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FINANCIAL INSTITUTIONS:
Foreign Banking
Office Act

Richard K. Lignoul
Commissioner of Banks and Trust Companies
Room 400 Reisch Building
4 West Old State Capitol Plaza
Springfield, Illinois 62791

Dear Mr. Lignoul:

I have your letter requesting my opinion as to whether you may issue a certificate of authority to Banco Real, S.A., a Brazilian banking corporation. Section 3 of the Foreign Banking Office Act (Ill. Rev. Stat. 1975, ch. 16 1/2, par. 503) provides in pertinent part that:

" § 3. A foreign banking corporation, upon receipt of a certificate of authority from the Commissioner, may establish and maintain a single banking office in the central business district of Chicago and may conduct thereat a general bank-

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ing business. No such foreign banking corporation is, however, entitled to a certificate of authority under this Act unless, under the laws of the country under which such foreign banking corporation was organized, a State bank and a national bank may be authorized to maintain a banking office which may engage in a general banking business or may be authorized to own all the shares (except for directors' qualifying shares) of a banking organization organized under the laws of such country." (emphasis added.)

As I pointed out in my opinion No. NP-781, issued July 3, 1974, the word "or" is used in section 3 in the disjunctive sense so that a certificate may be granted if either of the two conditions set forth there is satisfied. In the present case, however, the only question to be answered is whether a State or national bank may open a banking office in Brazil. Counsel for Banco Real has stipulated that a State or national bank could not own all the shares of a bank organized under the laws of Brazil.

Article 10, IX of Brazilian Law 4,595 of December 31, 1964, states in part:

"It is the exclusive duty of the Central Bank of Brazil * * * to grant authorization to the financial institutions in order that they may be able:

a. to operate within the country."

Article 10, paragraph 2 of Brazilian Law 4,595 provides however:

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"[T]he foreign financial institutions shall depend upon authorization from the Executive Power by means of Decree so that they may operate within the country."

Similarly, the relevant portion of article 18 of Law 4,595 provides that:

"The financial institutions shall only be able to operate within the country by means of prior authorization by the Central Bank of Brazil or, by Decree of the Executive Power when they be foreign."

I interpret these provisions to mean that a foreign bank may do business in Brazil if authorized to do so by a decree issued by that nation's President. The procedure required by Brazilian law is very similar to that discussed in opinion No. NP-781. The question there was whether a Hong Kong bank could obtain a certificate of authority under section 3 of the Foreign Banking Office Act. I noted at that time that an Illinois bank seeking to operate an office in the British Crown Colony of Hong Kong had first to obtain a license from the Governor in Council. Further, the applicable law gave the Governor in Council absolute discretion to grant or deny such applications. Despite this fact, I concluded that because an Illinois bank could be authorized to maintain a banking office in Hong Kong, the requirement

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of section 3 was satisfied.

I see no material distinction between the requirement that a foreign bank seeking to open an office in Hong Kong first obtain a license from the Governor in Council and the Brazilian law which requires a foreign bank to apply for an executive decree. In both instances, although the discretion of the executive to grant or deny the application of an Illinois bank is complete, a State bank "may be authorized to maintain a banking office" in the country involved as required by section 3.

I, therefore, am of the opinion that because an Illinois bank may be authorized to maintain a banking office in Brazil, you may issue a certificate of authority to a Brazilian bank provided all other requirements of the Foreign Banking Office Act are satisfied.

Very truly yours,

A T T O R N E Y G E N E R A L