



NEW YORK  
CITY BAR

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June 9, 2014

Hon. John J. Bonacic  
New York State Senate  
Legislative Office Building 509  
Albany, New York 12247

Hon. Helene E. Weinstein  
New York State Assembly  
Legislative Office Building 831  
Albany, New York 12248

Re: Comments on A.9576/S.7078

Dear Assemblywoman Weinstein and Senator Bonacic,

The Committee on Banking Law of the Association of the Bar of the City of New York has concerns with the enactment in its present form of A.9576 and S.7078, entitled:

AN ACT to amend the civil practice law and rules, the business corporation law, the general associations law, the limited liability company law, the not-for-profit corporation law and the partnership law, in relation to consent to jurisdiction by foreign business organizations authorized to do business in New York.

While there is some question whether the amendments to New York law that are provided for in the bill will address the due process issues that were identified in *Daimler v. Bauman*, \_\_ U.S. \_\_\_, 134 S. Ct. 746 (2014), the Committee urges that if the bill is enacted its text should be

amended to make clear that its amendments to New York law do not alter existing jurisdictional rules as applied to foreign banking organizations doing business in New York.<sup>1</sup>

The New York City Bar Association was founded in 1870 to promote reforms in the law, to facilitate and improve the administration of justice, and to elevate the standard of integrity, honor, and courtesy in the legal profession. The Banking Law Committee is one of the City Bar's standing committees. It explores current legal issues affecting banks and bank holding companies operating in the U.S. and abroad. The Committee is composed of members drawn from law firms, financial institutions, state and federal banking agencies, banking industry organizations, and law schools with diverse points of view.

The bill would amend several different statutes to provide that an application by a foreign business organization to conduct business in New York would constitute consent to the general jurisdiction of the courts of New York for all actions against that organization. According to the New York State Senate Introducer's Memorandum in Support, the bill has been introduced at the request of the Chief Administrative Judge in response to the recent *Daimler* decision from the Supreme Court of the United States, in which the Court held that due process requires more than doing business in a state before the courts of that state can exercise general jurisdiction.

The Introducer's Memorandum acknowledges that amendments to New York law that purported to confer general jurisdiction as a result of a foreign business organization doing business in New York "would be futile" because of the constitutional limitations on general jurisdiction identified in *Daimler*. It is not clear that the bill's alternative approach, to base general jurisdiction over a foreign business organization on its deemed consent as a result of registering to do business in the state, would solve this constitutional problem. As a factual matter, those organizations still would not be viewed as being "essentially at home" in New York notwithstanding their deemed consent to jurisdiction under New York law. See *Daimler*, 134 S. Ct. at 761 (quoting *Goodyear Dunlop Tires Opers., S.A. v. Brown*, 564 U.S. \_\_\_, \_\_\_, 131 S. Ct. 2846, 2851 (2011)).

Constitutional issue aside, however, the bill's proposed amendment to the business corporation law raises jurisdictional issues with regard to foreign banking corporations doing business in New York. Article 5 of the banking law includes detailed and specific provisions addressing jurisdictional and related matters for foreign banking corporations doing business in New York. See N.Y. Banking Law, §§ 200, *et seq.* The Introducer's Memorandum makes clear that it is *not* the bill's intention to alter those provisions or to subject foreign banking corporations doing business in New York to general jurisdiction in the New York courts. To the contrary, as the Introducer's Memorandum explains, "[a]lthough those foreign entities must register to do business in New York, their concomitant designation of the Secretary of Banking . . . as an agent upon whom process may be served is explicitly limited by statute to a narrow range of claims." See Banking Law, § 200(3).

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<sup>1</sup> Several members of the Committee are lawyers with federal or state agencies. All of those Committee members have abstained from deliberations concerning this letter and the position taken by the Committee in it.

This clarification is important, and it should be included expressly in the text of any statutory amendment. Accordingly, if the bill is to be enacted, the Committee requests the sponsors to consider revising the bill's proposed amendment to section 1301 of the business corporation law to add the underlined text to the proposed new section 1301(e) and to add a new section 1301(f) as set forth below::

(e) Except for foreign banking corporations, A a foreign corporation's application for authority to do business in this state, whenever filed, constitutes consent to the jurisdiction of the courts of this state for all actions against such corporation. A surrender of such application shall constitute a withdrawal of consent to jurisdiction.

(f) Authorization of foreign banking corporations to do business in this state is governed by Article 5 of the banking law.

We appreciate your consideration of this letter.

Very truly yours,

A handwritten signature in blue ink, appearing to read "John J. Clarke, Jr.", with a long horizontal flourish extending to the right.

John J. Clarke, Jr.

cc.: Members of the Banking Law Committee