

No. 24-

IN THE
Supreme Court of the United States

FIRST FINANCE INTERNATIONAL BANK, INC.,

Petitioner,

v.

OFFICE OF THE COMMISSIONER OF FINANCIAL
INSTITUTIONS OF PUERTO RICO,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF
APPEALS FOR THE COMMONWEALTH OF PUERTO RICO

PETITION FOR A WRIT OF CERTIORARI

KEVIN R. MYER
Counsel of Record
KRMLEGAL LLC
1501 South Power Road, Suite 114
PMB# 1047
Mesa, AZ 85206
(602) 456-2243
kevin@krm-legal.com

Counsel for Petitioner



QUESTIONS PRESENTED

1. Does Respondent The Office Of The Commissioner Of Financial Institutions (“OCIF”)’s regulation of Petitioner First Finance International Bank (“FFIB”) violate the Foreign Dormant Commerce Clause and the Equal Protection Clause through selective enforcement of Puerto Rico statutes and regulations?
2. Should this Court order this matter remanded to the Puerto Rico courts for further consideration in light of this Court’s recent pronouncements in *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244, 2247 (2024)?

PARTIES

All parties appear in the caption of the case on the cover page.

CORPORATE DISCLOSURE

Pursuant to Supreme Court Rule 29.6, Petitioner FIRST FINANCE INTERNATIONAL BANK, INC. (“FFIB”) discloses the following:

There is no parent or publicly-held company owning ten percent (10%) or more of Petitioner’s stock.

RELATED CASES

Administrative ruling:

Office Of The Commissioner Of Financial Institutions,
Complainant, v. First Finance International Bank,
Inc., Respondent

Office Of The Commissioner Of Financial Institutions
Case #: C22-D-008

Administrative ruling (order appointing a trustee and
instructing the trustee to liquidate the Bank's assets):
March 27, 2023

Direct appeal of administrative ruling:

First Finance International Bank, Inc., Appellant, v.
Office of the Commissioner of Financial Institutions,
Appellee.

Puerto Rico Commonwealth Court of Appeals:
KLRA202300209

Judgment: June 26, 2023.

Discretionary review of administrative ruling

First Finance International Bank, Inc. ("FFIB"),
Petitioner, v. Office Of The Commissioner Of Financial
Institutions, Respondent.

v

Puerto Rico Supreme Court: CC-2023-604, CC-2024-0022

Certiorari denied as premature: November 11, 2023
(CC-2023-604)

Certiorari denied: February 16, 2024 (CC-2024-0022)

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Comes now First Finance International Bank (FFIB), through counsel undersigned, and respectfully prays that a Writ of Certiorari issue to review the June 26, 2023 decision of the Puerto Rico Commonwealth Court of Appeals below, which affirmed a March 27, 2023 administrative order by Puerto Rico's Office Of The Commissioner Of Financial Institutions ("OCIF") appointing a permanent trustee to oversee FFIB's assets and with instructions to liquidate FFIB's assets.

OPINIONS/DECISIONS BELOW

The Puerto Rico Commonwealth Court of Appeals' June 26, 2023 judgment in KLRA202300209 affirming the OCIF order appointing a trustee and instructing the trustee to liquidate the Bank's assets is attached as Appendix A. *See also* 2023 WL 5033571.

The Puerto Rico Supreme Court's November 11, 2023 order in CC-2023-604 denying FFIB's Petition for Certiorari as premature is attached as Appendix B. This order is not available through online libraries.

The Puerto Rico Supreme Court's February 16, 2024 order in CC-2024-0022 denying FFIB's Petition for Certiorari is attached as Appendix C. This order is not available through online libraries.

The Puerto Rico Supreme Court's April 10, 2024 order in CC-2024-0022 denying FFIB's Petition for Certiorari is attached as Appendix D. This order is not available through online libraries.

The Puerto Rico Office Of The Commissioner Of Financial Institutions' March 27, 2023 administrative order appointing a trustee and instructing the trustee to liquidate the Bank's assets is attached as Appendix E. This order is not available through online libraries.

JURISDICTION

This Court has jurisdiction over this timely-filed petition for certiorari pursuant to 28 U.S.C. § 1258. *See* 28 U.S.C.A. §1258 (West) ("Final judgments or decrees rendered by the Supreme Court of the Commonwealth of Puerto Rico may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of the Commonwealth of Puerto Rico is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States."). *See also Carrier Corp. v. Perez*, 677 F.2d 162, 164 (1st Cir. 1982) (petitioner "can seek review of any final Commonwealth court decision by the Supreme Court of the United States") (citing 28 U.S.C.A. §1258).

FFIB timely sought review the June 23, 2023 Commonwealth of Puerto Rico Court of Appeals' decision to the Commonwealth of Puerto Rico Supreme Court. The Puerto Rico Court of Appeals considered and rejected a motion for partial consideration by the OCIF by order dated December 13, 2023.

Thus, FFIB's September 11, 2023, Petition for Certiorari was not only timely, but premature (because the Court of Appeals had not issued its mandate by that date). After initially denying the petition as premature, the Puerto Rico Supreme Court denied the petition on its merits on February 16, 2024, and then denied FFIB's motion for reconsideration of its denial of certiorari on April 10, 2024.

On July 8, 2024, this Court granted an extension of time in which to file this instant petition until September 2, 2024. This Petition has been timely filed, so there is no procedural impediment to this Court's jurisdiction. Sup. Ct. R. 13.

CONSTITUTIONAL AND STATUTORY PROVISIONS

Article III

The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a

presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

STATEMENT OF THE CASE

I. The Business Practices of FFIB

FFIB is an international financial institution (“IFE”) with a license issued by the OCIF to operate from the jurisdiction of Puerto Rico under Law No. 273-2012, as amended, known as the International Financial Center Regulatory Law (“Law No. 273-2012”), 7 L.P.R.A § 3081 et seq., among other applicable statutes.

However, FFIB is not a traditional bank, but a transactional bank. Moreover, FFIB does not grant loans either, but only receives deposits for payment transactions from its clients. This means that the money that customers deposit in their accounts is safe, because FFIB does not use it for anything. Therefore, the risk of customer deposits being compromised or lost is practically non-existent, as is the case with a traditional bank that does lend.

The market that FFIB is pursuing is people around the world, except Puerto Rico, who, for one reason or another, do not have access to or do not trust traditional banks, or who prefer to access their money predominantly from their cell phones and ask for a transaction to be executed through that medium, similar to how ATH Mobile is.

In the words of Ismael Torres Pizzaro, FFIB's president, FFIB is "[a] sort of glorified Western Union." [Transcript of the hearing OCIF v. FFIB of November 9, 2022 PM Session, p. 72.] When a customer opens an account with FFFIB, a small fee is charged. Likewise, each time the customer orders a transaction to be made, a small fee is charged. That is, customers deposit cash into their accounts and First Finance processes the payments they generate from their accounts, charging them a fee each time the customers order a payment to be made.

II. Administrative Oversight by the OCIF

On August 24, 2021, OCIF issued Complaint Case No. C21-D-002 against FFIB, to request an administrative hearing to determine whether OCIF should order finding that FFIB had voluntarily surrendered its license and, as a consequence, would be required to

- 1) submit a Voluntary Liquidation Plan that protected its customers' deposits and provided for full payment.
- 2) cease and desist from conducting business as an international financial institution

- 3) submit financial reports and pay fines

In 2021 and 2022, FFIB engaged in the OCIF administrative process. FFIB submitted its books for audit, and worked with OCIF to provide updates regarding conversion of some of its liabilities into stock.

On November 7 and 9, 2022, the OCIF held an administrative hearing, during which OCIF received documentary evidence from FFIB and allowed FFIB to call witnesses, who presented testimony.

On December 6, 2022, First Federal International Bank (FFIB) filed its Post-Hearing Memorandum in response to an administrative complaint by the Puerto Rican Office Of The Commissioner Of Financial Institutions (OCIF), which alleged that FFIB had failed to file timely accounting reports and might be insolvent. In that Memorandum, FFIB asserted that OCIF was acting in ultra vires of its authority to regulate interstate and international commerce and that the bank had no solvency concerns.

On March 27, 2023, OCIF issued its administrative order in this matter. The administrative order affirmed:

- 1) the prior cease-and-desist order
- 2) the fine structure and
- 3) ordered FFIB to undergo a process of dissolution and liquidation by securing the deposits of its customers.

To accomplish these requirements, the OCIF appointed a permanent trustee with the authority to control FFIB's assets, hire professionals as needed, issue reports, and otherwise effectuate the liquidation process.

III. Direct Appeal of the OCIF Administrative Liquidation Order

FFIB then sought review of OCIF's administrative trustee-appointment order with the Puerto Rico Commonwealth Court of Appeals. On May 10, 2023, FFIB filed its challenge, again raising the ultra vires / commerce argument and challenging the OCIF's power to regulate commerce.

On June 23, 2023, the Court of Appeals approved the appointment order, concluding that its review would be

limited to determining whether the agency acted arbitrarily or unlawfully, or in such an unreasonable manner that its actions constitute an abuse of discretion.

[Appx.A, p.9.]

The Court of Appeals denied reconsideration of its affirmance (which challenged the affirmance on the ultra vires – interstate commerce issue) on September 1, 2023.

IV. Efforts to Seek Review with the Puerto Rico Supreme Court

FFIB then sought review of the appointment order with the Puerto Rico Supreme Court.

On September 11, 2023, FFIB filed its Petition for Certiorari with that court, with the same challenge.

On November 3, 2023, the Puerto Rico Supreme Court initially denied the petition as premature (because the mandate from the Court of Appeals had not issued -- extended due to an OCIF motion for partial reconsideration -- before the Petition was filed).

Ultimately, the Puerto Rico Supreme Court denied the petition on February 16, 2024, and further denied reconsideration of that denial on April 10, 2024.

V. Timing for This Petition

On July 1, 2024, FFIB filed a timely Application to Extend Time to File a Petition for Certiorari with this Court. On July 8, 2024, Justice Jackson Brown granted that request, extending the certiorari deadline until September 2, 2024. This is that Petition for Certiorari.

FEDERAL QUESTIONS RAISED AND DECIDED BELOW

On May 10, 2023, FFIB filed its challenge to the OCIF's authority raising the ultra vires / commerce argument and challenging the OCIF's power to regulate commerce.

On June 23, 2023, the Court of Appeals approved the appointment order, concluding that

Thus, judicial review will be limited to determining whether the agency acted

arbitrarily or unlawfully, or in such an unreasonable manner that its actions constitute an abuse of discretion.

[Appx.A, p.9.]

The Puerto Rico Commonwealth Court of Appeals denied reconsideration of its affirmance (which challenged the affirmance on the ultra vires – interstate commerce issue) on August 1, 2023, writing that “[t]he grounds set forth above do not provide new elements that would lead us to vary our opinion issued on June 26, 2023.”

REASONS FOR GRANTING THE WRIT

“The Puerto Rico Office of the Commissioner for Financial Institutions (“OCIF”) is the public office whose primary responsibility is to supervise and regulate Puerto Rico’s financial sector to ensure its safety and soundness, as well as to oversee a strict adherence to all applicable laws and regulations.” *de Pueyo v. RG Premier Bank of Puerto Rico*, 2013 WL 6097549, at *4 (D.P.R. Nov. 20, 2013); *see also Bautista Cayman Asset Co. v. Centro Cardiovascular de Manati III, C.S.P.*, 2023 WL 11052520, at *3 (D.P.R. Apr. 12, 2024) (OCIF is “the government agency charged with licensing mortgage servicers in Puerto Rico.”).

This Petition presents both legal and procedural issues involving allegations that Respondent OCIF is violating the Foreign Dormant Commerce Clause and the Equal Protection Clause through selective enforcement of Puerto Rico statutes and regulations. *See, e.g., Nat’l Pork Producers Council v. Ross*, 598 U.S. 356 (2023); *New*

York v. Grand River Enter. Six Nations, Ltd., 2020 WL 13252320 (W.D.N.Y. Mar. 10, 2020).

This Petition also questions whether the Puerto Rico courts, in particular the Puerto Rico Commonwealth Court of Appeals, afforded too much deference to the OCIF's administrative decision in violation of this Court's recent pronouncements in *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244, 2247 (2024).

I. The Office Of The Commissioner Of Financial Institutions ("OCIF")'s regulation of Petitioner First Finance International Bank ("FFIB") violated the Foreign Dormant Commerce Clause and the Equal Protection Clause through selective enforcement of Puerto Rico statutes and regulations.

When challenging the OCIF's order to show cause, FFIB argued that the OCIF was acting ultra vires in the following manner:

the OCIF is exercising its delegated powers in a vague, ambiguous and arbitrary manner, especially with respect to the meaning of the concept of insolvency under Law No. 273, and is engaging in the reprehensible practice of legislating on an ad hoc, or case-by-case basis. Such a course of action departs from the aforementioned precepts, and deprives First Finance of its due process of law.

[Appx.D, p#.]

To prove an equal protection violation under the Fifth Amendment, a plaintiff must prove that similarly situated people have been treated differently by a governmental entity without adequate justification. *See, e.g., Washington v. Davis*, 426 U.S. 229, 96 S.Ct. 2040, 48 L.Ed.2d 597 (1976). Because FFIB is not part of a suspect or protected classification, all other classifications are reviewed under the “rational basis test” and will be upheld unless they bear no rational relationship to any conceivable governmental interest. *See, e.g., Romer v. Evans*, 517 U.S. 620, 631, 116 S.Ct. 1620, 1627, 134 L.Ed.2d 855 (1996) (citing *Heller v. Doe*, 509 U.S. 312, 319–20, 113 S.Ct. 2637, 125 L.Ed.2d 257 (1993)); *see also Gary v. City of Warner Robins*, 311 F.3d 1334, 1337 (11th Cir.2002); *Price v. Tanner*, 855 F.2d 820, 828–30 (11th Cir.1988).

Because FFIB contends that the OCIF is treating FFIB like a deposit bank rather than a financial-services company akin to Western Union, the OCIF is failing to treat FFIB like the unique entity it is. By applying regulations to an international business that does not meet the required definitions, FFIB is being denied equal protection of the law.

The fact that OCIF is trying to regulate FFIB, an international business, like the OCIF would regulate domestic banks in Puerto Rico, also violates the Foreign Dormant Commerce Clause. “Absent a compelling justification ...” a State or Territory may not advance its legitimate goals by means that facially discriminate against foreign commerce. *See Kraft General Foods, Inc. v. Iowa Dept. of Revenue and Finance*, 505 U.S. 71, 81, 112 S.Ct. 2365, 2371, 120 L.Ed.2d 59 (1992).

The Court found that the Act, “in effectively placing an embargo on foreign products, amounts to a usurpation by this state of the power of the federal government to conduct foreign trade policy.” *See id.* at 225, 80 Cal.Rptr. 800. According to the Court,

Only the federal government can fix the rules of fair competition when such competition is on an international basis. Foreign trade is properly a subject of national concern, not state regulation. State regulation can only impede, not foster, national trade policies. The problems of trade expansion or non-expansion are national in scope, and properly should be national in scope in their resolution.

Bethlehem Steel Corp. v. Board of Comm’rs of the Dept. of Water and Power of the City of Los Angeles, 276 Cal. App.2d 221, 80 Cal.Rptr. 800 (1969), cited in *Antilles Cement Corp. v. Calderon*, 288 F. Supp. 2d 187, 198 (D.P.R. 2003).

Before determining whether the instant laws violate the commerce clause, the Court must first evaluate the legitimate interests cited by the Puerto Rican government to support the laws and decide whether they are sufficiently compelling to withstand intense Constitutional scrutiny. *Antilles Cement*, 288 F. Supp. 2d at 199.

Puerto Rico is the United States. The Court’s opinion is based on the Commerce Clause of the United States Constitution, which applies equally to all states, including Puerto Rico. Therefore, the Court’s opinion would be the

same if the facts in this case involved any other state or territory. Simply put, a state or territory of the United States is not permitted to make restrictions on foreign commerce unless the restrictions are approved by Congress.

Id.

By using domestic Puerto Rico territorial laws to govern an international bank that does not operate like a domestic Puerto Rico deposit bank, the OCIF has acted in excess of its statutory authority and is attempting to regulate international trade and commerce. Because the federal government must be able to “speak with one voice” and because Congress has not authorized the OCIF’s regulation of international banks, the OCIF’s March 27, 2023 administrative order appointing a permanent trustee to govern FFIB and to effectuate the dissolution of FFIB violates both FFIB’s rights to equal protection of the law and to be free from governmental action that violates the United States’ Constitutions limitations of state and territorial authority to regulate commerce, particularly international commerce.

II. FFIB respectfully requests this Court to remand this matter to the Puerto Rico courts to reevaluate their affirmance of the OCIF administrative ruling in light of this Court’s recent pronouncement in *Loper Bright*.

Alternatively, if this Court does not grant review of the OCIF’s administrative order appointing a permanent trustee to determine whether OCIF’s actions violated the Foreign Dormant Commerce Clause or the Equal

Protection Clause, FFIB respectfully requests that this Court remand this matter to the Puerto Rico Commonwealth Court of Appeals for further consideration of its decision in light of this Court's recent pronouncements in *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244, 2247 (2024).

The Puerto Rico Commonwealth Court of Appeals denied FFIB's challenge to OCIF's administrative order appointing a trustee and requiring the liquidation of the bank's assets, holding that its review was limited

to determining whether the agency acted arbitrarily or unlawfully, or in such an unreasonable manner that its actions constitute an abuse of discretion.

[Appx.A, p.9.]

Whether the Puerto Rico Court of Appeals reviewed the OCIF's decision under the Administrative Procedures Act or under Puerto Rican law, the principle of deference to agencies' determination – including an agency's factual determinations – stem from application of this Court's principles set forth in *Chevron U.S.A. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 844, 104 S.Ct. 2778, 81 L.Ed.2d 694, (1984). See, e.g., *Carrero v. Depto. de Educacion*, 141 D.P.R. 830, 839, 1996 JTS 141 (Oct. 30, 1996) (citing and following *Chevron*); *C.E.S. v. Gobernador I*, 134 D.P.R. 350, 359, 1993 JTS 129 (Sept. 24, 1993) (same); *Universidad Interamericana De Puerto Rico v. Gautier Colon*, No. JAC2010-02943, 2011 WL 8478022, at *3 (P.R. Cir. Nov. 29, 2011) (same).

Indeed, federal courts reviewing OCIF decisions defer to the agency's experience and prior determinations, all under the rubric provided by *Chevron*. See, e.g., *Bautista Cayman Asset Co. v. Centro Cardiovascular de Manati III*, C.S.P., No. CV 16-3129 (FAB), 2023 WL 11052520, at *6 (D.P.R. Apr. 12, 2024) (“this Court defers to OCIF’s expertise as the agency charged with implementing Act No. 247’s and finds Bautista is not subject to Act No. 247’s licensing requirements in this case ...”) (citing *Chevron*).

However, now that this Court has issued its opinion in *Loper Bright*, the deference afforded by courts must be reviewed under new principles, most importantly the judiciary’s duty to reach judicial determinations on its own.

By tying a judge’s hands, *Chevron* prevents the Judiciary from serving as a constitutional check on the Executive. It allows “the Executive ... to dictate the outcome of cases through erroneous interpretations.” ... Because the judicial power requires judges to exercise their independent judgment, the deference that *Chevron* requires contravenes Article III’s mandate.

Loper Bright, 144 S. Ct. at 2274 (opinion of THOMAS, J.) (quoting *Baldwin v. United States*, 589 U.S. ___, ___, 140 S. Ct. 690, 692, 206 L. Ed. 2d 231 (2020) (opinion of THOMAS, J.)) (other internal citations omitted).

The Puerto Rico Commonwealth Court of Appeals did not give any consideration to FFIB’s ultra vires arguments, instead providing OCIF the deference to determine its own power and scope of authority. Given

that this Court has clarified that courts abdicate their duty to resolve judicial controversies by providing such deference to agencies, FFIB's arguments were ignored by the Court of Appeals.

Given that the Puerto Rico Commonwealth Court of Appeals made its decision in part on deference to administrative decision, FFIB respectfully requests that this Court remand this matter to that court for a new evaluation of its decision in light of the principles found in *Loper Bright*, which was issued nearly a year after the Court of Appeals' June 6, 2023 decision.

**OTHER FEDERAL CONSTITUTIONAL
RIGHTS IMPLICATED**

none

CONCLUSION

WHEREFORE, Petitioner FFIB respectfully requests that this Court issue an order to the Puerto Rico Supreme Court to evaluate whether Respondent OCIF exceeded its regulatory authority to regulate financial institutions operating in Puerto Rico

ALTERNATIVELY, Petition FFIB respectfully requests that this Court remand this matter to the Puerto Rico courts for further consideration of their affirmance of the OCIF's administrative order appointing a trustee and ordering the liquidation of FFIB in light of this Court's recent decision in *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244, 2247 (2024).

Respectfully Submitted this 3rd day of September, 2024.

KEVIN R. MYER
Counsel of Record
KRMLEGAL LLC
1501 South Power Road, Suite 114
PMB# 1047
Mesa, AZ 85206
(602) 456-2243
kevin@krm-legal.com

Counsel for Petitioner

APPENDIX

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1a

**APPENDIX A — ORDER DENYING REVIEW
OF THE SUPREME COURT OF PUERTO RICO,
FILED FEBRUARY 16, 2024**

IN THE SUPREME COURT OF PUERTO RICO

CC-2024-0022

FIRST FINANCE INTERNATIONAL BANK, INC.,

Petitioner,

v.

OFFICE OF THE COMMISSIONER OF
FINANCIAL INSTITUTIONS,

Respondent.

Chambers composed of Chief Judge Oronoz Rodriguez,
Associate Judge Mrs. Pabon Charneco, Associate Judge Mr.
Rivera Garcia, and Associate Judge Mr. Estrella Martinez.

RESOLUTION

In San Juan, Puerto Rico, on February 16, 2024.

Having considered the petition for certiorari filed by
the petitioner, it is hereby Denied.

So decided by the Court and certified by the Supreme
Court Clerk.

2a

Appendix A

/s/ Javier O. Sepulveda Rodriguez

Javier O. Sepulveda Rodriguez

Supreme Court Clerk

[COMMONWEALTH OF PUERTO RICO, GENERAL
COURT OF JUSTICE, SUPREME COURT]

3a

**APPENDIX B — ORDER DENYING REVIEW
OF THE SUPREME COURT OF PUERTO RICO,
FILED NOVEMBER 3, 2023**

IN THE SUPREME COURT OF PUERTO RICO
CHAMBER II

CC-2023-604

Certiorari

FIRST FINANCE INTERNATIONAL BANK, INC.,

Petitioner,

v.

OFFICE OF THE COMMISSIONER OF
FINANCIAL INSTITUTIONS,

Respondent.

Chamber composed of Associate Justice Mr. Martinez
Torres as its President, Associate Justices Mr. Kolthoff
Caraballo, Mr. Feliberti Cintrón, and Mr. Colón Pérez.

RESOLUTION

In San Juan, Puerto Rico, on November 3 , 2023.

The petition for certiorari is denied for lack of
jurisdiction (premature).

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So decided by the Court and certified by the Supreme Court Clerk.

/s/ Javier O. Sepulveda Rodriguez
Javier O. Sepulveda Rodriguez
Supreme Court Clerk

[COMMONWEALTH OF PUERTO RICO, GENERAL
COURT OF JUSTICE, SUPREME COURT]

5a

**APPENDIX C — JUDGMENT OF THE COURT
OF APPEALS OF THE COMMONWEALTH OF
PUERTO RICO, PANEL IX, FILED JUNE 26, 2023**

COMMONWEALTH OF PUERTO RICO
COURT OF APPEALS
PANEL IX

KLRA202300209

FIRST FINANCE INTERNATIONAL BANK, INC.,

Appellant,

v.

OFFICE OF THE COMMISSIONER OF
FINANCIAL INSTITUTIONS,

Appellee.

ADMINISTRATIVE REVIEW from the Office of
the Commissioner of Financial Institutions

Case No.:
C-22-D00S

Regarding:
Violations of Law
273-2012

Panel composed of its president, Judge Rivera Colon,
Judge Ronda Del Toro, and Judge Diaz Rivera.

Ronda Del Toro, Presiding Judge

*Appendix C***JUDGEMENT**

In San Juan, Puerto Rico, on June 26, 2023.

First Finance International Bank, Inc., hereinafter referred to as First Finance, FFIB, or the appellant, filed an Administrative Review Petition for us to review the Final Resolution and Order issued by the Office of the Commissioner of Financial Institutions [OCIF] on March 27, 2023, notified on that same day. Through said determination, OCIF ordered the cessation of First Finance's business as an international financial entity, imposed various fines, and appointed a trustee.

For the reasons set forth below, we modify the contested *Resolution and Order*.

I.

On October 27, 2022, the Office of the Commissioner of Financial Institutions ("OCIF") filed a Complaint and Order to Cease and Desist and Provisional Order for the Appointment of Trustee against First Finance International Bank as an emergency action to avert the danger to the safety of the international financial entities industry. Through this action, OCIF issued an ORDER for First Finance to cease and desist from conduction business as an international financial entity due to:

1. Failure to comply with the requirements established in the license renewal process, omitting to present conclusive evidence that

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it maintains the capital required by the commissioner.

2. Failure to comply with the minimum capital required by Article 2(g) of Law No. 273-2012;
3. Failure to comply with the terms and conditions established in the issued *Consent Order*; and
4. Failure to disclose relevant information about the Audited Financial Statements of 2021 to OCIF for a period of two (2) months.

Furthermore, OCIF required the payment of several fines amounting to \$775,000.00, as well as for First Finance to undergo a process of dissolution and liquidation ensuring the deposits of its clients and the delivery to the Secretary of the Department of Treasury of the money corresponding to a Certificate of Deposit in the amount of \$300,000.00. Likewise, it issued a provisional order for the appointment of a trustee.¹

On November 4, 2022, First Finance filed the *Amended Repsonse to the Complaint and Order to Cease and Desist and Provisional Order for Appointment of Trustee*.

1. Complaint and Order to Cease and Desist and Provisional Order for Appointment of Trustee, Appendix 1 of First Finance.

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The administrative hearings before the Examining Officer were held on November 7 and 9, 2022. Testifying for OCIF were Karem Rosario Melendez, Assistant Commissioner of OCIF, and Wigberto Lugo Mender, Trustee appointed by OCIF. As witnesses for First Finance, Silvino Cepeda Ortiz, Senior Accountant of First Finance, María de los Ángeles Franco Casellas, Office Manager, and Ismael Torres, President of First Finance, testified.

On December 16, 2022, First Finance submitted a *Post-Hearing Memorandum*, and OCIF did the same with a *Legal Memorandum*.

On January 12, 2023, First Finance filed a reply to OCIF's Legal Memorandum. Among other issues, it explained that the \$775,000 fine imposed by OCIF was *ultra vires* and not authorized by any law or regulation. On February 28, 2023, OCIF submitted a *Memorandum in compliance with the order*.

After evaluating the matter, on March 27, 2023, the Commissioner of Financial Institutions issued a Final Resolution and Order confirming the previous Order. In this, she made 94 findings of fact and decreed to adopt the Examiner's Report. Among the key facts, she stated the following:

77. As of December 31, 2021, FFIB's Audited Financial Statements reflect accumulated losses from operations amounting to \$4,545,333.00 and a net capital of \$872,809.00.86. FFIB's net

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capital as of December 31, 2020, was below the amount of \$1,750,000.00, and therefore, as a result of this capital position, FFIB is insolvent.

78. First Finance's Audited Financial Statements for the year 2021 were completed by external auditors on June 30, 2022. OCIF received both physical and digital copies of said statements on August 23, 2022.

79. The financial statements should have been delivered immediately to the Board of Directors of First Finance and to OCIF after their issuance. However, that was not the case as they were received approximately 45 days after being signed by Valdes, Garcia, Martinez & Marin.

80. On March 10, 2022, First Finance sent a letter to OCIF requesting a ninety (90) day extension to submit the audited financial statements for the year 2021. First Finance is obligated to submit its audited financial statements within a period of ninety (90) days after the close of operations each year.

After setting forth the applicable law, OCIF issued the following Conclusion and Order:

Based on the aforementioned grounds, the powers and faculties conferred to the Commissioner by Law No. 4, Law No. 273-

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2012, Section 3.9 of Law No. 38-2017, and the regulations issued, as well as the evaluation of all the evidence in the record which demonstrates that the financial and operational situation of FFIB is uncertain, precarious, and of such a nature that it is causing or could cause irreparable harm to its interests, or to the persons and entities with funds or values in the institution, the ORDER issued for FFIB is CONFIRMED:

(A) cease and desist from conducting business as an international financial entity

(B) immediately pay a fine of FIVE THOUSAND DOLLARS (\$5,000.00) for failing to meet the solvency level and/or minimum capital required by Article 2(g) of Law No. 273-2012;

(C) pay a fine of FIFTY THOUSAND DOLLARS (\$50,000.00), the maximum established in the Consent Order, for non-compliance with the same from March 2, 2022, to the present.

(D) pay a fine of FIVE THOUSAND DOLLARS (\$5,000.00) for each day from April 1, 2022, until the final delivery of the aforementioned audited financial statements on August 23, 2022. Said fine amounts to SEVEN HUNDRED TWENTY THOUSAND DOLLARS (\$720,000.00).

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(E) undergo a process of dissolution and liquidation ensuring the deposits of its clients; and

(F) deliver to OCIF by certified check made payable to the Secretary of the Department of Treasury the money corresponding to the Certificate of Deposit, as aforementioned, in the total amount of \$300,000.00.

The total fine amounts to SEVEN HUNDRED SEVENTY-FIVE THOUSAND DOLLARS (\$775,000.00) and must be payable by certified check made payable to the Secretary of the Department of Treasury within the next ten (10) days from the date of being notified with a copy of the ORDER. In accordance with Section 3.20 of Law No. 38-2017, said fine will include interest on the amount imposed therein from the date when payment was ordered until it is satisfied, at the rate of 8.00% per annum, which is the rate set by the Financial Board for civil judgments by regulation, as certified by the Commissioner of Financial Institutions of Puerto Rico and in effect at the time of the decision.

(G) [...]

OCIF also decreed the permanent appointment of a trustee. To that end, it ordered the following:

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In view of the insolvency scenario facing FFIB, which creates a risk of irreparable harm to the public interest as described above, and to the operational safety and financial adequacy of FFIB, and in accordance with the broad powers and faculties conferred to the Commissioner by Law No. 4, Law No. 273-2012, Section 3.9 of Law No. 38-2017, and the regulations issued to enforce said statutes, THE PERMANENT APPOINTMENT OF THE TRUSTEE, Wigberto Lugo Mender, IS ORDERED.

Regarding this matter, it was warned that the determination of OCIF to appoint a trustee may be reviewed by filing an appeal with the Court of Appeals within a period of ten (10) days from the date of notification of said determination.

As instructed, on April 5, 2023, First Finance filed an administrative review appeal before this Court of Appeals, which was assigned case number KLRA202300158. It contested the decision of March 27, 2023, regarding the permanent appointment of the trustee due to insolvency. It requested that this determination be set aside, as it believed that OCIF acted ultra vires by issuing an order appointing the trustee when the bank was not in a state of insolvency, as defined in Law 243-2012, Article 2(g). It added that in October 2022, it was not insolvent.²

2. We take notice of case KLRA202300158. See also *Opposition to Administrative Review Appeal*, page 11 . First Finance did not include the reconsideration request in its appendix.

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Upon examining the aforementioned appeal, the panel noticed that the appeal did not comply with Rule 59 of the Court of Appeals Regulations³. After giving the appellant time to perfect the appeal, which they failed to do so, on May 8, 2023, this forum dismissed the action for failure to comply with Rule 59 (d) and (f)⁴ of the Court of Appeals Regulations.

Meanwhile, on April 12, 2023, First Finance requested reconsideration from OCIF regarding the agency's decision on March 27, 2023. The request was not addressed⁵. Therefore, on May 10, 2023, it initiated the present appeal. In this, it alleged the commission of the following errors:

First: OCIF erred by acting ultra vires in appointing the trustee and issuing the order when FFIBI was solvent.

Second: OCIF erred in determining that FFIBI had surrendered its license.

The respondent OCIF presented its position regarding the appeal. With the benefit of both submissions, we make our decision.

3. Rule 59 of the Court of Appeals, 4 LPRA Ap. XXII-B, R. 59.

4. Supra.

5. Opposition to Administrative Review Appeal, page 11, paragraph 69; See Motion in Compliance with Order filed by First Finance on June 20, 2023.

*Appendix C***II.****A.**

Jurisdiction “is the power or authority that a court has to consider and decide the cases and controversies before it.” *Metro Senior v. AFV*, 2022 TSPR 47; 209 DPR (2022); *Beltran Cintron et al. v. ELA et al.*, 204 DPR 89, 101 (2020). As such, the first factor to consider in any legal situation presented to an adjudicative forum is precisely the jurisdictional aspect. *Torres Alvarado v. Madera Atilas*, 202 DPR 495 (2019); *Ruiz Camilo v. Trafan Group, Inc.*, 200 DPR 254 (2018); *Horizon v. Jta. Revisora, RA Holdings*, 191 DPR 228, 233-234 (2014). When the jurisdiction of a court is questioned by any of the parties or even when it has not been raised by them, the court will examine and evaluate the jurisdictional issue rigorously as part of its ministerial duty because it directly affects the power to adjudicate a dispute. *Torres Alvarado v. Madera Atilas*, *supra*; *Ruiz Camilo v. Trafan Group, Inc.*, *supra*; *Yumac Home v. Empresas Masso*, 194 DPR 96, 103 (2015); *Souffront v. A.A.A.*, 164 DPR 663, 674 (2005). If the court lacks jurisdiction, it must dismiss the claim without delving into its merits. *Metro Senior v. AFV*, *supra*; *Beltran Cintron et al. v. ELA et al.*, *supra*, pag. 102; *Torres Alvarado v. Madera Atilas*, *supra*, pag. 501.

B.

The doctrine of *res judicata* requires the most perfect identity between the case resolved by judgment and the case in which it is invoked, including the things, causes,

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the litigants, and the capacity in which they were involved. *Fonseca et al. v. Hosp. HIMA*, 184 DPR 281, 294 (2012); *Mendez v. Fundación*, 165 DPR 253, 267 (2005); *Pagan Hernandez v. UPR*, 107 DPR 720, 732 (1978). In the context of administrative law, the doctrine of res judicata could apply in three ways: (1) within the same agency; (2) inter-agency, meaning from one agency to another; and (3) between agencies and courts. *Mun. of San Juan v. Bosque Real, S.E. DPR 743, 770 (2003)*; ***Pagan Hernandez v. UPR*, *supra*, pag. 733**. When an administrative agency acts in a judicial capacity and resolves factual disputes before it, which the parties have been able to litigate in a timely and adequate manner, the courts have not hesitated to apply the doctrine of res judicata to impose finality in the controversy. *Pagan Hernandez v. UPR*, *supra*, pag. 734. Thus, the doctrine of res judicata prevents the same parties from relitigating in a subsequent lawsuit the same causes of action and matters, the controversies already litigated and adjudicated, and those that could have been litigated. *Fonseca et al. v. Hosp. HIMA*, *supra*, pag. 294; *Mun. of San Juan v. Bosque Real, S.E.*, *supra*, pag. 769; *Acevedo Santiago v. Western Digital*, 140 DPR 452, 464 (1996). This is so due to considerations of public order and necessity. *Fonseca et al. v. Hosp. HIMA*, *supra*, pag. 294. At the same time, it safeguards the government's interest in finalizing lawsuits and giving due dignity to court judgments. *Fonseca et al. v. Hosp. HIMA*, *supra*, pag. 294.

In this way, the principle of res judicata, when applicable, is conclusive even regarding issues that could have been raised but were not. *S.L.G. Font Bardon v.*

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MiniWarehouse, 179 DPR 322, 333 (2010). Therefore, when a determination becomes final and conclusive, it will have the effect of *res judicata* and will close the doors to the aggrieved party to bring subsequent lawsuits for the same facts or causes of action. *Sanchez Rodriguez v. Adm. Of Correction*, 177 DPR 714, 721 (2009). However, its application does not proceed in a rigid and automatic manner if doing so would defeat the ends of justice or considerations of public order. *Fonseca et al. v. Hosp. HIMA*, *supra*.

C.

The primary objective of judicial review focuses on ensuring that administrative agencies act within the powers granted by law. *Hernandez Feliciano v. Municipality of Quebradillas*, 211 DPR __, 2023 TSPR 6, res. January 25, 2023; *OEG v. Martínez Giraud*, 2022 TSPR 93, 210 DPR (2022); *Perez Lopez v. Dept of Correction*, 208 DPR 656 (2022). It is a reiterated norm that courts are called upon to grant broad deference to determinations of administrative agencies. *Moreno Lorenzo y otros v. Depto. Fam.*, 207 DPR 833 (2021); *Graciani Rodriguez v. Garage Isla Verde, LLC*, 202 DPR 117, 126 (2019).

Of course, deference yields when administrative determinations are not based on substantial evidence, when the agency erred in applying the law, or when the agency's actions have been arbitrary, unreasonable, or contrary to law. *Moreno Lorenzo et al v. Fam. Dept.*, *supra*; *The Sembler Co. v. Mun. of Carolina*, 185 DPR

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800, 822 (2012); *Otero v. Toyota*, 163 DPR 716, 729 (2005). Also when their actions constitute an abuse of discretion. *Calderon Otero v. CFSE*, 181 DPR 386 (2011). Similarly, if the administrative action violated fundamental constitutional rights. *Torres Rivera v. Puerto Rico*, 196 DPR 606, 627-628 (2016).

The guiding principle in judicial review of administrative determinations will be the criterion of reasonableness in the action of the agency under review. *Hernandez Feliciano v. Municipio de Quebradillas*, *supra*; *Torres Rivera v. Polida de PR*, *supra*, pag. 626. Thus, judicial review will be limited to determining whether the agency acted arbitrarily or unlawfully, or in such an unreasonable manner that its actions constitute an abuse of discretion.

For this task of judicial review, Section 4.5 of the Uniform Administrative Procedure Act, 3 LPRA sec. 9675, provides that the courts will adhere to evaluating these three (3) aspects: (1) whether the remedy granted was appropriate; (2) whether the factual determinations are supported by substantial evidence in the administrative record viewed as a whole, and (3) whether the agency's legal conclusions are supported. *Hernandez Feliciano v. Municipality of Quebradillas*, *supra*; *Moreno Lorenzo y otros v. Fam. Dept.*, *supra*, pags. 839-840; *Capo Cruz v. Planning Board et al*, 204 DPR 581, 591 (2020); *Torres Rivera v. Police of PR*, *supra*, pags. 626-627.

While the aforementioned deference does not automatically extend to the legal conclusions made by the

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agency, as these are subject to full judicial review. See Sec. 4.5 of the APAU., *supra*; *Hernandez Feliciano v. Municipality of Ouebradillas*, *supra*; *ECP Incorporated v. OCS*, 205 DPR 268, 281-282 (2020). This means that the court can review them without being bound by any rule or criteria. *Hernandez Feliciano v. Municipio de Ouebradillas*, *supra*; *Batista, Nobbe v. Board of Directors*, *supra*, pag. 217. Of course, judicial review is not equivalent to an automatic substitution of the criteria and interpretation of the administrative entity. *Hernandez Feliciano v. Municipality of Ouebradillas*, *supra*; *Capo Cruz v. Planning Board et al.*, *supra*, pag. 591. On the contrary, “reviewing courts will discard the criteria of administrative bodies when ‘no rational basis can be found to explain or justify the administrative decision’”. *Hernandez Feliciano v. Municipality of Ouebradillas*, *supra*; *Rolon Martínez v. Supte. Polida*, 201 DPR 26, 36 (2018).

In the exercise of our reviewing function, appellate courts must differentiate between matters of statutory interpretation, where courts are specialists, and matters within the realm of administrative discretion or expertise. *Hernandez Feliciano v. Municipality of Quebradillas*, *supra*; *OCS v. Point Guard Ins.*, 205 DPR 1005, 1028 (2020).

D.

Through Law No. 4 of October 11, 1985, as amended, (Law 4-1985), the Office of the Commissioner of Financial Institutions was created, with the primary responsibility

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of oversight and supervision of financial institutions operating or doing business in Puerto Rico. Article 3, 7 LPRA sec. 2003.

According to Article 10 of Law 4-1985, the Legislature delegated to the Commissioner of said agency the power and authority to, among other matters,

Address, investigate, and resolve the complaints filed with the Board or the Office of the Commissioner.

Initiate any remedies, actions, or legal proceedings necessary or convenient to enforce the purposes of this law or any other law or regulation within its jurisdiction, whether represented by its attorneys or by the Secretary of Justice, upon prior request for such purposes.

Initiate any remedies, actions, or legal proceedings necessary or convenient to enforce the purposes of this law or any other law or regulation within its jurisdiction, whether represented by its attorneys or by the Secretary of Justice, upon prior request for such purposes.

When any of the laws and regulations it administers do not provide otherwise, issue, upon prior notice and hearing, cease and desist orders, and prescribe the terms and conditions it determines to be in the public interest. Article 10 (a), clauses 3, 4, and 9, 7 LPRA sec. 2010.

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Regarding the appointment of a trustee, Article 10 (b) of Law 4-1985, 7 LPRA sec. 2010, indicates that,

If as a result of an audit, examination, or inspection or a report submitted by an examiner, it is demonstrated that the financial institution lacks a sound economic and financial situation or that it is operated or managed in such a way that the public or individuals and entities with funds or securities under its custody are in danger of being defrauded, and in the absence of a specific provision in the law regulating the financial institution in question that similarly empowers it, the Commissioner may assume the direction and administration of the financial institution and promptly appoint a trustee, who in the case of insured financial institutions may be its insurer. The Commissioner must hold a hearing before issuing an order to place a financial institution under its direction or that of a trustee.

[...]

The determination of the Commissioner to assume the administration and direction of a financial institution or to appoint a trustee may be reviewed by the Circuit Court of Appeals, through a petition filed within ten days from the date of the determination. (Emphasis added).

On the other hand, the aforementioned Article 20 of Law 4-1985, 7 LPRA sec. 2020, provides as follows:

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Penalties.

(a) Any financial institution or person who violates the provisions of this law or regulations promulgated thereunder shall be subject to an administrative fine to be determined by the Commissioner, **which in no case shall exceed five thousand dollars (\$5,000)**. Any financial institution or person who violates the provisions of other laws and regulations under the administration and jurisdiction of the Commissioner shall be subject to the penalty provided for such violation in the applicable law or regulation.

[...]

(c) The Commissioner may impose an administrative fine not exceeding five thousand dollars (\$5,000) **for each day that a financial institution fails to comply with the orders issued under the provisions of this law; Provided, that in no case shall the accumulation of fines exceed fifty thousand dollars (\$50,000)**. The Commissioner may initiate a civil action to collect such administrative fine in the Court of First Instance of Puerto Rico, San Juan Division, which shall have exclusive jurisdiction to hear such proceeding.

On the other hand, Law Number 273 of September 25, 2012, known as the *International Financial Center*

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Regulatory Act (Law 273-2012), was created to regulate the organization and operation of international financial entities in Puerto Rico authorized by the Office of the Commissioner of Financial Institutions.

The Law 273-2012 grants the Commissioner the authority to review and conduct investigations regarding all applications for licenses to operate international financial entities; approve, grant conditional approval, or deny applications for permits and licenses to operate international financial entities; any person whose application has been denied or conditionally approved may request a hearing in accordance with the regulations provided in Article 20 of this Law. It may also revoke or suspend a license to operate an international financial entity or impose other sanctions that it may deem necessary and appropriate under the Commissioner's Regulations. Article 3 a, clauses (4), (5), (9), 7 LPRA sec. 3082.

Article 15 of Law 273-2012, 7 LPRA sec. 3094, establishes reporting requirements. It provides that,

Every international financial entity shall submit to the Commissioner all reports required by the Commissioner's regulations, including an annual financial statement prepared by certified public accountants licensed to practice in Puerto Rico, as well as interim financial statements.

On the other hand, Article 16 of Law 273-2012, 7 LPRA sec. 3095, provides that the license issued under this Law

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may be revoked or suspended by the Commissioner, upon notification and a hearing in accordance with the regulations provided in Article 20 of this Law, if the conditions mentioned in the article are met.

In such cases, the Commissioner may, among other alternatives, appoint a receiver and order the dissolution of an international financial entity if the license of such international financial entity or the person of which such international financial entity is a unit is revoked or surrendered, pursuant to Article 16 of this Law. Article 17 of Law 273-2012, 7 LPRA sec. 3096.

Regarding penalties, Article 18 of Law 273-2012, 7 LPRA sec. 3097 grants the Commissioner the authority to impose administrative fines for violations of this Law or the Commissioner's regulations.

Finally, the OCIF applied in this case Regulation No. 5653 adopted by the agency under Law No. 52-1989, for the purpose of implementing the "Regulatory Law of the International Banking Center," as amended.

Article 11 of Regulation 5653 provides that every International Banking Entity ("IBE") must submit to the Commissioner:

- a. [...]
- b. Its annual audited financial statements at the close of its fiscal year or those of the entity of which it is a unit, if applicable, prepared consistently with the quarterly condition

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reports. [...] The financial statements must be received by the Commissioner within ninety (90) days of the close of the IBE's fiscal year and must comply with Generally Accepted Accounting Principles ("GAAP") or, with the Commissioner's approval, with equivalent requirements of other jurisdictions with the necessary adjustments, notes, and explanations to conform with Generally Accepted Accounting Principles in the United States of America.

On the other hand, Article 13 on Remedies and Penalties expresses the following:

2. Penalties

Any violation of the Law or this Regulation shall be penalized with the penalties established by the Law, and if the Law does not provide a penalty for any violation, the Commissioner may impose an administrative fine that it deems appropriate, not less than five hundred dollars (US \$500) **nor more than five thousand dollars (US \$5,000) for each separate violation.** (Emphasis supplied).

Having presented the legal framework that frames the disputes, we proceed.

*Appendix C***III.**

In the first error raised, First Finance alleges that OCIF erred in appointing the trustee despite its solvency. They argued that this point was raised in case KLRA202300158 but was dismissed. However, they indicate that since their central argument is that OCIF acted *ultra vires* and the entire order is void, they repeated it in this action.⁶

The respondent, OCIF, requests the dismissal of this part of the claim based on the doctrine of res judicata. They indicated that First Finance exercised its right to object to the permanent appointment of a trustee in the administrative review case KLRA202300518. They stated that in that action, First Finance outlined the same arguments as in the first allegation of the present case; however, that action was dismissed. They argued that if there is already a decision confirming a permanent receivership over the bank, that same determination affects the revocation of the bank's license. They mentioned that both issues have the same underlying thread, which was proven by OCIF. Therefore, the decision to appoint a trustee, revoke the bank's license, and proceed with the liquidation of First Finance is final and binding, in accordance with the doctrine of res judicata.

We assess. The OCIF is empowered to appoint a receiver when, among other reasons, it is demonstrated that a financial institution lacks a solid economic and

6. Administrative Review Appeal, pages 3 and 4.

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financial situation⁷. In this case, the OCIF issued a permanent order to appoint a receiver in view of the “insolvency scenario faced by FFIB”⁸. Note that the agency decreed that First Finance was insolvent, which is why it appointed the receiver. To challenge this determination before this appellate forum, the appellant had a period of ten days.

Accordingly, First Finance appealed to this review forum through the administrative review process assigned to KLRA202300158. That action was dismissed by judgment on May 8, 2023, because First Finance failed to comply with the provisions of Rule 59 (d) and (f) of the Rules of the Court of Appeals⁹. As a result, the issue related to the receivership due to insolvency was duly addressed and resolved.

Now, through this present action, First Finance reproduced, in the first error assertion, the same arguments related to the receivership and solvency that it had raised in the administrative review request KLRA202300158. As we mentioned, that action was dismissed, so there is nothing left for us to decide, as the doctrine of *res judicata* prevents parties from relitigating in a subsequent lawsuit the same causes of action and issues that have already been litigated and adjudicated, as well as those that could have been litigated. *Fonseca et al. v. HIMA Hosp., supra*, pag. 294.

7. See Article 10(b) of Law 4-1985.

8. Final Resolution and Order.

9. 4 LPRA Ap. XXII-B, R.59(e) y (f)

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So, everything related to the appointment of the trustee and the insolvency of First Finance was settled in a previous lawsuit, which deprives us of jurisdiction to consider this issue again due to the doctrine of *res judicata*.

In the second allegation, First Finance claims that there is no evidence that it has relinquished its license. They also indicated that the fine imposed by OCIF for the late submission of the financial statement for the year 2021 has no legal basis. They explained that the report was promptly delivered to them as soon as the state was available, according to the uncontested testimony of Ms. Mariangie Lozada. They added that the fine only exacerbates the economic situation of First Finance.

Regarding this allegation, OCIF countered, firstly, that nowhere in the Final Resolution and Order does it conclude that First Finance relinquished its license. Regarding the fines, they indicate that the audited financial statements for the year 2021 were issued as of June 30, 2022, or at least were available, yet First Finance chose to delay the submission of the audited financial statement.

We review.

It emerges from the Final Resolution and Order that, “given the non-compliance with the timely submission of the Financial Statement at the close of the year 2021, the OCIF imposed a fine of five thousand dollars (\$5,000.00) for **each day**, from April 1, 2022, in which the institution had not complied with the submission of the audited

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financial statement for the year 2021, which was finally submitted on August 23, 2022. The total amount of the fine amounts to seven hundred twenty thousand dollars (\$720,000.00) and is supported by Article 13 of Regulation No. 5653, cited above.”

We see that the Commissioner imposed a fine of \$5,000 **per day**, from April 1, 2022, until August 23, 2022, the date on which First Finance supplied the audited financial statement for 2021. This fine amounted to \$720,000.00. However, this determination is not supported by the facts outlined here. Let me explain.

Article 11 of Regulation 5653 stipulates that audited financial statements must be submitted within a period of ninety (90) days after the close of operations for each year. That is, by the end of March 2022. On March 10, 2022, First Finance sent a letter to the OCIF requesting a ninety (90) day extension to submit the audited financial statements for the year 2021¹⁰. If the extension had been granted, this deadline would have expired on June 30, 2022. Now, it emerges from finding of fact number 78 that the Audited Financial Statement for the year 2021 was completed by the external auditors on June 30, 2022. The OCIF received physical and digital copies of said statement on August 23, 2022. These facts are not in dispute. Therefore, if the extension had been granted, the deadline for submitting the report would have been June 30, 2022, the date it was completed. However, the report was submitted on August 23, 2022. Therefore, the

10. In the Final Resolution and Order, finding of fact number 80.

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days counted for delays should have elapsed from June 30, 2022, and not from April 1, 2022. Consequently, the computation of days for delays is incorrect.

Regardless of the above, the fine of \$720,000, equivalent to \$5,000 **per day** for the delay of First Finance in providing the audited financial statements for the year 2021, is contrary to what is established by the legislation and Regulation 5653.

The OCIF referred to Article 13 of Regulation Number 5653 to impose a daily fine, from April 1, 2022, until August 23, 2022, for the late submission of First Finance's audited financial report for the year 2021.

However, upon reviewing Article 13 of Regulation Number 5653, we noticed that nowhere does it allow for the imposition of daily fines. This provision states that "the Commissioner may impose an administrative fine that he deems appropriate, not less than five hundred dollars (US \$500) **nor more than five thousand dollars (US \$5,000) for each separate violation.**"

Similarly, Article 20 of Law No. 4-1985 states that "[a]ny financial institution or person who violates the provisions of this law or the regulations promulgated thereunder shall be subject to an administrative fine to be determined by the Commissioner, **in no case exceeding five thousand dollars (\$5,000).**"

From the above, it is clear and precise that fines for violations of the regulations or the law should **not** exceed \$5,000. Therefore, the fine imposed by the OCIF

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of \$720,000, at a rate of \$5,000 per day, is not within the powers delegated to the OCIF under Law No. 4-1985, nor is it within Regulation 5653 administered by the agency.

Consequently, for the violation of not timely supplying the Audited Financial Report of 2021, the fine is reduced to \$5,000, which is the maximum amount allowed per violation under the Regulation.

On the other hand, the only daily fine permitted by Article 20 of Law No. 4-1985 is for non-compliance with orders issued by the agency. These fines also have a cap, in no case exceeding fifty thousand dollars (\$50,000). This reaffirms that the fine of \$720,000 is excessive and contrary to Regulation 5653 and Article 20 of Law No. 4-1985.

We conclude that the determination of the OCIF to impose a fine of \$720,000 exceeded its powers conferred by Law and Regulation to impose sanctions. Therefore, we reduce it to \$50,000.00.

Finally, the petitioner proposed, alternatively, that they be allowed to sell shares or interests to potential new investors or to continue operating as a debtor in possession with the trustee, among other options.

Regarding this request, the OCIF argues that it is an apparent settlement offer that does not include factual elements and rights to the disputes in this case, so it should be stricken from the record.

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We reviewed it and cannot make any decisions on this particular matter since it pertains to internal administrative affairs, which are beyond the scope of our jurisdiction.

IV.

For the reasons expressed above, which are hereby made part of this judgment, we modify the Final Resolution and Order to reduce the fine imposed on First Finance from \$720,000 for failing to submit the audited report for the year 2021 on time to \$50,000.00, and as modified, it is affirmed.

So ordered and decreed by the Court, and certified by the Court Clerk.

Leda. Lilia M. Oquendo Solfs
Appeals Court Clerk

**APPENDIX D — RESOLUTION OF THE
COMMONWEALTH OF PUERTO RICO,
GENERAL COURT OF JUSTICE,
SUPREME COURT, DATED APRIL 5, 2024**

COMMONWEALTH OF PUERTO RICO GENERAL
COURT OF JUSTICE SUPREME COURT

CASE NUMBER:	CC-2024-0022
ORIGINAL:	C-22-D008
APPEALS:	KLRA202300209
CIVIL ACTION	

CIVIL ACTION OR CRIME

FIRST FINANCE INTERNATIONAL BANK, INC.,

Petitioner,

v.

OFFICE OF THE COMMISSIONER
OF FINANCIAL INSTITUTIONS,

Respondent.

NOTIFICATION

I CERTIFY THAT REGARDING THE MOTION
FOR RECONSIDERATION, THE COURT ISSUED
THE RESOLUTION ACCOMPANYING THIS NOTICE.

IN SAN JUAN, PUERTO RICO ON APRIL 10, 2024.

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ATTORNEY JAVIER O. SEPÚLVEDA RODRÍGUEZ
SUPREME COURT CLERK

BY: F/ ROSALIA PABÓN RIVERA
ASSISTANT CLERK

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Chambers composed of Associate Judge Mr. Martinez Torres as President, Associate Judge Mr. Kolthoff Caraballo, Associate Judge Mr. Feliberti Cintron, and Associate Judge Mr. Colon Perez.

RESOLUTION

In San Juan, Puerto Rico, on April 5, 2024.

Considering the first motion for reconsideration filed by the petitioner, it is hereby Denied.

So resolved by the Court and certified by the Supreme Court Clerk.

Javier O. Sepulveda Rodriguez
Supreme Court Clerk

[COMMONWEALTH OF PUERTO RICO,
GENERAL COURT OF JUSTICE, SUPREME COURT]

**APPENDIX E — FINAL DECISION AND ORDER
OF THE OFFICE OF THE COMMISSIONER OF
FINANCIAL INSTITUTIONS, SAN JUAN,
PUERTO RICO, FILED MARCH 27, 2023**

GOVERNMENT OF PUERTO RICO
OFFICE OF THE COMMISSIONER OF
FINANCIAL INSTITUTIONS
SAN JUAN, PUERTO RICO

CASE NO. C22-D-008

SUBJECT: Violations to Law No. 273-2012,
as amended, known as “International Financial
Center Regulatory Law” and Regulation 5653.

OFFICE OF THE COMMISSIONER OF
FINANCIAL INSTITUTIONS,

Complainant,

v.

FIRST FINANCE INTERNATIONAL BANK, INC.,

Respondent.

FINAL DECISION AND ORDER

I. INTRODUCTION

The Complaint and Order to Cease and Desist and Temporary Order Appointing Trustee (“**Complaint**” or “**ORDER**”) filed with the Office of the Commissioner of Financial Institutions (“OCIF”) on October 22, 2022

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against First Finance International Bank, Inc. (“FFIB”, “First Finance” or the “FFI”) is an emergency action of a summary nature that seeks to avert an imminent danger to the safety of the international financial institution industry operating from the jurisdiction of Puerto Rico, as well as to protect the public interest of ensuring full and strict compliance with all laws and/or regulations applicable to the licenses issued by the OCIF. The same was issued after the commencement of an administrative hearing process in case C21-D-002 following the *Complaint and Order to Show Cause* filed by the OCIF against FFIB during which the Audited Financial Reports were filed late and which, in the opinion of the auditors themselves, were not submitted to the OCIF, according to the opinion of FFIB’s own internal auditors state in their “Disclaimer of Opinion” that “[w]e were unable to confirm cash accounts aggregating \$1,461,275 as December, 31 2021, which represent 50 percent of the total assets of the Bank and were unable to obtain sufficient appropriate Audit evidence about those cash accounts by other auditing procedures. ...the Bank has suffered recurring losses from Operations and has an accumulated deficit, which raises a substantial doubt about the Bank’s ability to continue as a going concern”. Furthermore, upon examining this report, as well as the financial reports for previous years, it was concluded that FFIB was an insolvent international financial institution, as defined by law.

After FFIB filed on November 4, 2022 its Amended Answer to the *Complaint and Order to Cease and Desist and Provisional Order Appointing Trustee* (“Amended Answer”) and following the administrative hearing held

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on November 7 and 9, 2022, presided over by the appointed Examining Officer, Ledo. Luis Torres Mendez, the evaluation of the evidence presented and the documents contained in the administrative file, on November 15, 2023, the Examining Officer rendered *the Report of the Examiner's Office* recommending that the Complaint be upheld. Said report is part of the administrative file of the case and any party and/or its legal representative may make an appointment with the OCIF to examine or request a copy thereof.

II. JURISDICTION

Act No. 4 of October 11, 1985, as amended, known as the “Office of the Commissioner of Financial Institutions Law”, 7 L.P.R.A. § 2001 *et seq.*, (“Act No. 4-1985”), imposes on the OCIF the responsibility to supervise and oversee financial institutions operating or doing business in Puerto Rico. As provided by Act No. 4-1985, the OCIF has the ministerial duty to administer and implement Law No. 273-2012. Pursuant to the Law, the OCIF supervises and oversees international financial institutions organized under the Law.

Law No. 4-1985, Law No. 273-2012 and Law No. 38-2017, as amended, known as the “Uniform Administrative Procedure Act of the Government of Puerto Rico” (“Law No. 38-2017”), 3 L.P.R.A. § 9601, *et seq.*, as well

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as Law No. 3920 of June 23, 1989, as amended,¹ known as “Regulations to Regulate Adjudication Procedures under the Jurisdiction of the Office of the Commissioner of Financial Institutions” (“Regulation No. 3920”), empower the Commissioner to issue any necessary, appropriate and convenient order to enforce the laws and/or regulations under his jurisdiction.

After an extensive administrative proceeding, the OCIF established that FFIB incurred in serious violations to Law No. 273-2012, to Regulation No. 5653 adopted by the OCIF under Law No. 52-1989, as amended, known as the “International Banking Center Regulatory Law”. 52-1989, as amended, known as the “International Banking Center Regulatory Law” and whose provisions are applicable to international financial

1. Law No. 38-2017 repealed Law No. 170 of August 12, 1988, as amended, known as the “Uniform Administrative Procedure Act of the Commonwealth of Puerto Rico”. Section 8.3 of Law No. 38-2017 provides, as applicable hereunder, as follows:

Law No. 170 of August 12, 1988, as amended, known as the “Uniform Administrative Procedure Act of the Commonwealth of Puerto Rico,” is hereby repealed11- Any reference to Law No. 170 of August 12, 1988, in any regulation, executive order or other official document of the Government of Puerto Rico, shall be understood to refer to this Law. It shall also be understood that any law in which reference is made to Law No. 170 of August 12, 1988, is hereby amended in order to be replaced by this Law. of August 12, 1988, is hereby amended for the purposes of being replaced by this Law.

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entities pursuant to the provisions of Article 27 of Law No. 273-2012².

As a consequence of the foregoing, the testimonial and documentary evidence presented at the administrative hearings held, the entire administrative file and the recommendation of the Examining Officer presiding over the hearings, the Commissioner, pursuant to the aforementioned legal provisions, **CONFIRMS** the **ORDER** issued.

III. BRIEF PROCEDURAL BACKGROUND

1. FFIB is an international financial institution (“IFE”) with a license issued by the OCIF to operate from the jurisdiction of Puerto Rico under Law No. 273-2012, as amended, known as the “International Financial Center Regulatory Law” (“Law No. 273-2012”), 7 L.P.R.A § 3081 et seq., among other applicable statutes. The aforementioned governing statute imposes clear and specific mandates on the minimum capital required for an EFI to guarantee its financial security and operational adequacy before the OCIF, which has broad delegated powers to oversee, supervise, audit and examine these entities in order to ensure that they comply with applicable laws and/or regulations..

2. Article 27 of Law No. 273-2012 states that:

Any regulations adopted pursuant to...[the] Law No. 52, which are not in conflict with this Law, may be used to interpret and implement provisions of this Law until the corresponding regulations are issued in accordance with the provisions of this Law.....

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2. On August 24, 2021, OCIF issued Complaint Case No. C21-D-002 against FFIB, to request an administrative hearing and show cause why OCIF should not order that, within ten (10) days of receipt of the complaint, FFIB should hold an administrative hearing:

- (A) FIRST FINANCE is deemed to have voluntarily surrendered its license and, as a consequence, submit a Voluntary Liquidation Plan to OCIF that protects its customers' deposits and provides for their full payment.
- (B) Cease and desist from conducting business as an international financial institution without a license issued by OCIF for the current year and *revoke the License by conducting EBI's business in a manner contrary to the highest standards of banking and financial prudence and jeopardizing the financial security and proper operation of EBI*. In addition, EBI's failure to comply with the Consent Order and for failing to submit Audited Financial Statements within the required period, the lack of capital required by Law, the inconsistency between the letters injecting capital without supporting evidence provided to OCIF and the information in the Quarterly Reports, the failure to comply with the *Consent Order* and for failing to submit Audited Financial Statements within the required period.

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- (C) Deliver to the OCIF by certified check made payable to the Secretary of the Treasury, the money corresponding to the Certificate of Deposit No. 5004911794 held at Grupo Santander de Puerto Rico (now First Bank), in the amount of \$300,000, which is pledged in favor of the OCIF, as aforementioned.
- (D) Submit to OCIF the Audited Financial Statements for the year ended December 31, 2020 AND pay a fine of **FIVE THOUSAND DOLLARS (\$5,000.00)** for the audited financial statement that has not been filed for in violation of Article 15 of Law No. 273-2012.
- (E) Pay a fine of **FIVE THOUSAND DOLLARS (\$5,000.00)** as of August 2, 2021 for each day in which it has not complied with the delivery of the aforementioned audited financial statement. Said fine amounts to **EIGHTY THOUSAND DOLLARS (\$80,000.00)**.
- (F) Pay a fine of **FIVE THOUSAND DOLLARS (\$5,000.00)** for each day in which he/she failed to comply with the *Consent Order* pursuant to Article 20 (c) of Law No. 4-1985.

The total fine, amounting to **ONE HUNDRED THIRTY-FIVE THOUSAND AND THIRTY-FIVE THOUSAND DOLLARS (\$135,000.00)**, shall be paid by certified check payable to the Secretary of the Treasury

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within ten (10) days from the date of having been notified with a copy of the Complaint.

3. On August 31, 2021, FFIB filed a Request for Amendment to *Complaint* and on September 7, 2021, OCIF issued a *Decision* modifying the same.

4. On September 27, 2021, FFIB submitted its response to the *Complaint*, thus initiating an administrative adjudicative procedure.

5. On September 29, 2021, OCIF appointed an Examining Officer to preside over the adjudicative proceedings in Case No. C21-D-002.

6. On June 2, 2022, FFIB sent a communication to OCIF informing about the alleged capital injections that were made, as detailed below:

Dear Ms. Rosario:

Pursuant to the June 10th, 2019 Consent Order issued to First Finance International Bank Inc. (“FFIBI”),. Diversified Payment Solutions Holding Corporation (“DPSHC”).. FFIBI’s parent company, has made considerable capital contribution from May 16th, 2022 to date.

On May 16th, 2022., DPSHC contributed the amount of \$2,000,000.00. The amount was divided in three deposits ‘to FFIBI’s

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Grove Bank and Trust (“the Grove”). The total amount is being kept as a Certificate of Deposit valued at \$2,000,000.00 with said financial institution (See attached Certificate of Deposit). This additional capital has been registered in Stock Certificate No.16 (documents also attached).

On June 1st, 2022, DPSHC contributed the amount of \$1,000,000.00. This deposit was received at the Grove. The total amount is being kept in FFIBI’s business account at this financial institution (See attached account Information).

On June 2, 2022, DPSHC contributed the amount of \$1,000,000.00. This deposit was received at Hamilton Reserve Bank {NOTE: Formerly State Trust Bank}. The total amount is being kept as a Certificate of Deposit: valued at \$1,000,000.00 with said financial institution. (See attached Certificate of Deposit). The additional contributed capital has been registered in Stock Certificate No. 17 (documents also attached).

These recent additional capital contributions totaling \$4,000,000,000.00., have raised FFIBI’s net capital above the required minimum of \$5M based on FFIBI’s 1Q2022 financial report..

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7. After several procedural steps, during the status hearing held on August 19, 2022 in Case No. C21-D-002, OCIF insisted FFIB's legal representation to deliver the Audited Financial Statements as of December 2021.

8. On August 23, 2022, FFIB presented the Audited Financial Statements as of December 2021 and the Management's Attestation, issued on June 30, 2022.

9. The 2021 Audited Financial Statements submitted during the adjudicative proceeding show serious capital deficiencies, among other problems. First, these statements confirm that, based on the information provided by FFIB, the external auditors are unable to issue an opinion on the Financial Statements as they have not been able to confirm that, in fact, EFI has \$1,461,275.00 in its cash accounts as of December 31, 2021, which represents:

- (1) ninety-one percent (91%) of the EFI's cash,
- (2) virtually all of the funds that EFI would need to have to satisfy its customers' deposits; and
- (3) approximately fifty percent (50%) of First Finance's total assets.

Likewise, the statement details that FFIB has suffered recurring losses in its operations and has an accumulated deficit, which creates substantial doubts about First Finance's ability to continue operating.

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10. Secondly, the 2021 Audited Financial Statements reflect a net loss of \$1,706,791.00 at the close of 2021, increasing the accumulated losses (or negative retained earnings) to a total of negative \$4,548,333.00. The entity's equity position at the end of 2021 was a total *shareholder's equity* of \$872,809.00.

11. The Audited Financial Statements as of December 31, 2021 include a "Disclaimer of Opinion" from FFIB's own auditors stating that: "We were unable to confirm cash accounts aggregating \$1,461,275 as of December 31, 2021, which represents 50 percent of the total assets of the Bank and were unable to obtain sufficient appropriate audit evidence about those cash accounts by other auditing procedures-...the Bank has suffered recurring losses from Operations and has an accumulated deficit, which raises a substantial doubt about the Bank's ability to continue as a going concern." Emphasis supplied.

12. The 2021 Audited Financial Statements include "*Emphasis of Matter*" paragraphs by its independent auditors, where such professionals raise substantial doubts about FFIB's operational viability as a "*going concern*" and its financial capacity to meet its obligations as they fall due in the ordinary course of business..

13. On October 27, 2022, OCIF issued the summary **ORDER**.

14. On November 3, 2022, FFIB filed its Response to the **ORDER** and requested the administrative hearing.

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15. On November 7 and 9, 2022, the administrative hearing was held, presided over by the appointed Hearing Officer, Luis Torres Mendez.

16. During the hearing, both OCIF and FFIB submitted documentary evidence, which was duly marked as evidence, namely:

Filed by OCIF

Exhibit A - FFIB Financial Statement for the year 2019; Exhibit B - FFIB Financial Statement for the year 2020; Exhibit C - FFIB Financial Statement for the year 2021; Exhibit D - Letter from FFIB to Karen Rosario Melendez dated March 10, 2022; Exhibit E - Letter from Myrna Lozada Guzman to Karen Rosario Melendez dated July 14, 2022; Exhibit D - Letter from FFIB to Karen Rosario Melendez dated March 10, 2022; Exhibit G - Customer Balance Deposit Report as of June 30, 2022; Exhibit H- Daily Cash Position Report as of June 20, 2022; Exhibit I-Letter from FFIB to Karen Rosario Melendez dated November 2, 2022; Exhibit J- Quarterly FFIB Report (“International Finance Entities Balance Sheet”) as of September 30, 2022; Exhibit K - FFIB Daily Cash Position Report as of September 29, 2022; Exhibit L - AICPA Literature “Dating of the Independent Auditors Report”; and Exhibit M - Auditing Standards of the Public Company Accounting Oversight Board: AS3110: dating of the Independent Auditor’s Report.

*Appendix E***Filed by FFIB**

Exhibit I - Letter from Valdes, Garcia, Marin & Martinez, LLP to FFIB dated August 23, 2022; Exhibit II - Curriculum vitae of Silvino Cepeda Ortiz, MBA; Exhibit III - Curriculum vitae of Mariangie Franco de Lozada; Exhibit IV - Emails exchanged between the firm Valdes, Garcia, Marin & Martinez and FFIB, dated August 12, 19 and 23, 2022; Exhibit V-OklySP Zoo Credit Reference Letter dated February 17, 2022 for accounts #12217 and #10321 as of December 31, 2021; Exhibit VI - FFIB's 00000010321 Account Statements at Okly Capital from January to December 2021; Exhibit VII - FFIB's 00000010321 Account Statements at Okly Capital from January to December 2022; Exhibit VIII - Emails exchanged between Okly Capital and FFIB dated June 30, 2022; Exhibit IX - OCIF Permit to Paytoo International Bank (now FFIB) to operate an EFI dated January 30, 2017; Exhibit X - OCIF Press Release dated June 30, 2022; Exhibit XI - Curriculum Vitae of Ismael Torres Pizarro, Ph. D, PE, Esq. Exhibit XII - Blance Sheet for FFIB as of October 31, 2022; Exhibit XIII - FDIC's 2022 Fiscal Year 2022 Spreadsheet for FFIB; Exhibit XIV - Optional Regulatory Capital Worksheet for FFIB as of December 31, 2019 (prepared by FFIB); Exhibit XV - Optional Regulatory Capital Worksheet for FFIB as of December 31, 2020 (prepared by FFIB); Exhibit XVI - Optional Regulatory Capital Worksheet for FFIB as of December 31, 2021 (prepared by FFIB); Exhibit XVII - Optional Regulatory Capital Worksheet for FFIB as of October 31, 2022 (prepared by FFIB); Exhibit XVIII - FINRA and Securities and Exchange Commission rule for calculating a Broker Dealer's or Investment Advisor's net capital.

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Table prepared by FFIB solvency for years 2019-2022 with formula; Exhibit XIX - Table prepared by FFIB solvency for years 2019-2022 without formula; Exhibit XX - Chart prepared by FFIB “weekly cash report” from 2021 to 2022, comparing weekly deposits with client deposits; Exhibit XXI - Chart prepared by FFIB “Expected Number of Clients vs. Actual”, comparing expected new clients and actual new clients; Exhibit XXII - Chart prepared by FFIB “Expected Number of Clients vs. Actual”, comparing new expected and new actual clients (same as Exhibit XXI but larger in size); Exhibit XXIII - FFIB Business Plan dated May 2022; Exhibit XXIV - Explanation of the products and services FFIB offers and description of its officers and directors; Exhibit XXV - Letter from FFIB to Karen Rosario Melendez dated June 3, 2022; and Exhibit XXVI - Letter from FFIB to Karen Rosario Melendez dated November 2, 2022.

17. The testimonial evidence paraded by the parties during the hearing was as follows:

Witness evidence presented by OCIF

Ms. Karem Rosario Melendez, Assistant Commissioner of the Depository Institutions Examination Area and Mr. Wigberto Lugo Mender, FFIB Trustee appointed by OCIF.

Witness evidence presented by FFIB

Mr. Silvino Cepeda Ortiz, Senior Accountant of FFIB; Maria de las Angeles Franco Casellas, Office Manager of FFIB; and Mr. Ismael Torres Pizarro, President of FFIB.

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18. Ms. Karem Rosario Melendez, is the Assistant Commissioner for Depository Institutions Examinations at OCIF, the area of the agenda in charge of the supervision of depository institutions including FFIB. Ms. Rosario has vast experience in the examination and audit process of financial institutions, both in private industry and government. During her testimony, Ms. Rosario indicated that, according to the financial statements and examinations performed on FFIB, the institution is not in compliance with the parameters of Law No. 273-2012, and that the institution is not in compliance with the parameters of Law No. 273-2012, and that, despite the multiple capital injections, at the end of each year the result of FFIB's operations is to absorb the capital injections with operating expenses, not generating sufficient income to overcome the annual deficit it has experienced since its creation, having losses and not having a paid-in capital that complies with the one-third (1/3) established in the Law. No. 273-2012.

19. According to Ms. Rosario's testimony, FFIB's demonstrated inability to comply with OCIF's orders and requirements despite multiple opportunities to show its ability to operate. Ms. Rosario testified that allowing FFIB to operate, despite all the evidence showing that it is insolvent, would put FFIB's clients' deposits at risk, justifying the immediate action issued by OCIF.

20. Mr. Wigberto Lugo Mender is the OCIF's appointed Trustee for FFIB. He testified about the initial review he conducted of FFIB whereby he was able to corroborate that FFIB's income is not sufficient to sustain

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the operation, as it depends on capital contributions from its parent company. He indicated that, without these contributions, FFIB would not be able to cover its operating expenses.

21. Mr. Silvino Cepeda, Senior Accountant FFIB testified that he has only been in charge of FFIB's accounting for a short time. For the Examining Officer, the credibility of this FFIB witness was questionable since, when questioned by OCIF's counsel in open hearing, he did not inform FFIB and initially omitted in cross-examination that he had been convicted of a crime until he was confronted with information proving his federal conviction. Furthermore, he admitted during the hearing that most of the reports FFIB has submitted to OCIF were prepared by his predecessor, Mr. Gil Ramos, who is the person who has been training and assisting him in his current duties, but who did not serve as a witness in these proceedings.

22. Ms. Mariangie Franco Casellas, FFIB office administrator, testified about the dates FFIB discussed the 2021 Audited Financial Statements with the audit firm and about certifications from Oakley Capital bank where FFIB has bank accounts.

23. Mr. Ismael Torres Pizarro, President of FFIB testified that FFIB allegedly complied with the definition of solvency of Law No. 273-2012, and with the definition of "well capitalized financial institution" established by the FDIC manuals. Aderhas testified about the current situation of the international financial institution, the items

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where a debt conversion was performed and that they did not arise from the financial statements issued by the auditing firm. He also presented several exercises using the FDIC metrics where, in his opinion, the institution achieved a capitalized entity. It should be noted that the witness, when questioned by OCIF's legal representation, had to admit that for the years 2019, 2020 and 2021 FFIB did not meet the definition of solvency, according to Law No. 273-2012 and that, in fact, it was insolvent, having to depend on cash injections from its parent company in order to pay regular and recurring expenses of the international banking entity.

24. At the conclusion of the administrative hearing, both OCIF and FFIB were granted until December 16, 2022 to submit their respective Memoranda of Law. Both OCIF and FFIB submitted their respective Memoranda of Law on the required date.

25. However, despite the fact that the parties had agreed that no replies to duplicates to the memoranda would be filed, FFIB filed a *Reply to the OCIF Memorandum* dated January 12, 2023, whereupon the Examining Officer granted OCIF fifteen (15) days to file its Reply.

26. After requesting an extension, on February 28, 2023, OCIF filed its *Memorandum in Compliance with the Order*, and the case was submitted.

26. On March 15, 2023, the Examining Officer submitted his Examining Officer's Report to the Commissioner.

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**IV. DETERMINATIONS OF PROVEN, ADMITTED
AND UNDISPUTED FACTS**

1. On December 13, 2016, PayToo International Bank, Inc. (“Paytoo”) applied to OCIF for permission to organize an international financial institution under the provisions of Law No. 273-2012.³

2. The President and Director of EFI was Mr. Michel Poignant. Mr. Michel Poignant resigned as President on April 26, 2021. At present, Mr. Michel Poignant remains as Chief Executive Officer (CEO) of EFI and Mr. Ismael Torres Pizarro is the current President.⁴

3. On January 30, 2017, OCIF issued a permit to Paytoo to organize an international financial entity under the provisions of Law No. 273-2012.⁵

4. On May 16, 2017, OCIF granted License No. IFE-41 (the “License”) to Paytoo to commence operations under Law No. 273-2012.⁶

3. See Fact 1 of the Complaint admitted by FFIB in its Amended Answer and Exhibit 1 filed by OCIF together with the Complaint.

4. See Fact 2 of the Complaint as admitted by FFIB in its Amended Answer.

5. See Fact 3 of the Complaint as admitted by FFIB in its Amended Answer.

6. See fact 4 of the Complaint admitted by FFIB in its Amended Answer.

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5. The permit to commence operations states that, given its proposed deposit-taking activities, the EFI will be required to increase its capital once it begins operations. Among other regulatory criteria, the EFI's capital must meet the standards required of a safe and sound financial institution, as provided by federal and state banking statutes and as verified by examiners' manuals such as those used by the Federal Deposit Insurance Corporation. Pertinently, the Permit reads as follows:

CAPITAL

The proposed minimum capitalization of the JFE is five million dollars (\$5,000,000.00). As required in Article 5(b)(3)(B) of the IFE Act, at least two hundred and fifty thousand dollars (\$250,000) have been paid-in at this time. We note however, that given its proposed deposit taking activities, the JFE will have to increase its capital once it commences to operate. Among other regulatory criteria, the capital of the IFE must satisfy the adequacy criteria required in a safe and sound financial institution, in the manner provided by federal and state banking statutes and verification of which is provided for in examiners' manuals such as those used by the Federal Deposit Insurance Corporation.

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Please note that increases and decreases in the IFE's authorized capital are governed by the IFE Act and the Regulation.⁷

6. On May 17, 2018, PayToo applied for OCIF approval to change its name to First Finance International Bank, Inc.⁸

7. On May 18, 2018 the License was renewed in the name of FFIB.⁹

8. On December 6, 2018, OCIF notified FFIB that a Safety and Soundness review will commence on January 10, 2019, for the period from the commencement of operations through September 30, 2018.¹⁰

9. On February 21, 2019, FFIB submitted Audited Financial Statements as of December 1-31, 2017. Although FFIB denied this fact in its Answer to the Complaint, it

7. See Fact 5 of the Complaint as admitted by FFIB in its Amended Answer.

8. See Fact 6 of the Complaint as admitted by FFIB in its Amended Answer.

9. See Fact 7 of the Complaint as admitted by FFIB in its Amended Answer.

10. See Fact 8 of the Complaint as admitted by FFIB in its Amended Answer.

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did not present evidence contradicting OCIF's allegation or the document submitted by OCIF.¹¹

10. On March 21, 2019, FFIB requested ninety (90) days to submit the Audited Financial Statements as of December 31, 2018.¹²

11. On May 27, 2019, OCIF granted until June 28, 2019 for the submission of the Audited Financial Statements as of December 31, 2018.¹³

12. On March 31, 2019, FFIB filed its Easy Call Report with \$1,002,000.00 in *Additional paid in capital* and a deficit of \$46,000.00 in *Total equity capital*.¹⁴

13. On May 24, 2019, FFIB applied to renew the License and attached, together with its application, a letter dated April 9, 2019 by which Grupo Santander de Puerto Rico certifies that the Certificate of Deposit No. 5004911794 for the amount of \$300,000.00 is pledged in favor of OCIF. In addition, it informed that it maintains \$250,000.00 in *Paid Stock*, \$1,001,825.00 in *Additional paid in capital* and \$1,251,825.00 in *Total capital*.¹⁵

11. See Exhibit 7 filed by OCIF together with the Complaint.

12. See Fact 10 of the Complaint admitted by FFIB in its Amended Answer.

13. See Exhibit 9 filed by OCIF along with the Complaint.

14. See Fact 12 of the Complaint as admitted by FFIB in its Amended Answer.

15. See Fact 13 of the Complaint as admitted by FFIB in its Amended Answer.

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14. On June 10, 2019, the *Report for Examination* (ROE), a *Consent Order* and a *Fine Order* amounting to \$21,500.00 were issued due to the manner in which FFIB was operating, including various violations of Law, deficient capital, inaccurate accounting and Quarterly Reports that did not reflect FFIB's financial condition, and an unsatisfactory BSA/AML and OFAC Compliance Program, among others. The *Consent Order* specifically states, as applicable, that:

...The Commissioner and the Entity hereby consents to:

1. ...
2. Operate the Entity with an adequate level of capital considering the volume and kind of assets held by the Entity.
3. Operate the Entity in a commercially reasonable manner to achieve sufficient earnings to support operations and generate capital.
4. Operate the Entity under a reliable accounting system that succeeds in keeping accurate books,... and submitting accurate Easy Call Reports to the Commissioner...¹⁶

15. Similarly, the *Consent Order* provides in the "Notices" section that:

The Entity affected by this Order is hereby given notice that, pursuant to the provisions

16. See Exhibits 12, 13 and 14 filed by OCIF together with the Complaint.

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of Article 20 (c) [o]f *Act* No. 4, the OCFI may impose an administrative fine not greater than Five Thousand (\$5,000.00) Dollars for each day of non-compliance with the orders issued under the provisions of the act, up to a maximum of Fifty Thousand (\$50,000.00) Dollars...¹⁷

16. On June 20, 2019, FFIB notified OCIF of its partial acceptance of the *Fine Order*. However, it paid the full amount of the fine imposed therein.¹⁸

17. On June 26, 2019, FFIB requested an additional sixty (60) days to submit the Audited Financial Statements as of December 31, 2018. It also submitted a special report for the period of December 31, 2017.¹⁹

18. On June 30, 2019, FFIB filed its Quarterly Report with \$0 in *Additional paid in capital* and a deficiency of \$370,000.00 in *Total equity capital*.²⁰

19. On July 1, 2019, OCIF granted until August 30, 2019, to submit the Audited Financial Statements for the period as of December 31, 2018.²¹

17. See Fact 15 of the Complaint as admitted by FFIB in its Amended Answer.

18. See fact 16 of the Complaint as admitted by FFIB in its Amended Answer.

19. See fact 17 of the Complaint as admitted by FFIB in its Amended Answer.

20. See fact 18 of the Complaint as admitted by FFIB in its Amended Answer.

21. See fact 19 of the Complaint as admitted by FFIB in its Amended Answer.

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20. On July 10, 2019, FFIB replied to the ROE and on July 22, 2019, OCIF acknowledged receipt of the ROE.²²

21. On July 31, 2019, FFIB reported to OCIF on the injection of \$1,000,000.00 in capital from January 1, 2018 through April 15, 2019.²³

22. On August 8, 2019, FFIB requested thirty (30) days to comply with the Consent Order and OCIF authorized the extension, granting it until September 10, 2019.²⁴

23. On August 30, 2019, OCIF sent a letter to FFIB informing it of the agreements reached during a meeting held on August 14, 2019 with the then Commissioner, Mr. George Joyner, which include: an injection of \$1.5 million which, at the time of the letter, had not been injected; that the extension granted to comply with the Consent Order is final and cannot be postponed; and that as of September 10, 2019, they will submit a Voluntary Liquidation Plan.²⁵

24. On September 9, 2019, FFIB reported that as of August 30, 2019, FFIB had added \$750,000.00 in

22. See fact 20 of the Complaint admitted by FFIB in its Amended Answer.

23. See fact 21 of the Complaint admitted by FFIB in its Amended Answer.

24. See fact 22 of the Complaint admitted by FFIB in its Amended Answer.

25. See Fact 23 of the Complaint as admitted by FFIB in its Amended Answer.

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Additional paid in capital.²⁶

25. On September 10, 2019, FFIB answered the Consent Order.²⁷

26. The Quarterly Report filed by FFIB as of September 30, 2019 in its Item 35 shows Total equity capital of \$70,000.00 and \$750,000.00 in Additional paid in capital.²⁸

27. On October 4, 2019, FFIB submitted a letter to OCIF clarifying their equity situation and indicating that they had injected \$750,000.00 as of August 30, 2019 and had net equity of \$296,308.79.²⁹

28. On October 11, 2019, the then Commissioner, George Joyner, informed FFIB that once the JFE demonstrated positive net capital, then they could evaluate proposals for compliance with the Consent Order.³⁰

26. See fact 24 of the Complaint as admitted by FFIB in its Amended Answer.

27. See fact 25 of the Complaint as admitted by FFIB in its Amended Answer.

28. See fact 26 of the Complaint admitted by FFIB in its Amended Answer.

29. See fact 27 of the Complaint as admitted by FFIB in its Amended Answer.

30. See fact 28 of the Complaint as admitted by FFIB in its Amended Answer.

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29. On November 14, 2019, FFIB reported a \$250,000.00 capital infusion by that date. However, the Quarterly Report as of December 31, 2019 shows, in subsection 35, a Total equity capital of \$38,000.00 and \$1,000,000.00 in Additional paid in capital.³¹

30. On the other hand, the Quarterly Report as of March 31, 2020 reflects \$1,000,000.00 in Additional paid in capital and a deficit of \$144,000.00 in Total equity capital.³²

31. The Quarterly Report as of June 30, 2020 reflects \$1,000,000.00 in Additional paid in capital and a deficit of \$427,000.00 in Total equity capital.³³

32. On July 17, 2020, OCIF required FFIB to submit documents in support of the reports, such as bank statements, systems print outs; and required a customer deposit trial balances directly from the system.³⁴

33. On July 20, 2020, FFIB requested an extension of time to file the 2019 Audited Financial Statements. On July 28, 2020, this request was denied by the OCIF.³⁵

31. See fact 29 of the Complaint admitted by FFIB in its Amended Answer.

32. See fact 30 of the Complaint admitted by FFIB in its Amended Answer.

33. See fact 31 of the Complaint as admitted by FFIB in its Amended Answer.

34. See fact 32 of the Complaint admitted by FFIB in its Amended Answer.

35. See Fact 33 of the Complaint as admitted by FFIB in its Amended Answer.

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34. On August 28, 2020, FFIB submitted its license renewal application in which it reported that they had \$2,700,000.00 in Total Capital.³⁶

35. As part of the renewal process, OCIF reviewed the unaudited financial information as of March 31, 2019 submitted by FFIB together with the license renewal form. OCIF noted that FFIB maintained authorized capital of \$2,450,000.00, negative retained earnings of \$1,074,249.16, and a net loss of \$1,118,638.95, representing total capital of \$257,111.89. For the same period, FFIB had total assets of \$3,431,863.27, and deposit accounts totaling \$1,935,840.17.³⁷

36. The Quarterly Report as of September 30, 2020 reflects \$0.00 in Additional paid in capital and \$403,000.00 in Total equity capital.³⁸

37. On November 19, 2020, FFIB delivered its 2019 Audited Financial Statements. The balance sheet reflects \$2,450,000.00 in paid in and issued common stock, \$0 in Additional paid in capital, an accumulated deficit of \$2,064,032.00 and a Total equity capital of \$503,043.00.³⁹

36. See Exhibit 35 filed by OCIF together with the Complaint.

37. See fact 35 of the Complaint admitted by FFIB in its Amended Complaint.

38. See fact 36 of the Complaint admitted by FFIB in its Amended Complaint.

39. See fact 37 of the Complaint admitted by FFIB in its Amended Answer.

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38. The Quarterly Report as of December 31, 2020 reflects \$0.00 in Additional paid in capital and \$98,000.00 in Total equity capital.⁴⁰

39. On March 23, 2021, FFIB requested an extension to file the Audited Financial Statements as of December 31, 2020.⁴¹

40. On March 30, 2021, OCIF granted until August 2, 2021 to file the same.⁴²

41. The Quarterly Report as of March 31, 2021 reflects \$0.00 in Additional paid in capital and \$246,000.00 in Total equity capital.⁴³

42. On April 29, 2021, FFIB submitted its license renewal application. The documents received by OCIF were:

- a. Application for renewal of license;
- b. Unaudited balance sheet as of March 31, 2021;

40. See fact 38 of the Complaint admitted by FFIB in its Amended Answer.

41. See fact 39 of the Complaint admitted by FFIB in its Amended Answer.

42. See Fact 40 of the Complaint admitted by FFIB in its Amended Complaint.

43. See Fact 41 of the Complaint admitted by FFIB in its Amended Complaint.

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- c. Unaudited income statement as of March 31, 2021;
- d. Bank Secrecy Law (“BSA/ AML/ OFAC”) Affidavit;
- e. Bank transfer confirmation number 210429W155752840 in the amount of \$5,000.00, made payable to the Secretary of the Department of the Treasury..⁴⁴

43. As part of the renewal process, OCIF reviewed the unaudited financial information as of March 31, 2021 submitted by FFIB, along with the license renewal form. OCIF noted that FFIB maintained an authorized capital of \$3,000,000.00, negative retained earnings of \$1,074,249.16, and a net loss of \$1,679,613.61, for a total capital of \$246,137.23. For the same period, it had total assets of \$3,431,863.27, and deposit accounts totaling \$1,935,840.17.⁴⁵

44. In a letter dated May 3, 2021, OCIF requested FFIB to submit a Capitalization Plan for the operation of the EFI. The Plan should contain an explanation of the amount with which the capitalization will begin and the origin of the funds. The Plan should include future contributions, and when they expected to meet the

44. See fact 42 of the Complaint admitted by FFIB in its Amended Complaint.

45. See Fact 43 of the Complaint admitted by FFIB in its Amended Complaint.

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minimum of \$5,000,000.00 required by Law No. 273-2012. OCIF granted FFIB thirty (30) days to submit the required information. The term expired on June 2, 2021 and FFIB did not submit the Capitalization Plan within the term required by OCIF.⁴⁶

45. On May 13, 2021, OCIF sent a letter to FFIB not objecting to the appointment notified on April 30, 2021 of Mr. Luis Ernesto Muniz Colon as President of FFIB.⁴⁷

46. On June 30, 2021, the Quarterly Report reflected \$0.00 in *Additional paid in capital* and a deficit of \$161,000.00 in *Total equity capital*.⁴⁸

47. On July 28, 2021, OCIF held a meeting with FFIB representatives. During this meeting FFIB submitted various documents and OCIF Jes required that these documents be formally submitted to OCIF. EFI submitted the following documents to the OCIF Regulatory and Licensing Area:

- a. Capitalization Plan 2021.
- b. Letter informing of additional capital contributions made on July 13, 26 and 27, 2021.
- c. Letter informing that they will not be able to comply with the deadline granted by the

46. See Fact 44 of the Complaint admitted by FFIB in its Amended Complaint.

47. See Fact 45 of the Complaint admitted by the FFIB in its Amended Answer.

48. ⁴³ See fact 46 of the Complaint admitted by FFIB in its Amended Answer.

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OCIF for the filing of the Audited Financial Statements corresponding to the year ended December 31, 2020.⁴⁹

48. On July 30, 2021, First Finance reported the contribution of \$600,000.00 as of July 27, 2021 in exchange for shares, but did not present evidence thereof.⁵⁰

49. On August 2, 2021, FFIB informed OCIF that it reaffirmed its commitment to submit the Audited Financial Statements as of December 31, 2020 and that they expected to submit them on August 18, 2021.⁵¹

50. On August 16, 2021, FFIB reported on the contribution of \$1,000,000.00 in paid in capital as of August 16, 2021 in exchange for shares.⁵²

51. On August 18, 2021, FFIB reported that its Audited Financial Statements as of December 31, 2020 were not yet available.⁵³

49. See Exhibit 47 of the Complaint filed by FFIB in its Amended Answer.

50. See Exhibit 47 filed by OCIF together with the Complaint.

51. See Fact 50 of the Complaint as added by FFIB in its Amended Answer.

52. See fact 51 of the Complaint as added by FFIB in its Amended Answer.

53. See fact 52 of the Complaint as added by FFIB in its Amended Answer.

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52. In addition to submitting an incomplete Capitalization Plan and failing to submit Audited Financial Statements as of December 31, 2020 as required, FFIB failed to comply with the *Consent Order* by failing to submit Progress Reports, the *Independent Annual Review* required for BSNAML and OFAC *Risk Assessment*, among other documents required in the *Consent Order*.⁵⁴

53. The Paid-in Capital figure that OCIF had confirmed at the time it issued the Complaint was \$2,450,000.00 according to the Audited Financial Statements as of December 31, 2019, which keeps EFI insolvent, with a leverage ratio of -0.17.⁵⁵

54. On June 1, 2021, Ms. Karem Rosario began her employment at OCIF in the position of Assistant Commissioner of the Depository Institutions Examination Area. She is in charge of supervising the Depository Institutions Examination Area, providing the corresponding monitoring of the institutions, before and after the examinations performed on them. This includes institutions that are in some kind of enforcement action..⁵⁶

54. See fact 53 of the Complaint as added by FFIB in its Amended Answer.

55. See Fact 54 of the Complaint as added by FFIB in its Amended Answer.

56. See Hearing Transcript, Turn I, p. 15, L 7-23. Prospectively, reference will be made to the three volumes of the transcript of the hearing in the background following the chronological order of the volumes and Roman numerals I, II and III to identify each volume.

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55. Ms. Rosario's immediate supervisor is the Commissioner of OCIF.⁵⁷

56. First Finance was subject to an examination by the Depository Financial Institutions Examination Area at the close of September 30, 2018. An examination report was issued in fiscal year 2019.⁵⁸

57. The outcome of the examination was one of deficient compliance with the BSA program, apparent violations of Law No. 273-2012, capital deficiencies and internal controls issues. As a result, a consent order was issued.⁵⁹

58. The core issues of the consent order were capital, liquidity and compliance with the BSA Anti-Money Laundering program. It was required to maintain corresponding capital levels as well as compliance with the solvency provisions set forth in the Law.⁶⁰

59. To be solvent, an entity may not reduce its paid-in capital to one-third of its injected capital. Solvency means a reduction of one-third of capital.⁶¹

57. See Volume I, p.16, L 2-3.

58. See Volume I, p.20, L 14-19.

59. See Volume I, p. 20, L. 20-25; p. 21, L 1-5, 8-20.

60. See Volume I, p. 21, L. 21-25; p. 22, L 1-101.

61. See Vol. I, p. 22, L 11-22.

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60. First Finance failed to comply with the requirements of the consent order.⁶²

61. After the review, FFIB presented a progress plan with a capitalization plan. They injected capital, but it was not enough as the injected capital was absorbed by the accumulated losses that the entity was generating. As of today, First Finance continues to be deficient in revenue generation.⁶³

62. If an EFI such as First Finance does not comply with having the required level of capital under Law 273-2012, it cannot continue to operate because it is considered insolvent. Nor can it receive deposits.⁶⁴

63. In First Finance's audited financial statement for fiscal 2019, the statement of condition reflected paid-in capital as of December 31, 2019 of \$2,450,000.00.⁶⁵

64. As of December 31, 2019, First Finance reflected \$2,064,032.00 in accumulated losses on its Audited Financial Statement⁶⁶ and reflected a net equity of \$503,000.43.⁶⁷

62. See Lathe I, p. 23, L 2-6.

68 See Volume I, p. 23, L 8-17.

64. See Volume I, p. 23, L 18-25; p. 24, L 1.

65. See Volume I, p. 32, L. 6-23. See, in addition, OCIF Exhibit A.

66. -See Volume I, p. 33, L. 3-10. See, also, OCIF Exhibit A.

67. -See Volume I, p. 34, L. 3-9. See, in addition, OCIF Exhibit A.

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65. To calculate in the year 2019 the one-third of the paid-in capital for solvency purposes of the capital levels required by Law 273-2012, the amount of \$2,450,000.00 is divided in three (3), resulting in \$816,667.00. The net capital must be above that number.⁶⁸

66. As of December 31, 2019, First Finance's net capital was below the \$816,667 number, being \$503,000.43. For OCIF purposes, that would be an entity in a state of insolvency.⁶⁹

67. As of December 31, 2020, First Finance's Audited Financial Statement reflected paid-in capital of \$2,900,000.00⁷⁰ and accumulated losses from operations of \$2,831,767.00.⁷¹ One-third of First Finance's paid-in capital for the 2020 Audited Financial Statement should be \$966,667.00.⁷²

68. However, as of December 31, 2020, First Finance's Audited Financial Statement reflected a net

68. See Volume I, p. 35, L. 4-22.

69. See Volume I, p. 36, L. 15-25; p. 37, L 1-2. See, in addition, OCIF Exhibit A.

70. See Volume I, p. 39, L. 6-23. See, in addition, OCIF Exhibit B.

71. See Volume I, p. 40, L. 6-11. See, in addition, OCIF Exhibit B.

72. See Volume I, p. 41, L 11-18.

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capital of \$229,600.00.⁷³ First Finance's net capital as of December 31, 2020 was below the amount of \$966,667.00⁷⁴ and therefore, the result of that capital position is that First Finance is insolvent..⁷⁵

69. First Finance's financial statements for the years 2019 and 2020 were audited and the opinion was "unqualified", which means that the auditors were able to proceed with all the accounting requirements to evaluate the financial situation of the entity. First Finance's auditors are Valdes, Garcia, Marfn & Martfnez.⁷⁶

70. The audited financial statements of First Finance for the year 2021 were also issued by the firm Valdes, Garcia, Marin & Martfnez. For said financial statement, the opinion issued was a disclaimer of opinion, which means that the auditors were unable to comply with the complete program of evaluation and confirmation of accounting principles. The basis was that they were unable to confirm an aggregate amount of cash of \$1,461,275.00 at the close of December 31, 2021. The auditors were unable to issue an opinion supporting FFIB's financial statements.⁷⁷

73. See Volume I, p. 41, L 6-9. See, in addition, OCIF Exhibit B.

74. See Volume I, p. 42, L 1-6.

75. See Volume I, p. 42, L 7-9.

76. See Volume I, p. 42, L. 10-25; p. 43, L. 1-12.

77. See Volume I, p. 43, L 13-25; p. 44, L 1-25; p. 45, L. 1-9. See, in addition, OCIF Exhibit C.

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71. The item of \$1,461,275.00 that the auditors could not verify corresponds to cash that First Finance should have in some bank account and the auditors could not confirm that this amount was in the bank account. This amount represents fifty percent (50%) of the total assets of that entity as of that date.⁷⁸

72. In First Finance's 2021 Audited Financial Statement, deposits total \$1,362,335.⁷⁹

73. First Finance's cash reflected in its 2021 Audited Financial Statement is \$1,600,000.00. If the \$1,461,275.00 item cannot be confirmed, then the amount of \$1,362,332.00 in deposits cannot be covered.⁸⁰

74. A financial institution that receives deposits and does not have the cash to pay them would be insolvent because it cannot meet its immediate obligations to its customers. It is a financial institution with a critical picture.⁸¹

75. The "going concern" is the projection that the auditor has when reviewing the financial and operating situation of the entity that it can continue with its business

78. See Volume I, p. 46, L. 7-24; p.47, L. 5-7. See also OCIF Exhibit.

79. See Volume I, p. 47, L. 15-25. See, in addition, OCIF Exhibit C. "See Volume I, p. 48, L. 6-18. See, in addition, Exhibit C of the OCIF.

81. See Volume I, p. 48, L. 19-25; p. 49, L.1-8.

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generating income and providing banking services. In First Finance's Audited Financial Statement for the year 2021, the auditors concluded that First Finance will not have the ability to continue operating as a going concern, due to its operating deficiencies and accumulated losses.⁸²

76. As of December 31, 2021, First Finance's Audited Financial Statement referred to a paid-in capital of \$5,250,000.00⁸³. One third of First Finance's paid-in capital for 2021 should be \$1,750,000.00.⁸⁴

77. As of December 31, 2021, FFIB's Audited Financial Statement reflects accumulated operating losses of \$4,548,333.00⁸⁵ and net capital of \$872,809.00.⁸⁶ First Finance's net capital as of December 31, 2020 was below the amount of \$1,750,000.00⁸⁷ and therefore, the result of that capital position is that First Finance is insolvent.⁸⁸

82. See Volume I, p. 49, L. 9-25; p. 50, L. 1-2. See, in addition, OCIF Exhibit C.

83. See Volume I, p. 50, L. 3-14. See, in addition, OCIF Exhibit C.

84. See Volume I, p. 51, L. 14-21.

85. See Volume I, p. 50, L. 15-23. See, in addition, OCIF Exhibit C.

86. See Volume I, p. 51, L. 6-13. See, in addition, Exhibit C of the OCJF.

87. See Volume I, p. 51, L. 21-24.

88. See Volume 1, p. 51, L. 25; p. 52, L. 1-2.

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78. First Finance's Audited Financial Statement for the year 2021 was completed by the external auditors on June 30, 2022. OCIF received a physical and digital copy of said statement on August 23, 2022.⁸⁹

79. The financial statements should have been immediately delivered to the Board of Directors of First Finance and OCIF after their issuance. However, this was not the case, as they were received about 45 days after they were signed by Valdes, Garcia, Martinez & Marin.⁹⁰

80. On March 10, 2022, First Finance sent a letter to OCIF requesting a ninety (90) day extension to submit audited financial statements for the year 2021. First Finance is required to submit its audited financial statements within ninety (90) days after the close of business each year.⁹¹

81. On July 14, 2022, First Finance, through Leda. Myrna I. Lozada Guzman, sent OCIF a letter requesting an additional extension of time to issue the audited financial statements. The reason for this was that there was a new auditing firm, Valdes, Garcia, Martfnez & Marfn, and they were not going to be able to complete the audit within the established time period. However, the auditing firm announced in the letter was the same firm

89. See Volume I, p. 52, L. 3-17. See, furthermore, OCIF Exhibit C.

90. See Volume I, p. 53, L. 13-25; p. 54, L.1-3. See, furthermore, OCIF Exhibit C.

91. See Volume I, p. 54, L. 16-25; p. 55, L. 1-25; p. 56, L.1-2. See, in addition, OCIF Exhibit D.

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that had performed the previous financial statements. Furthermore, they indicated that they would be able to complete the audited statements by August 15, 2022.⁹²

82. The representation made by First Finance was not correct because the audited financial statements were signed as of June 30, 2022 and the letter is dated July 14, 2022. It is a false representation to OCIF.⁹³

83. On June 3, 2022, notified on June 6, 2022, First Finance notified OCIF of certain capital injections consisting of a \$2,000,000.00 certificate of deposit at Grove Bank & Trust, a \$1,000,000.00 deposit at Grove Bank & Trust, a \$1,000,000.00 deposit at Grove Bank & Trust, and a \$1,000,000.00 certificate of deposit at Hamilton Reserve Bank.⁹⁴

84. First Finance, as part of the requirements under the Consent Order, submitted to OCIF a Weekly Report on its liquidity position dated June 30, 2022. The Weekly Report is a document prepared by FFIB and submitted by First Finance to OCIF. It reflects the capital contributions that First Finance notified in the letter dated June 3, 2022.⁹⁵

92. See Volume I, p. 58, L. 2-25; p. 59, L. 1-25; p. 60, L. 1-3. See, in addition, OCIF Exhibits A, B, c and E.

93. See Volume I, p. 60, L. 4-20. See, in addition, Exhibits c and D of the OCIF.

94. See Volume I, p. 61, L. 6-25; p. 62, L. 1-25; p. 63, L. 1-25; p. 64, L. 1-25; p. 65, L. 1-19. See, in addition, OCIF Exhibit F.

95. See Volume I, p. 67, L. 1-25; p. 68, L. 1-25; p. 69, L. 1-24. See, in addition, OCIF Exhibit G.

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85. From the Weekly Report, prepared by First Finance, dated October 20, 2022, there is no evidence of the cash capital injection of \$1,000,000.00 deposited in Grove Bank & Trust without a balance of \$26,256.49 in said account. There is also no certificate of deposit for \$2,000,000.00 deposited in the same institution. Only the certificate of deposit for \$1,000,000.00 deposited in Hamilton Reserve Bank is reflected in the report. This means that First Finance used the newly injected capital to cover its financial needs and at the time of the Weekly Report as of October 20, 2022, it no longer holds such capital.⁹⁶

86. On November 2, 2022, First Finance notified a new additional capital injection consisting of a \$1,300,000.00 debt-for-equity swap with its parent company, Diversified Payment Solution. There was no liquidity involved. It was a debt-for-equity conversion.⁹⁷

87. For OCIF, a debt conversion such as the one made by First Finance (after an order is issued in an adversary proceeding), is seen as an action to try to remedy the reality that the entity is presenting at the accounting level. However, it is not a real capital contribution. On the contrary, what it demonstrates is an insufficiency of liquidity to be able to meet its obligations, in this case, its deposits.⁹⁸

96. See Volume I, p. 70, L. 13-25; p. 71, L. 1-25; p. 72, L. 1-25; p. 73, L.1-9. See, in addition, OCIF Exhibit H.

91 See Volume I, p. 77, L. 3-25; p. 78, L. 1-25; p. 79, L. 1-9. See, in addition, OCIF Exhibit I.

98. See Volume I, p. 84, L. 7-18.

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88. The information presented by First Finance is not reliable, given the discrepancies they have previously reflected. The audited financial statements themselves are their basis.⁹⁹

89. First Finance files quarterly reports which are interim financial statements. The reports are prepared by FFIB through a program into which the entity itself enters the financial information. The software provider gives OCIF access to the report each time FFIB provides the information. OCIF does not have access to alter the information or make changes. If OCIF finds any discrepancies or “red flags” of figures that increase more than 10%, the system provides a Schedule where the discrepancies are seven.¹⁰⁰

90. En el Informe Trimestral para el periodo que culminó el 30 de septiembre de 2022, preparado por First Finance, dicha entidad reportó que su posición de efectivo o los equivalentes era alrededor de \$8,000,000.00.¹⁰¹

91. However, in the Weekly Report on the liquidity position presented by First Finance as of September 29, 2022, it reported a cash position of \$3,643,455.11. This amount is inconsistent with the figure reported in the Quarterly Report for the period ending September 30, 2022. This means that there was an omission of information

99. See Volume I, p. 84, L 19-25; p. 85, L 1.

100. See Volume I, p. 85, L 9-25; p. 86, L 1-20; p. 89, L 3-25.

101. See Volume I, p. 86, L 21-25; p. 87, L. 1-25; p. 88, L 1-4. See, furthermore, OCIF Exhibit J.

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since both figures do not coincide. The pre-audit numbers reported by First Finance are not reliable.¹⁰²

92. First Finance's Weekly Liquidity Position Report as of September 29, 2022 included the \$4,000,000.00 capital injection amount reported on June 6, 2022, for a total of \$9,250,000.00 in paid-in capital. However, by that date, \$3,000,000.00 of such reported capital injection no longer existed.¹⁰³

93. Mr. Wigberto Lugo Mender, an OCIF-appointed trustee for First Finance, has been a certified public accountant since 1991 and a licensed attorney since 1997. He maintains a private practice where he offers accounting and legal services. He has been an appointed trustee of the Panel of Trustees of the Puerto Rico Bankruptcy Court since 1996.¹⁰⁴

94. In his initial review of First Finance, Mr. Lugo Mender found that FFIB's revenues are not sufficient to sustain the operation. First Finance's operation is substantially dependent on regular contributions from the parent company. So much so that the payroll has to be made with cash provided by the parent company in order to cover the payroll. The injection of cash to cover recurring expenses is a pattern that has been occurring for

102. See Volume I, p. 90, L. 3-25; p. 91, L.1-10. See, furthermore, OCIF Exhibit K.

103. See Volume 1, p. 92, L. 7-25; p. 93, L.1-5. See, in addition, OCIF Exhibit K.

104. See Volume I, p.119, L. 3-25; p. 120, L. 1-25, p.121, L.1-2.

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the past year. Without the parent company's contribution, these expenses would not have been covered. This includes payroll, rent, utilities and other types of expenses.¹⁰⁵

Based on the above uncontroverted facts outlined by FFIB, all of the documentary evidence in the administrative record of this case, the testimonial evidence, and the provisions contained in the governing rule of law, the Commissioner accepts the Report of the Examining Officer and issues this **FINAL DECISION** affirming the **ORDER** issued on the grounds that there is an imminent danger to: (i) to the safety and operational adequacy of FFIB, including, but not limited to, with respect to the deposits in its possession; and (ii) to the public interest that OCIF must protect by ensuring that FFIB complies with applicable legal parameters and/or requirements for a healthy, responsible and viable operation.

V. LEGAL CONCLUSIONS

The Explanatory Memorandum of Law No. 4-1985 states that “[i]t is the inescapable responsibility of the State to ensure that the interests of those who are linked to these industries as depositors are protected...”, among others. Accordingly, Law No. 4 imposes on the OCIF the responsibility to supervise and oversee financial institutions operating or doing business in Puerto Rico and empowers the Commissioner to “regulate its own

105. Volume I, p.126, L. 4-25; p. 127, L. 1-25; p.128, L. 1-25; p. 129, L. 1-7.

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procedures and work standards. In harmony with Law No. 4, the OCIF administers Law No. 273-2012, which grants the Commissioner the duty to review and conduct investigations with respect to all applications for licenses to operate international financial institutions; approve, grant conditional approval or deny applications for permits and licenses to operate international financial institutions. As part of the powers conferred by Law No. 4 and Law No. 273- 2012, the Commissioner has broad supervisory powers over international financial institutions such as FFIB. Among these powers is the power to require reports, documents and evidence that demonstrate the operating capacity of such entities and compliance with laws and regulations.

It appears from the evidence evaluated and OCIF has determined that FFIB is an international financial institution licensed to operate in Puerto Rico by OCIF since May 2017, initially under the name Paytoo. In the exercise of the powers conferred by Law No. 273-2012, OCIF notified FFIB on December 6, 2018 that a *Safety and Soundness* examination would commence on January 10, 2019, for the period since it began operations through September 30, 2018.

As a result of said examination, on June 10, 2019, the Report for Examination (ROE), a Consent Order and a *Fine Order* amounting to \$21,500.00 was issued due to the manner in which FFIB was operating, including various violations of Law, deficient capital, inaccurate accounting and Quarterly Reports that did not reflect EFI's financial condition, and an unsatisfactory BSA/AML and OFAC

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Compliance Program, among others. The *Consent Order* specifically states, as applicable, that:

The Commissioner and the Entity hereby consents to:

1. ---
2. Operate the Entity with an adequate level of capital considering the volume and kind of assets held by the Entity.
3. Operate the Entity in a commercially reasonable manner to achieve sufficient earnings to support operations and generate capital.
4. Operate the Entity under a reliable accounting system that succeeds in keeping accurate books,... and submitting accurate Easy Call Reports to the Commissioner...

Similarly, the *Consent Order* provides in the “Notices” section that:

The Entity affected by this Order is hereby given notice that, pursuant to the provisions of Article 20 (c) [o]f Act No. 4, the OCFI may impose an administrative fine not greater than Five Thousand (\$5,000.00) Dollars for each day of non-compliance with the orders issued under the provisions of the act, up to a maximum of Fifty Thousand (\$50,000.00) Dollars...

Además, como parte del Consent Order suscrito por OCIF y aceptado voluntariamente por FFIB, dicha

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entidad acuer6 lo siguiente: “[e]n caso de que la Entidad no pueda mantener los niveles de capital requeridos especificados en el subpárrafo (1) anterior, entonces dentro de los treinta {30} días siguientes a la recepción de la instrucción por escrito del Comisionado, la Entidad desarrollará, adoptará e implementará un plan por escrito para vender o fusionarse con otra institución financiera o para obtener de otra manera inmediata una inversión de capital suficiente en la Entidad para cumplir plenamente con los requisitos de capital del párrafo (1) anterior”.

As part of the *Consent Order*, and as part of compliance with Law No. 273-2012, FFIB is required to submit Audited Financial Statements, in addition to periodic reports, showing OCIF its ability to continue operating. The Audited Financial Statements for the years 2019, 2020 and 2021 submitted by FFIB to OCIF and submitted in evidence to OCIF in this case (Exhibits A, By C) reflect the following:

	2019	2020	2021
Total Paid Capital	\$2,450,000	\$2,900,000	\$5,250,000.00
Net Capital	\$503,043.00	\$229,600.00	\$872,809.00
1/3 of Capital	\$816 667.00	\$966,666.67	\$1,750,000.00
Difference	-\$313,624.00	-\$737,066.67	-\$877,191.00

For its part, subsection (g) of Article 2 of Law No. 273-2012 defines insolvency as:

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(g) Insolvency. - Refers to the financial situation in which an international financial institution, or the person of which an international financial institution is a unit, may be when it is unable to pay its debts when due or when its paid-in capital has been reduced to less than one-third (1/3). (Emphasis supplied.)

The definition of insolvency in Law No. 273-2012 is clear, and it establishes that the paid-in capital (net) of an international financial institution operating in Puerto Rico cannot be below 1/3 and knowing this definition and the results of FFIB, as they arise from its Audited Financial Statements, the president of FFIB, Ismael Torres Pizarro, upon questioning from OCIF's legal representation during the hearing, admitted that the institution was insolvent for the years 2019, 2020 and 2021. As relevant here, FFIB's paid-in capital as of December 31, 2021 was \$5,250,000.00-and one-third of that amount was \$1,750,000.00. Therefore, a *total stockholder's equity* of \$872,809.00, within the reality of its banking operation, constitutes an insolvency scenario. This capital shortfall demonstrates FFIB's inability to meet its obligations, particularly to cover all of its depositors' balances as of that date, being in a position to leave all (100%) of its deposits uncovered. As of that date, FFIB had:

- \$1,600,160.00 in cash on the books, but of which the external auditors were unable to confirm cash accounts in the aggregate in the amount of \$1,461,275.00; and
- \$1,362,335.00 in customer deposits.

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The evaluation of the relevant documents and information, and the failure to produce relevant documents and/or information, evidences that FFIB failed to comply with the Consent Order, incurred in a systematic pattern of non-compliance with the legal requirements related to the minimum capital needed to operate a viable EFI, and is in violation of the solvency level requirement established in Article 2(g) of Law No. 273-2012.

Witness Karem Rosario explained to the Examining Officer how the 1/3 of capital required by Law No. 273-2012 is computed, demonstrating that effectively and in accordance with the definition of Article 2 {g) of Law No. 273-2012, FFIB is insolvent since 2019. She added that, far from seeing an improvement in its outlook, the Audited Financial Statements show that the gap between the paid-in capital (net) and the deficiency to comply with the required 1/3 is increasing year after year.

Not only does Ms. Rosario's testimony and the admission at the hearing by FFIB's president demonstrate FFIB's deficient operating picture, but also, in the Audited Financial Statement as of December 31, 2021, the external auditing firm hired by FFIB could not issue an opinion on the institution's financial position, since they could not corroborate the existence and availability of \$1,461,275 in funds. The information arising from the Audited Financial Statements as of December 31, 2021, provided by the entity itself at the insistence of OCIF, evidences FFIB's lack of ability to meet the required standards

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and applicable minimum capital requirements due to the significant accumulated loss on its books.

Serious capital deficiencies arise from the 2021 Audited Financial Statements submitted during the adjudicative proceeding. First, these statements confirm that, based on the information provided by FFIB, the external auditors are unable to express an opinion on the Financial Statements as they have not been able to confirm that, in fact, FFIB has \$1,461,275.00 in its cash accounts as of December 31, 2021, which represents:

- (1) ninety-one percent (91%) of the EFI's cash,
- (2) virtually all of the funds required to be held by EFI to satisfy its customers' deposits; and
- (3) approximately fifty percent (50%) of First Finance's total assets.

Secondly, the 2021 Audited Financial Statements reflect a net loss of \$1,706,791.00 at the close of that year, increasing the accumulated losses (or negative retained earnings) to a total of negative \$4,548,333.00. The entity's capital position at the end of def 2021 was a *total shareholders equity* of \$872,809.00, which constitutes a non-compliance by FFIB with the minimum solvency and/or capital level required by Article 2(g) of Law No. 273-2012.

Similarly, the 2021 Audited Financial Statement shows that EFI has suffered recurring losses in its operations and has an accumulated deficit, which creates substantial doubts about FFIB's ability to continue operating.

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The Audited Financial Statements as of December 31, 2021 include a “Disclaimer of Opinion” from FFIB’s own auditors stating that, “We were unable to confirm cash accounts aggregating \$1,461,275 as of December 31, 2021, which represents 50 percent of the total assets of the Bank and were unable to obtain sufficient appropriate audit evidence about those cash accounts by other auditing procedures---the Bank has suffered recurring losses from Operations and has an accumulated deficit, which raises a substantial doubt about the Bank’s ability to continue as a going concern.” Emphasis supplied.

In addition, the 2021 Audited Financial Statements include “Emphasis of Matter” paragraphs by its independent auditors, in which those professionals raise substantial doubt about FFIB’s operational viability as a going concern and its financial ability to meet its obligations as they fall due in the ordinary course of business. Likewise, the “Disclaimer of Opinion” included in the 2021 Audited Financial Statements, allows concluding that the unaudited financial information periodically reported by EFI to OCIF lacks sufficient assurance of reliability and proves that, due to the operational losses evidenced, the entity does not comply with the capital levels required by Law.

On the other hand, Article S(b)(3)(A) of Law No. 273-2012, regarding the licensing requirements to operate an international financial institution, provides that the amount of authorized capital in shares that the institution must maintain is five million dollars (\$5,000,000) of which two hundred fifty thousand dollars (\$250,000) must be paid at the time the license is issued.

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Section S(b)(3)(A) of Law No. 273-2012 provides, in pertinent part, as follows:

- (b) The articles of incorporation, the partnership agreement or any written document establishing an international financial institution shall specify:
 - (1)
 - (2)
 - (3)
 - (A) The authorized capital in shares and the initial paid-in capital shall be specified. In the case of a corporation, the amount of its authorized capital in shares shall not be less than five million dollars (\$5,000,000), or such greater amount as may be required by the Commissioner, and of which at least two hundred fifty thousand dollars (\$250,000) shall be fully paid up at the time the license is issued, which shall be considered as the initial paid-up capital for all purposes of this Law.... (Emphasis added).

Maintaining the capital required under Law No. 273-2012 is a requirement to renew the operating license of an international financial institution. Article 8(d)(2)(B) of Law No. 273 provides as follows:

- (d) License renewal.
 - (1)
 - (2) All license renewal applications must be filed within thirty (30) days prior to the

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expiration date of each license. The same must contain:

(A)...

(B) Evidence that the licensee maintains the capital required by the Commissioner pursuant to the provisions of Section 5 of this Law, calculated in accordance with generally accepted accounting principles (Emphasis added).

Article 8(d)(2) of Law No. 273-2012 requires, among other things, that when applying for license renewal, an applicant submit evidence that it maintains the capital required by the Commissioner pursuant to Article 5 of the Law. Based on the information submitted by FFIB, OCIF determined that EFI does not comply with the minimum capital established in Article S(b)(3){B} of Law No. 273-2012. Based on the evidence presented, specifically, FFIB's Audited Financial Statements for the years 2019, 2020, and 2021, the same demonstrate that the institution for the past three years has not achieved a net capital that complies with the 1/3 required by Law No. 273-2012 in order to operate as an international financial institution in Puerto Rico. Therefore, FFIB did not meet the adequacy criteria required of a safe and sound financial institution, as required by federal and state banking statutes.

Ms. Rosario also testified about the content of the financial statements submitted and the reports that FFIB has to submit to OCIF as part of the Consent Order and indicated that the capital injections that FFIB has received

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over the past years mainly from its parent company have been absorbed in operating expenses, which shows that FFIB is not able to maintain a self-sustaining operation.

On July 30, 2021, FFIB reported the contribution of \$600,000.00 on July 27, 2021 in exchange for shares, but did not present evidence of it. In addition, the capital injection reported on June 2, 2022, cannot be confirmed by OCIF until it receives audited financial statements for the year 2022. These amounts were not reflected in the deposit accounts mentioned by FFIB, to the point that there is a reduction of approximately \$3,000,000.00 of said capital, as reported by EFI itself in its cash position report dated October 20, 2022. This economic situation continues to place EFI in a critical financial situation, putting it and its stakeholders at risk of suffering irreparable damage.

According to the administrative record at issue in the instant proceeding, FFIB has failed to comply with the Consent Order, as required by the Commissioner, by failing to submit a Capitalization Plan that satisfies OCIF's requirements. After evaluating the 2021 Capitalization Plan (the "Plan"), FFIB failed to submit evidence of capital contributions from DIVERSIFIED PAYMENT SOLUTIONS HOLDING CORP. ("DPS"), the entity holding the EFI shares, to demonstrate that they have reached \$3.6 million as of July 27, 2021. There is also no explanation as to the source of funds and that they have the financial capacity to make this capital injection. The Plan was insufficient on its face and, in addition, should contain specific actions to maintain adequate capital, projected asset growth and projections to meet current

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and future needs, in addition to cash account maintenance requirements.

Likewise, FFIB has repeatedly failed, and continues to fail, to maintain the capital required by Law and *Consent Order*, *jeopardizing the deposits of the institution's customers, with the aggravating circumstance that such deposits are not insured*. Evidently, the operational problems faced by FFIB, which have resulted in recurrent and continuous operational losses, have the adverse effect of hurting the interests of the institution's depositors in being able to recover all the funds entrusted to FFIB. Operational and financial uncertainty violates the parameters of a depository institution and the fiduciary relationship that such institution has with its clients. In hearing that FFIB's financial insolvency continues to worsen as time passes, that it has been unable to remedy the situation and, moreover, has chosen to conceal such information for prolonged periods of time, OCIF, in the discharge of its broad powers, took extraordinary measures to address this situation with the urgency that it requires.

For its part, FFIB submitted evidence alleging that it meets the definition of a "well capitalized financial institution" and submitted into evidence an FDIC spreadsheet and the "Optional Regulatory Capital Worksheet" for the years 2019, 2020 and 2021 for the purpose of establishing that, in accordance with the standards of the federal schedule, the institution is not insolvent. It should be noted that the legal representation of OCIF objected to the presentation of such evidence, however, the Examining Officer allowed it.

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Although it is a fact that OCIF, among the requirements it established in the license to operate, indicated to FFIB that the capital must satisfy “*among other regulatory criteria*” the adequacy criteria required for a sound and solvent entity according to federal *and state* statutes, the reality is also that it was given as an example (such as) the solvency parameters established in the Federal Deposit Insurance Corporation (“FDIC”) manual because such requirements cannot be in conflict with Law No. 273-2012. This emerges from Exhibit IX, “OCIF Permit to Paytoo International Bank to operate an EFI dated January 30, 2017”, submitted as an exhibit by FFIB, which states the following:

...among other regulatory criteria, the capital of the IFE must satisfy the adequacy criteria required in a safe and sound financial institution, in the manner provided by de federal and state banking statutes and verification of which is provided for in examiners manual *such as those used* by de Federal Deposit Insurance Corporation”. Emphasis added.

Clearly the requirement begins by indicating that among **other regulatory criteria** the FFI must satisfy the solvency requirements for a sound financial institution under federal and state banking statutes to be verified by OCIF examiners pursuant to examination manuals such as those used by the FDIC. Indeed, the FDIC examination manuals are one of the “other” requirements set forth by OCIF to ensure the proper operation of an international financial institution. These “other” requirements cannot go above and beyond the mandate of the Law that

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regulates international financial institutions in Puerto Rico. That is why, although according to the testimony of FFIB's own president, Ismael Torres Pizarro, FFIB was not insolvent according to FDIC standards, this fact does not defeat the legal reality that, according to the definition of insolvency in Law No. 273-2012 and the Audited Financial Statements presented in evidence, the entity failed to maintain the required capital of more than one-third (1/3).

According to the documentary evidence presented and the testimonies of Mrs. Rosario and the president of FFIB, it was demonstrated that the institution was insolvent for the years 2019, 2020 and 2021. The evidence presented and evaluated by the Examining Officer shows that FFIB does not comply with the capital required by Law No. 273-2012. In view of FFIB's financial picture, OCIF issued the *Order* of October 27, 2022, appointing a trustee on an interim basis. This action taken by the OCIF is contemplated among the powers granted to the Commissioner in Article 10 of Law No. 4, 7 L.P.R.A. §2010, namely:

(20) ...

(b) *If, as a result of an audit, examination or inspection or a report rendered by an examiner, it is shown that the financial institution lacks sound economic and financial condition or that it is operated or managed in such a manner that the public or persons and entities having funds or securities in its custody are in danger of being defrauded, and*

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in the absence of a specific provision in the Law regulating the financial institution in question which similarly empowers him, the Commissioner may assume the management and administration of the financial institution, and promptly appoint a trustee. In the case of insured financial institutions, this may be their insurer. The Commissioner must hold a hearing before issuing an order to place a financial institution under his or her direction or that of a trustee. *However, the Commissioner may issue an interim order appointing a trustee manager without the need to hold a hearing when, in his opinion, the situation of the financial institution is such that irreparable damage is being caused or may be caused to the interests of the institution or of the persons and entities with funds or securities in the institution.* When the Commissioner issues an interim order for the purpose of appointing a trustee, he/she shall notify the Governor of the details and grounds for his/her determination and shall hold an administrative hearing within ten (10) days from the date of notification thereof to determine whether to make it permanent or revoke it. The trustee so appointed shall administer the financial institution in accordance with the provisions of the Law and regulations governing said institution and in accordance with the regulations issued by the Commissioner for emergency measures declared under this section.

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Said receivership *shall terminate with the total liquidation of the financial institution if necessary* or when the operations thereof, as certified by the trustee, allow, in the judgment of the Commissioner, devaluing the administration of the institution to its officers and officials, duly elected and appointed, under such circumstances as the Commissioner may stipulate. The Commissioner may fix reasonable compensation for the services of the trustee and the trustee's employees. *The determination of the Commissioner to assume the administration and management of a financial institution or to appoint a trustee may be reviewed by the Circuit Court of Appeals by means of an appeal filed within ten days from the date of the determination.*

In turn, Article 17 of Law No. 273-2012 provides that:

- (a) The Commissioner may, among other alternatives, appoint a trustee and order the dissolution of an international financial institution if the license of such international financial institution or of the person of which such international financial institution is a unit is revoked or surrendered, pursuant to section 3095 of this title.
- (b) *The trustee appointed shall be a person of recognized moral solvency, with vast experience in the field of banking or*

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finance, and his management in the international financial institution shall be secured by an adequate bond to be paid by the international financial institution itself.

- (c) *The trustee shall administer the international financial institution in accordance with the provisions of this chapter and shall:*
 - (1) *Take possession of the assets and liabilities, books, records, documents and files belonging to the international financial institution:*
 - (2) *collect all loans, fees and charges due to the international financing entity:*
 - (3) *pay the obligations and debts of the international financial institution, after having paid the necessary syndicate fees, and*
 - (4) *supervise the dissolution and liquidation of the international financial institution.*

In this regard, OCIF's action to appoint a trustee to the FFIB's financial table is supported by the powers

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granted to it by Law No. 273-2012 and Regulation No. 5653.

For not complying with the provisions of Law No. 273-2012 and Regulation No. 5653 regarding solvency and minimum capital requirements, the OCIF imposed a fine of five thousand (\$5,000.00) dollars on FFIB. The aforementioned fine is based on the penalties established in Article 13 of Regulation No. 5653, which states the following:

2. Penalties

Any violation of the Law or these Regulations shall be punishable by the penalties provided by Law and if no penalty is provided in the Law for any violation, the Commissioner may impose such administrative fine as he deems appropriate which shall not be less than five hundred dollars (US \$500) nor more than five thousand dollars (US \$5,000) for each separate violation. (emphasis supplied)

From the foregoing, it appears that in view of the evidence showing FFIB's insolvent financial picture, the DCIF, within its powers to impose sanctions and fines, imposed a fine on FFIB within the amounts established in Regulation No. 5653.

The Examining Officer further assessed OCIF's allegation that FFIB had failed to comply with the Law and Regulations by submitting the institution's

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financial statements late and outside the required terms. According to the evidence assessed, FFIB submitted the Audited Financial Statements as of December 31, 2017 on February 21, 2019; the Audited Financial Statements as of December 31, 2018, after having requested extensions, on November 19, 2020; the Audited Financial Statements as of December 31, 2020, were also submitted outside the regulatory term, after having requested extensions; and finally, the Audited Financial Statement as of December 31, 2021, was submitted by FFIB on August 23, 2022. The audited financial statement as of the end of the year 2021 and regarding an extension request submitted by FFIB, it appears that the request was based on a change in the firm of public accountants. However, according to the evidence presented, the external auditing firm that performed the audit was Valdes, Garda, Marin & Martfnez, the same firm that had performed the audits of FFIB for the years 2019 and 2020.

The obligation to submit audited financial statements of any international financial institution licensed by the OCIF arises from Article 5 of Law No. 273-2012, which states the following:

Every international financial institution shall submit to the Commissioner all such reports as may be required by the Commissioner's regulations, including an annual financial statement prepared by certified public accountants licensed to practice in Puerto Rico, as well as interim financial statements.

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In turn, the term to deliver the Audited Financial Statements required by Article 15 is established in Article 11, paragraph 2, of Regulation No. 5653, which provides as follows:

2. Reports

All EBIs must be submitted to the Commissioner:

- a. its annual audited financial statements as of the close of its fiscal year..., prepared in a form consistent with the condition reports rendered quarterly. Together with said financial statements shall be included a statement that the EBI is in compliance with the terms of the Law and these Regulations, by filling out the Form that from time to time shall be designed and circulated by the Commissioner by Circular Letter for such purposes. Said Form shall be certified by an independent Certified Public Accountant practicing under the laws of Puerto Rico. The financial statements must be received by the Commissioner **within ninety (90) days of the closing of the fiscal year of the EBI** and the same must comply with the Generally Accepted Accounting Principles or, with the approval of the Commissioner, with the equivalent requirements of other jurisdictions with the necessary adjustments, notes and explanations to conform them to the Generally Accepted Accounting Principles

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in the United States of America. (Emphasis supplied).

It is evident from the evidence presented and evaluated by the Examining Officer that FFIB has not complied with the delivery of the Audited Financial Statements within the ninety (90) days established in Article 11 of Regulation 5653. The delivery of the Audited Financial Statements as of December 31, 2021 two (2) months after they were received created serious questions about FFIB's good faith in complying with OCIF's requests. Moreover, the pattern of systematic noncompliance displayed by FFIB demonstrated its inability to comply with the responsibilities imposed by Law on an EFI. While it is true that an international financial institution may request an extension to submit the Audited Financial Statements for just cause, it cannot ignore the fact that FFIB was under a *Consent Order* since June 2019, so the degree of diligence it should have shown to the requirements of the Law and the regulations should not have been ignored by the institution. Similarly, it is of concern that FFIB's last extension request, FFIB claimed a change of auditing firm and it turned out that the firm performing the audit was the same as in previous years.

At the hearing, FFIB presented as a witness Mrs. Mariangie Franco, FFIB's office administrator. She testified about the dates on which the Audited Financial Statements for the year 2021 were received and the conversations and emails that were held before receiving them on August 12, 2022. It should be noted that from these conversations it appears that the auditors and FFIB

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had discussed some audit adjustments prior to that date. This information was also part of the testimony of Mrs. Franco, who at the hearing indicated that she did not know the exact date of receipt of the prior communication for which said discussions were held.

OCIF submitted as evidence to establish the date of delivery of the Audited Financial Statement as of the close of 2021, Exhibits L and M, AICPA Literature: “Dating of the Independent Auditor’s Report” and the Auditing Standards of the Public Company Accounting Oversight Board: AS3110: Dating of the Independent Auditor’s Report, which indicate that, as a general rule, the Audited Financial Statements are issued on the date the auditors’ opinion is signed and that according to FFIB’s Audited Financial Statement as of the close of 2021, Exhibit C, the date contained as issued was June 30, 2022.

Ms. Franco’s testimony and the e-mails submitted do not defeat OCIF’s position that Exhibit C itself shows the date on which it was available, i.e., June 30, 2022. FFIB did not present the auditing firm Valdes, Garcia, Marin & Martinez as a witness and therefore failed to rebut that evidence and, therefore, withheld relevant information on the 2021 Audited Financial Statements for a period of two (2) months even though OCIF was insistently requesting it.

Given the failure to deliver the Financial Statement on time at the close of the year 2021, OCIF imposed a fine of five thousand dollars (\$5,000.00) for each day, as of April 1, 2022, in which the institution had not complied with the

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delivery of the audited financial statement for the year 2021, which was finally delivered on August 23, 2022. The total fine amounts to seven hundred and twenty thousand dollars (\$720,000.00) and is sustained in accordance with Article 13 of Regulation No. 5653, mentioned above.

Finally, OCIF imposed a fine of fifty thousand dollars (\$50,000.00) on FFIB for failure to comply with the *Consent Order*. This fine is the maximum amount that OCIF may impose for non-compliance with its orders, as set forth in Article 20 of Law No. 4, which provides:

(b) The Commissioner may impose an administrative fine not to exceed five thousand dollars (\$5,000) *for each day that a financial institution fails to comply with the orders issued under the provisions of this Law*; provided, however, that in no case shall the accumulated fines exceed fifty thousand dollars (\$50,000). The Commissioner may initiate a civil action for the collection of such administrative fine in the Court of First Instance of Puerto Rico, San Juan Division, which shall have exclusive jurisdiction to hear such proceeding.... (Emphasis added)

The same is stated in the Consent Order as follows:

The Entity affected by this Order is hereby given notice that, pursuant to the provisions of Article 20 (c) [o]f Act No. 4, the OCFI may impose an administrative fine not greater than

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Five Thousand (\$5,000.00) Dollars *for each day of non-compliance* with the orders issued under the provisions of the act, up to a maximum of Fifty Thousand (\$50,000.00) Dollars...

Therefore, the fine imposed by the OCIF is within the powers delegated to the Commissioner pursuant to Law No. 4 and the same are within the amounts established by the Law and the regulations administered by the agency. For such purposes, Article 10 of the aforementioned Law, 7 L.P.R.A. §2010, indicates that the Commissioner, in the exercise of his powers, may:

- (a) The Commissioner, in addition to the powers and authorities transferred hereunder, shall have the power and authority to:
 - (4) To file any legal remedies, actions or proceedings that may be necessary or convenient to enforce the purposes of this Law or any other law or regulation, the enforcement or supervision of which has been assigned to him/her, either represented by his/her attorneys or by the Secretary of Justice, upon request to such effect.
 - (9) To impose administrative fines for violations of the rules it administers or the rules, regulations and orders approved or issued by it, as set forth in Article 20 of this Law....

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In view of the violations first alleged, the evidence presented at the administrative hearing, the powers of the Commissioner and, in accordance with the recommendations of the Examining Officer, the fines imposed are appropriate.

Evaluated the documentary and testimonial evidence in this case we see how FFIB, regulated by OCIF and who has been given multiple opportunities to demonstrate its ability to operate, has not complied with the requirements of Law No. 273-2012. The evidence evaluated, specifically FFIB's financial reports, demonstrate that FFIB is insolvent and that despite having received capital injections on multiple occasions at the end of each fiscal year from 2019 to the present, the result is that it has never been able to meet the one third (1/3) of paid-in capital required by Law No. 273-2012. This reality was not only demonstrated by the documentary evidence submitted, but also by the president of FFIB, Ledo. Ismael Torres Pizarro, had to admit this fact when questioned by the legal representation of OCIF. Likewise, it is clear that FFIB is insolvent under the definition established by Law No. 273-2012, but it has also demonstrated lack of diligence in the fulfillment of its duties by failing to deliver the financial statements.

The appointment of a trustee, beyond being a power of the Commissioner in this case, is a necessity, the evidence evaluated shows that FFIB has not been able to comply with the provisions of Law No. 273- 2012. Despite the multiple opportunities provided by OCIF to demonstrate its ability to operate, according to the evidence presented, it has failed to do so. At the administrative hearing, FFIB

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presented evidence of a different table for the period through 2022 than the table reflected in its Audited Financial Statements for previous years. However, the evidence in the file shows that FFIB repeatedly submitted reports to OCIF showing a picture within the standards of Law No. 273-2012 and then, when the Audited Financial Statement is submitted at the end of each year, the final numbers always end up indicating that the institution is insolvent. This, in spite of receiving capital injections from its parent company. We cannot rely on the information presented by FFIB at the hearing if there is already a proven pattern of non-compliance with the evidence that is binding, the Audited Financial Statements for the previous years.

In the permit adjudication exercise, OCIF has discretion “in selecting measures that will assist them in meeting the objectives of the laws they administer and implement as long as they act within the framework of their expertise and the Law. *Commissioner of Insurance v. Antilles*, 145 D.P.R. 226 (1998). Absent an abuse of discretion, the administrative decision must be affirmed. The OCIF is presumed to be an agency with specialized knowledge, so a reviewing function must be limited to determining whether the administrative interpretation or action was reasonable in light of the guidelines set forth by the legislature. *San Antonio Maritime v. Puerto Rico Cement*, 153 D.P.R. 374 (2001). In *Agosto Serrano v. F.S.E.*, 132 D.P.R. 866 (1993), the Supreme Court established that the decisions and criteria of specialized administrative agencies deserve great consideration and respect, in view of the vast experience and expert knowledge of

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such agencies on the matters entrusted to them. See, *Hernandez Alvarez v. Centro Unido*, 168 D.P.R. 592 (2006); *Velez v. ARPE*, 167 D.P.R. 684 (2006).

In this case, FFIB was afforded due process and had the opportunity to present evidence in its favor. However, the evidence presented by FFIB did not lead the Examining Officer to believe that OCIF's action was arbitrary, capricious or unreasonable. On the contrary, as set forth in the factual framework of this FINAL DECISION, FFIB has consistently demonstrated a pattern of noncompliance, and has operated as an international financial entity without being adequately capitalized, in violation of Law 273-2012 and the Orders issued by OCIF. The failure to comply with the minimum capital and/or solvency requirements have not been remedied, despite having been required by OCIF on multiple occasions and after OCIF guaranteed due process of law with sufficient time to comply. Therefore, the unjustified and conscious noncompliance with the capital levels required by the Commissioner, in accordance with the provisions of Law No. 273-2012, constitute violations to Sections S(b)(3)(A) and 8(d)(2)(B) thereof.

Allowing an international financial institution with a capital structure such as the one exhibited by FFIB to continue operating, *without having designed and successfully implemented a capitalization plan for its operations*, in violation of Law No. 273-2012, jeopardizes and undermines public confidence in the jurisdiction of Puerto Rico as a law and order banking system that ensures strict compliance with the applicable regulatory

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framework. Failure to act decisively and expeditiously would be tantamount to taking a step backward in Puerto Rico's financial recovery, as it could damage the Island's reputation as an international financial destination for doing business.

Likewise, it is important to highlight that the capital problems that lead FFIB to be in default are matters of first order and importance. So much so, that Law No. 273-2012, 7 L.P.R.A. § 3097, makes it a crime for an employee of an international financial institution to receive deposits or make loans on behalf of said institution with knowledge that the institution is insolvent. In other words, in the face of insolvency, Law No. 273-2012 does not envision the international financial institution being able to continue its ordinary course of business. The same language applies to directors of the entity, who make false representations about the financial condition of the entity.

VI. CONCLUSION AND ORDER

For the reasons stated above, and the powers and authorities conferred upon the Commissioner by Law No. 4, Law No. 273-2012, Section 3.9 of Law No. 38-2017, and the regulations issued, as well as the evaluation of all the evidence in the file which demonstrates that the financial and operational situation of FIFB is uncertain, precarious, and of such a nature that it is causing or could cause irreparable harm to its interests, or to the interests of individuals and entities with funds or securities in the institution, the **ORDER** issued for FFIB is **CONFIRMED**:

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- (A) cease and desist from conducting business as an international financial institution
- (B) immediately pay a fine of **FIVE THOUSAND DOLLARS (\$5,000.00)** for not complying with the solvency level and/or minimum capital required by Article 2(g) of Law No. 273-2012;
- (C) pay a fine of **FIFTY THOUSAND DOLLARS (\$50,000.00)**, maximum set forth in the *Consent Order*, for failure to comply with the *Consent Order* from March 2, 2022 to the present.
- (D) pay a fine of **FIVE THOUSAND DOLLARS (\$5,000.00)** as of April 1, 2022 for each day in which it has not complied with the delivery of the aforementioned audited financial statement, until its final delivery on August 23, 2022. Said fine amounts to **SEVEN HUNDRED AND TWENTY THOUSAND DOLLARS (\$720,000.00)**.
- (E) undergo a process of dissolution and liquidation by securing the deposits of its customers; and
- (F) deliver to the OCIF by certified check made payable to the Secretary of the Department of the Treasury the money corresponding to the Certificate of Deposit,

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as aforementioned, for the total amount of \$300,000.00.

The total fine amounts to **SEVEN HUNDRED SEVENTY-FIVE THOUSAND DOLLARS (\$775,000.00)** and shall be payable by certified check payable to the Secretary of the Department of the Treasury within ten (10) days from the date of having been notified with a copy of the **ORDER**. Pursuant to the provisions of Section 3.20 of Law No. 38-2017, said fine shall include interest on the amount imposed therein from the date on which said payment was ordered and until said payment is satisfied, at 8.00% per annum, which is the rate established by regulation of the financial Board for civil judicial sentences, as certified by the Commissioner of Institutions of Puerto Rico and in effect at the time the decision is rendered.

- (G)(i) take the strictest security measures to secure, guarantee, preserve and maintain in a safe place, the totality of the assets identified in FFIB's audited consolidated financial statements (including cash, accounts receivable, among others), documents, reports, books, records, registers, accounting records, papers and any other documents and evidence related to its operations, so that OCIF may inspect them if it deems necessary; and (ii) immediately notify (including via electronic media) all banks with which it has correspondent agreements of this **FINAL DECISION** and deliver copies thereof.

*Appendix E***GENERAL WARNINGS**

Pursuant to Law No. 38-2017 and Regulation No. 3920, FFIB is hereby notified that it may agree to the proposed fine and penalties and report its compliance or payment as provided in this **FINAL DECISION** on or before ten (10) days from the date it is notified, and comply with the order within the terms established. established.

Any party adversely affected by OCIF's **FINAL DECISION** may request reconsideration within twenty (20) days from the date of filing of the notice of this **FINAL DECISION**. Provided, that if the date of filing of the copy of the notification of the **FINAL DECISION** is different from the date of deposit in the regular mail or electronic mailing of said notification, the term shall be calculated from the date of deposit in the regular mail or electronic mailing, as the case may be. The request for reconsideration must be in writing, clearly stating the term "*Motion for Reconsideration*" as the title for the request. The filing of a *Motion for Reconsideration* shall not stay or modify in any way the terms of this **FINAL DECISION** unless otherwise ordered by the Commissioner.

Within fifteen (15) days of the filing of the *Motion for Reconsideration*, OCIF shall consider it. If it rejects it out of hand or fails to act within fifteen (15) days, the time limit for requesting review shall begin to run again upon notice of such rejection or upon the expiration of such fifteen (15) days, as the case may be. If any determination is made in its consideration, the time limit for requesting review shall begin to run from the date

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on which a copy of the notification of the notice of the agenda's **DECISION** definitively resolving the motion for reconsideration is filed in the files. This **DECISION** must be issued and filed within ninety (90) days following the filing of the motion for reconsideration. If the OCIF grants the motion for reconsideration but fails to take any action on the motion within ninety (90) days after it is filed, it shall lose jurisdiction over the same and the time limit for requesting judicial review shall commence upon the expiration of said ninety (90) day period, unless the agenda, for just cause and within such ninety (90) days, extends the time to resolve for a period not to exceed an additional thirty (30) days. If the date of filing of the copy of the notification of the order or resolution is different from the date of the deposit in the ordinary mail or the sending by electronic means of said notification, the term shall be calculated from the date of the deposit in the ordinary mail or the sending by electronic means, as the case may be.

A party adversely affected by a final order or **DECISION** of the OCIF and who has exhausted all remedies provided by the OCIF may file a petition for judicial review before the Puerto Rico Court of Appeals within thirty (30) days pursuant to Section 4.2 of Law No. 38-2017.

This **FINAL DECISION** does not relieve the FFIB from other violations arising as a result of this **FINAL DECISION** or which come to the attention of OCIF after the filing of the notice of this **DECISION**. In such case, OCIF reserves the right to amend the **FINAL DECISION**

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to include additional allegations, violations, penalties and remedies, subject to applicable Law.

FFIB is hereby warned that pursuant to the provisions of Article 20(c) of Law No. 4-1985, OCIF may impose an administrative fine of no more than **FIVE THOUSAND DOLLARS (\$5,000.00)** for each day that it fails to comply with the orders issued under the provisions of the Law, up to a maximum of **FIFTY THOUSAND DOLLARS (\$50,000.00)**. In case of total or partial noncompliance with this **FINAL DECISION**; the OCIF, in aid of the statutory jurisdiction conferred by Law No. 4-1985, may request the Court of First Instance, Superior Chamber of San Juan, to enforce the same, under penalty of contempt, and impose fines and sanctions in addition to those that the OCIF understands to be applicable, with any other pronouncement that may be appropriate at law.

**VII. PERMANENT APPOINTMENT
OF THE TRUSTEE**

In hearing the insolvency scenario faced by FFIB, which creates a risk of irreparable harm to the public interest, as described above, and to the operational safety and financial adequacy of FFIB, and in accordance with the broad powers and authority conferred to the Commissioner by Law No. 4, Law No. 273-2012, Section 3.9 of NCim. 38-2017 and the regulations issued to enforce said statutes, it is hereby **ORDERED THE PERMANENT APPOINTMENT OF THE TRUSTEE**, Mr. Wigberto Lugo Mender.

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The Trustee shall administer the international financial institution in accordance with the foregoing without this being construed as a waiver and/or limitation of OCIF's power to impose additional requirements. Specifically, the Trustee shall:

1. To take immediate possession of the assets and liabilities, books, records, documents and files belonging to the international financial institution. Pursuant to the foregoing, the Trustee shall perform the duties that the body of the Board of Directors of the international financial institution has as of today. In addition, it shall be the primary objective of the Trustee to organize the affairs of the entity in such a manner as to complete the process of dissolution and liquidation of the international financial institution without further delay.
2. The Trustee shall take immediate control of FFIB's bank accounts, as well as all of its investments and assets, including FFIB's equity or other proprietary interests in FFIB's subsidiaries, if any. The Trustee shall simultaneously collect all loans, charges and fees owed to the international financial institution. In addition, he/she shall be empowered to execute all documents that may be necessary before financial institutions or third parties to perform these functions.

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3. As a general rule, monies obtained as part of the liquidation process will be distributed to satisfy uninsured claims in the following order of priority:
 - (a) Administrative expenses of the trustee.
 - (b) Any customer deposits of the institution, excluding any deposits, debts or obligations payable as described in subsection (e) of this schedule.
 - (c) Any other senior or general debt of the institution.
 - (d) Any other obligation that has been subordinated to the payment of deposits of customers or general creditors.
 - (e) Any deposits, debts or obligations to shareholders, affiliates, subsidiaries or members of FFIB. FFIB.
4. The intention of this **PERMANENT APPOINTMENT**, pursuant to the powers conferred to the OCIF in its organic law, is to give preference and legal certainty to the payment of Jos deposits of the clients of the international financial institution in the order established above. To this effect, and based on its broad powers aimed at achieving compliance with the purposes of the laws under its jurisdiction, including

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Law No. 273-2012, the OCIF adopts, for purposes of the orderly processing of the receivership imposed herein, the priority parameters developed by the FDIC in its applicable regulations, particularly those set forth in the “Resolution and Receivership” rules codified in 12 CFR Part 360.3.

5. The Trustee may engage those professionals who are experts in their particular discipline to assist the Trustee in the performance of its duties, such as lawyers, accountants and forensic investigators, as well as such other professionals as may be necessary to carry out the duties of the Trustee in light of the totality of the particular circumstances of the international financial institution, at the Trustee’s discretion and in accordance with reasonableness.
6. The Trustee shall be in charge of paying the obligations and debts of the international financial institution, after having paid the necessary expenses directly related to the syndicate.
7. The Trustee shall prepare an operative budget to be implemented in accordance with the financial condition of the entity while reviewing the entity’s castes and aimed at completing the liquidation without further delay.

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8. The Trustee may conduct such audits and investigations as it deems necessary and/or advisable and as requested by OCIF in its sole discretion. The Trustee shall submit the results of the matter investigated to OCIF upon completion of the investigation, as appropriate.
9. The Trustee shall submit quarterly reports during the first ten (10) days of the month following the quarter in question. Said reports shall be submitted to the OCIF under oath and a digital copy shall be sent to each registered client of the institution that requests it in the ordinary course of business with the institution.
10. As part of the efforts to liquidate the assets of the entity, the Trustee shall conduct its efforts and acts to: (i) maximize the value to be obtained from the sale or disposition of such assets; (ii) minimize the amount of loss realized in the resolution of the matters before it; and (iii) ensure fair and consistent treatment of any entity or person interested in acquiring such assets.
11. Upon receipt of this **FINAL DECISION**, the Trustee shall establish an e-mail address to receive claims from FFIB customers. In addition, the Trustee shall prepare a Claims and Debts Register of the international

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financial institution and shall examine all such claims submitted for payment by customers. The Trustee shall have discretion in determining the appropriate means or means of reasonably notifying all parties in interest of the proceedings to be conducted by the Trustee. The Trustee may engage those professionals or services directed to receive and process these claims to assist it in its discretion in the preparation of the final settlement report.

12. The Trustee shall supervise the dissolution and liquidation of the international financial institution. Upon completion of its work, the Trustee shall submit a Final Liquidation and Distribution Report (“Final Report”).
13. The Final Report must be signed by the Trustee under penalty of perjury and must certify that all assets of the international financial institution have been properly liquidated or accounted for and that the liquidation proceeds are available for distribution. The Final Report should be prepared as soon as all monies have been collected, all claims have been reviewed or determined, and after the date for filing claims by customers and creditors has expired. The Final Report must be filed with OCIF prior to any distribution of funds to creditors or clients **and any claim filed**

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before OCIF completes its review of the Final Report will be considered untimely.

14. OCIF will review the Final Report to assess whether the Trustee has adequately and reasonably managed the property of the international financial institution. If there are material deficiencies in the Trustee's management or other problems or errors, these will be brought to the attention of the Trustee for corrective action. Upon completion of this review, the Final Report, as well as the proposed liquidating distribution, will be notified to all parties with an interest in the liquidation process. If there is a dispute between the Trustee and any party with an interest in the proposed distribution, the OCIF will resolve the dispute with respect to the report and the distribution. The parties in interest may file, *within thirty (30) days after notification of the Final Report*, a brief with the OCIF detailing their position as to the distributions and payments contemplated in the Final Report and the reasons why they believe the same to be incorrect. These claims will be processed in accordance with OCIF Regulation 3920, which governs the administrative adjudication process in effect. The Trustee shall approve any documents necessary to implement the foregoing.

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15. The Trustee is not authorized to act as an international financial institution and its function is limited to the dissolution and liquidation process set forth in this **FINAL DECISION**.
16. The Trustee shall be authorized to apply directly to the Court of First Instance with jurisdiction, for contempt orders against any party that fails to comply with the administrative orders issued and which are within its legal mandate to issue and enforce.
17. Disputes related to the performance of the Trustee in the handling of the affairs of the dissolution and liquidation of the international financial institution may be brought to the attention of the OCIF only within the administrative adjudication process identified in item 14 of this section. Any claim or controversy filed before the thirty (30) day jurisdictional period provided in this section begins to run shall be considered premature. The interested parties shall exhaust these administrative remedies before being able to take their claims to the courts of justice of Puerto Rico.
18. The compensation provided for in the syndication shall be incorporated into

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the liquidation expenses budget and shall be borne by the international financial institution as part of its operating expenses.

WARNING REGARDING THE PERMANENT APPOINTMENT OF THE TRUSTEE

OCIF's determination to appoint a trustee may be reviewed by FFIB by filing a petition for review with the Court of Appeals within ten (10) days from the date of notification of such determination.

Given in San Juan, Puerto Rico, today, March 27, 2023.

REGISTER AND NOTIFY.

<signature>

Natalia I. Zequeira Diaz
Commissioner of Financial Institutions

NOTICE

I certify that I have served a copy of this FINAL DECISION by regular mail to: First Finance International Bank, Inc. through its President, Mr. Ismael Torres Pizarro, 252 Ave. Ponce de Leon, Suite 1702, San Juan, Puerto Rico 00918 and to Mr. Michel Poignant at m.poignant@ffbi.com; and by e-mail to: Ramon E. Dapena Guerrero at ramon.dapena@mbcdlaw.com; Jorge Morales at jorge.morales@mbcdlaw.com; Heriberto Lopez Guzman at hlopez@hlopezlaw.com; Jan Carlos Bonilla Silva at

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jbs@bonillasilvalaw.com and Wigberto Lugo Mender at
trustee@ffibi.com and wigberto@lugomender.com.

Today, March 27, 2023, in San Juan, Puerto Rico.

<signature>
Gladys Navarro
Clerk

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**APPENDIX F — RESOLUTION OF THE
SUPREME COURT OF PUERTO RICO,
FILED APRIL 5, 2024**

IN THE SUPREME COURT OF PUERTO RICO
CC-2024-0022

FIRST FINANCE INTERNATIONAL BANK, INC.,

Petitioner,

v.

OFFICE OF THE COMMISSIONER OF
FINANCIAL INSTITUTIONS,

Respondent.

Chambers composed of Associate Judge Mr. Martinez Torres as President, Associate Judge Mr. Kolthoff Caraballo, Associate Judge Mr. Feliberti Cintron, and Associate Judge Mr. Colon Perez.

RESOLUTION

In San Juan, Puerto Rico, on April 5, 2024.

Considering the first motion for reconsideration filed by the petitioner, it is hereby Denied.

So resolved by the Court and certified by the Supreme Court Clerk.

Javier O. Sepulveda Rodriguez
Supreme Court Clerk

[COMMONWEALTH OF PUERTO RICO, GENERAL
COURT OF JUSTICE, SUPREME COURT]