servicing rights to mortgage loans. You ask what regulations exist for a foreign subcontractor to provide payoff processing, loan reporting/reconciliation and default management services on existing mortgage loans and to provide customer acquisition (such as direct marketing), origination, and servicing functions on behalf of a mortgage company or a bank.

It has been the consistent position of the Division that there is no statute or regulation governing a third party performing marketing or mortgage servicing activities on behalf of a financial institution. Since these activities are not licensed or regulated in the Commonwealth, there is no prohibition against a financial institution chartered by a foreign country performing these services. However, in the event a mortgage servicer were to engage in the collection of loan payments that are more than 30 days past due, it would be required to obtain a collection agency license pursuant to General Laws chapter 93, section 24 and its implementing regulation, 209 CMR 18.00 et seq.

You also state that your client is considering offering certain origination services to lenders such as taking applications, underwriting and closing mortgage loans. You offer no particular detail on these "origination" services. Massachusetts General Laws chapter 255E governs the licensing of residential mortgage lenders and mortgage brokers in the Commonwealth. A "mortgage lender" is defined as a person or entity which is in the business of making mortgage loans or issuing commitments for mortgage loans. It has been the consistent position of the Division that the entity in whose name the loan is closed as reflected in the loan documents is the entity which must be licensed as a mortgage lender under said chapter 255E. A "mortgage broker" is defined as any person who for compensation or gain directly or indirectly negotiates, places, assists in placement, finds or offers to negotiate, place, assist in placement or find mortgage loans on residential property for others.

If your client is making mortgage loans or issuing commitments for mortgage loans in its own name within the definition of "mortgage lender", it would be required to be licensed as a lender in the Commonwealth. The Division is unable to opine based on the limited information in your letter as to



whether its activities may trigger the mortgage broker licensing statute in the Commonwealth. While the statute¹ contains specific licensing exemptions for certain financial institutions, it does not exempt those chartered by foreign countries.

You further ask if there are any registration requirements on the state or federal level for a foreign banking institution and if employees have to be located in the United States. These issues are beyond the jurisdiction of the Division. You may wish to contact the office of the Secretary of State in the Commonwealth for additional information on any required corporate filings.

Sincerely,



Joseph A. Leonard, Jr.
Deputy Commissioner of Banks
and General Counsel

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¹ See G.L. c. 255E, section 2.