



Instruction Guide

Subject: Guide to Foreign Bank Branching

Category: Application Guides

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Introduction

Part XII.1 of the [Bank Act](#) (BA) governs the establishment of a branch by a foreign bank as well as the on-going operation and supervision of such a branch. The Office of the Superintendent of Financial Institutions (OSFI) is responsible for assessing applications by foreign banks seeking to establish a branch in Canada, and makes recommendations to the Minister of Finance (the Minister), who has the authority to approve the establishment of a foreign bank branch (**FBB**). A foreign bank that is the subject of an order permitting it to establish a branch in Canada is referred to as an Authorized Foreign Bank (**AFB**).

A foreign bank may apply to establish either a “full-service branch” or a “lending branch”.¹ The BA permits full-service branches and lending branches to carry on the same activities except in relation to deposit taking. Lending branches may only take deposits or otherwise borrow from other financial institutions. Subject to certain exceptions², full-service branches may only hold deposits that are above \$150,000.

Purpose

This Guide outlines the process to establish an FBB under the BA along with the information that a foreign bank applicant (“Applicant”) is expected to submit in support of the application to:

- (a) the Minister seeking an order permitting the foreign bank to establish a branch in Canada to carry on business in Canada,³ and
- (b) the Superintendent of Financial Institutions (Superintendent) for the making of an order approving the commencement and carrying on of business in Canada by the Authorized Foreign Bank.⁴

¹ For the purpose of this Guide, an FBB whose order is subject to the restrictions and requirements referred to in subsection 524(2) of the BA is referred to as a lending branch.

² Please see section 545 of the BA and the [Prescribed Deposits \(Authorized Foreign Banks\) Regulations](#).

³ Please see subsection 524(1) of the BA.

⁴ Please see subsection 534(1) of the BA.



This Guide also sets out the various prudential, regulatory and legislative criteria and information requirements relative to applications for the establishment, and commencement of business, of an FBB.

The primary objective of this Guide is to promote awareness and enhance the transparency of the assessment criteria and processes for the establishment of an FBB.

OSFI officers from the Regulatory Affairs Division and Deposit-Taking Supervision Sector jointly review and assess each application for the establishment of an FBB. OSFI will generally evaluate a proposal to establish an FBB against the criteria in this Guide; however, as the particular circumstances and facts of each application are different, this Guide should not be viewed as an exhaustive set of criteria and information requirements.⁵

An Applicant wishing to incorporate or continue as a bank, bank holding company, federal credit union or federally regulated trust or loan company should refer to the appropriate guide or contact OSFI for more information.⁶

⁵ The BA provides broad authority to the Minister and Superintendent to take into account all matters that they consider relevant in the circumstances related to the granting of any approval (e.g., section 973.01).

⁶ Please refer to the OSFI [Guide for Incorporating Banks and Federally Regulated Trust and Loan Companies](#), the OSFI [Guide for Continuing a Body Corporate as a Bank or a Federally Regulated Trust or Loan Company](#), or the OSFI [Guide for Continuing a Local Cooperative Credit Society as a Federal Credit Union](#), as applicable.

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General Overview

There are two approvals related to an application to establish an FBB in Canada:

- (i) the making of an order by the Minister authorizing the establishment of an FBB (**Ministerial Order**)⁷; and
- (ii) the making of an order by the Superintendent approving the commencement and carrying on of business in Canada by the Authorized Foreign Bank (**Superintendent Order**).

Application Process

Prior to submitting a formal application, the Applicant should contact OSFI's Regulatory Affairs Division to schedule an in-person meeting to discuss the establishment of an FBB and the application process.⁸ This meeting is an opportunity for OSFI to provide preliminary feedback regarding any apparent or potential regulatory, prudential or policy issues.

The initial meeting also provides an opportunity for OSFI to clarify its processes and expectations regarding applications to establish an FBB, along with any unique considerations that may be applicable to that particular foreign bank.

The application process to establish an FBB in Canada is comprised of two steps related to each of the Orders noted above. The approach is intended to provide applicants with guidance and feedback at the initial stage of the proposed application and throughout the application process.

Step 1 – Ministerial Order

- Applicant provides introductory information to OSFI prior to an initial meeting.
- Applicant meets with OSFI to discuss the proposed application.
- Applicant publishes a notice of intention to apply for a Ministerial Order.
- Applicant submits its formal application for a Ministerial Order and a Superintendent Order to OSFI for review and consideration.
- OSFI will generally request further information or details from the Applicant and will meet with the Applicant during the course of its review of the application.
- Once the analysis of all considerations the Minister must take into account is complete, OSFI submits its recommendation to the Minister regarding the making of a Ministerial Order.

⁷ The Minister makes the Order upon recommendation of the Superintendent. Please refer to Section II of the Administrative Guidance attached to this document, which sets out the factors that the Minister must consider relative to the granting of an order.

⁸ The contact information for OSFI's Regulatory Affairs Division is located on the final page of this Guide.

Step 2 – Superintendent Order

- If a Ministerial Order is made, OSFI continues its review and consideration of the application with respect to the issuance of a Superintendent Order.
- OSFI will generally make additional requests for information or details and may have further meetings with the Applicant.
- OSFI carries out its pre-commencement review(s) of the Applicant.
- If OSFI is satisfied that any material issues or concerns identified have been adequately addressed, the Superintendent issues the Superintendent Order.

Application Timeframes

While there is no specific time limit on the assessment of applications, OSFI endeavours to complete all application assessments as quickly as possible. The assessment of each application will depend on the specific facts and circumstances, and OSFI will communicate regularly with the Applicant throughout this process.

In OSFI's experience, delays in receiving the Orders most often result from the complexities presented in the application, the provision of incomplete information by the Applicant in support of the application, and/or a failure on the part of the Applicant to sufficiently address additional information requests from OSFI in a timely manner.

Applicants should also note that an AFB may require several months to prepare for the on-site review, and the timing related to the making of the Superintendent Order will largely depend on the operational readiness of the AFB. It is important to note that the Superintendent cannot issue a Superintendent Order **more than one year** after the Ministerial Order is made.⁹

Terminating Review of Application

OSFI may terminate its review of an application where, in OSFI's view, based on the quality of the Applicant's submissions, and despite significant feedback from OSFI, the Applicant is unable to satisfy the information requirements in support of the application. In this regard, Applicants should note that they bear the onus of satisfying OSFI's information requirements in a timely, clear and complete manner.

⁹ Please see subsection 534(9) of the BA.

Step 1 – Ministerial Order – Permission to Establish a Foreign Bank Branch

(i) *Initial discussion with OSFI*

Prior to the initial meeting with OSFI, an Applicant will be expected to provide the following written submissions:

- (a) a brief description of the foreign bank;
- (b) a description of the home office regulatory regime;
- (c) the reason(s) for which it intends to apply to establish an FBB;
- (d) a description of the foreign bank’s ownership structure; and
- (e) a brief overview of the proposed business strategy in Canada and the target market of the FBB.

For the purpose of this Guide, any reference to “owner” generally includes:

- (a) any person who beneficially owns more than 10% of any class of shares or ownership interests in the Applicant, or who controls¹⁰ an entity that beneficially owns more than 10% of any class of shares or ownership interests in the Applicant; and
- (b) any person who controls the Applicant or who beneficially owns more than 10% of any class of shares or ownership interests in an entity that controls the Applicant.

OSFI will also request that the Applicant provide an expected date for its submission of a formal application.

(ii) *Notice of Intention to Apply*

Prior to submitting the formal application, the Applicant must give notice of its intention to apply for the establishment of an FBB (Notice). The purpose of the Notice is to inform the public of the identity of the Applicant making the application and to allow for public comment. The BA states that the Notice must be published once a week for four consecutive weeks in the *Canada Gazette* and in a newspaper in general circulation at or near the place where the principal office of the FBB is to be situated. The BA also specifies that the Notice must be in a form satisfactory to the Superintendent. As such, a draft copy of the Notice should be provided to OSFI for review prior to publication to avoid the possibility of having to republish the Notice.¹¹ In this regard, OSFI’s expectation is that the Notice sets out:

- (a) the name of the Applicant;
- (b) the ultimate controlling shareholder(s)¹² of the Applicant, if any;

¹⁰ Please see section 3 of the BA.

¹¹ Review by OSFI of the draft Notice will ensure that the form and information contained in the Notice provides, in OSFI’s opinion, the necessary information to the public.

¹² “Ultimate controlling shareholder” means any person who controls the Applicant but is not itself controlled by anyone. For more information on the concept of “control” please refer to section 3 of the BA and OSFI Advisory 2007-02 [Control in Fact](#).

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- (c) the name under which the Applicant proposes to carry on business in Canada;
 - (d) the geographical location/jurisdiction of the Applicant; and
 - (e) a brief description of the activities that the Applicant proposes to carry on in Canada.

The BA provides that a person may formally object to the proposed establishment of an FBB by submitting an objection, in writing, to the Superintendent within 30-days of the last publication of the Notice. Where an objection is submitted, the Superintendent will assess its merits and determine whether a public inquiry into the objection is warranted. The Superintendent must also inform the Minister of the objection and the findings of any such inquiry.

(iii) Ministerial Order - Formal Application

Following the publication of the Notice, the Applicant may submit its formal application to OSFI for the establishment of an FBB. The information that OSFI expects to be submitted in respect of this application is set out below.

OSFI will review the application and will contact the Applicant to discuss its completeness, status, and outstanding issues. This will typically be done through one or more written communications, discussions and/or meetings. Where necessary, OSFI may also request additional information to complete the assessment of the application, which may include additional corroborating information or analysis from third parties. OSFI's assessment will also be informed by its experience of the actual performance of FBBs in similar business lines.

OSFI's primary purpose in reviewing this information is to identify any fundamental issues that should be considered by the Applicant, including any:

- (a) material legal issues pertaining to the Applicant's plan to establish an FBB, as well as any risks that might be material to depositors or creditors of an FBB; and
- (b) significant prudential or policy concerns that may prevent OSFI from making a positive recommendation to the Minister for the issuance of a Ministerial Order.

In certain circumstances, it may not be feasible for an Applicant to provide all the information set out below at the time of the application. Where this is the case, Applicants should explain to OSFI which information items will be provided at a later date, and provide an estimate of when they will be provided.

Formal Application General Information Requirements

The Minister and the Superintendent have broad authority to take into account all matters that they consider relevant in the circumstances related to granting an Order.¹³ The requirements below are the general information expected from an Applicant. This information is reviewed in addition to the matters taken into account by the Superintendent in determining OSFI's ability to supervise and regulate the business in Canada of the FBB, as set out in the Administrative Guidance section of this Guide.

¹³ See footnote 5.

1.0 Prospective Applicant, Ownership, Financial Strength and Home Regulator

The Applicant is expected to provide, as applicable:

- (a) the name of the Applicant and the address of its head office;
- (b) certified copies of the constating documents and current by-laws of the Applicant;
- (c) a certified copy of a resolution of the board of directors of the foreign bank (or equivalent) approving the application;
- (d) the current organization chart (with percentages owned) of the Applicant, showing its owners and including entities in which the Applicant has a substantial investment¹⁴ (indicate by an asterisk whether any of the entities shown on the chart operate in Canada, and provide a summary of these operations);
- (e) details regarding any voting agreement or other similar arrangements that involve persons exercising direct or indirect control over the Applicant;¹⁵
- (f) details of any shares or ownership interests of the Applicant (and any of its owners) that are held by a government or a political subdivision, an agent or agency thereof, together with a summary of its involvement in the operation and affairs of the Applicant;
- (g) a summary of the current and proposed financial services and other key activities carried on by the Applicant and its affiliates (other than those that would be carried on through the FBB), including a list of jurisdictions in which they operate and the nature and degree of regulatory oversight applicable to the financial services activities;
- (h) copies of the annual reports of the Applicant (and of any of its owners) for the last three years;
- (i) a copy of the most recent report on the Applicant and its owners issued by a recognized credit rating agency, if available;
- (j) the audited consolidated financial statements of the Applicant (and of any of its owners) for the last three years (balance sheet, income statement, statement of changes in shareholders' equity);¹⁶
- (k) where applicable, a comparison between the accounting standards used to complete its financial statements and International Financial Reporting Standards;

¹⁴ Please see section 10 of the BA.

¹⁵ Please refer to OSFI Advisory 2007-02 [Control in Fact](#) for further details.

¹⁶ In this regard, the Applicant is expected to provide a comparison between the accounting standards used to complete its financial statements and International Financial Reporting Standards, where applicable.

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- (l) details regarding the asset quality of the foreign bank (and of any owner that is a foreign bank);¹⁷
 - (m) confirmation that the foreign bank:
 - (i) is adequately capitalized and meets, at a minimum, the Bank for International Settlements (BIS) capital standards to which it is subject in its home jurisdiction,¹⁸ and
 - (ii) meets, at a minimum, the BIS liquidity ratios and leverage ratio, as applied in its home jurisdiction;
 - (n) the name of the Applicant's home regulator and the name and contact information of an individual from that organization who is familiar with the Applicant's activities;
 - (o) a written confirmation from the Applicant that the Applicant's home regulator is aware of the Applicant's intention to establish an FBB in Canada, details regarding whether the Applicant requires regulatory approval from its home regulator to establish an FBB, and if so, the status of such an approval;
 - (p) information on whether, and in what manner, the Applicant is subject to comprehensive consolidated supervision and regulation by its home regulator;
 - (q) a copy of the most recent examination report in respect of the Applicant issued by its home regulator or, if the report cannot be provided, any views that such regulator may provide regarding the Applicant;
 - (r) if any of the Applicant's owners are individuals, for each owner:
 - (i) a completed [OSFI Security Information Form](#),¹⁹
 - (ii) a *curriculum vitae*, and
 - (iii) information that demonstrates that the owner has, or has access to, the necessary resources to provide on-going financial support to the foreign bank; and
 - (s) details of whether the Applicant, its owners or any of its affiliates have been:
 - (i) denied a request to establish a financial institution or a branch in any jurisdiction,

¹⁷ Depending on the circumstances, OSFI may request an explanation of the asset rating system of the home jurisdiction and amounts classified in each category, including a breakdown of the asset portfolio in Canadian and local currency, and the asset rating definitions used by home regulators.

¹⁸ Please note that, in certain circumstances, OSFI may request that the Applicant provide information that demonstrates that it meets the BIS standards in both its home jurisdiction and in Canada.

¹⁹ The OSFI Security Information Form(s) must be provided to OSFI in the following two formats: (a) a signed and dated original hard-copy, and (b) an electronic version in Excel format. Once OSFI receives the completed forms, they are then forwarded to the relevant Canadian law enforcement and intelligence agencies to carry out the requisite background and security assessments. Please note that the time required by law enforcement and intelligence agencies to complete these assessments is not within OSFI's control, and the Superintendent will generally not seek the Minister's approval in respect of the Order until these assessments are completed without issue. As such, Applicants are strongly encouraged to remit the completed OSFI Security Information Form(s) at the earliest possible stage in the application.

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- (ii) the subject of any administrative sanctions, or
 - (iii) convicted of any criminal offenses.

1.1 Business Plan

The Applicant is expected to provide a five-year business plan for the proposed FBB, including:

- (a) the reasons why the Applicant is seeking to establish the FBB;
- (b) the proposed location of the principal office and any other office and/or agency(ies) in Canada;
- (c) an analysis of target markets, opportunities and competitors of the FBB in Canada, and plans to address them;
- (d) the reasons why the Applicant believes that the proposed FBB will be successful and the overall strategy for achieving this success, including a discussion of key assumptions;
- (e) a detailed description of each line of business to be conducted by the proposed FBB and the products and services to be offered, including how the lines of business interrelate;
- (f) details regarding funding requirements, including sources of initial and future funding;
- (g) in the case of an application for a full-service branch, a sensitivity analysis regarding the amount of assets that the Applicant will have to maintain on deposit in Canada under section 582 of the BA;
- (h) five-year *pro forma* financial statements for the proposed FBB, including balance sheet, income statement, details regarding key assumptions and an identification of major asset, liability, income and expense categories; and
- (i) a description of any proposed material outsourcing arrangements²⁰ (including for services provided by an owner) involving the proposed FBB or services to the FBB to be provided by the Applicant, and a description of how these arrangements would be managed.

1.2 Management

The Applicant is generally expected to provide:

- (a) details regarding the projected staff complement and an organization chart showing reporting lines for the principal officer and all senior positions, located in Canada or elsewhere, including key responsibilities and mandates for each senior position of the FBB over the lifespan of the business plan;

²⁰ Please see OSFI [Guideline B-10 - Outsourcing of Business Activities, Functions and Processes](#).

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- (b) details regarding the hiring criteria for each senior position, including expected levels of knowledge and experience;
 - (c) details in support of the Applicant's capacity to provide continuing managerial and operational support to its proposed Canadian operations;
 - (d) information on the proposed principal officer and each of the senior individuals expected to be directly responsible for the operations of the FBB, including:
 - (i) the title of the position the individual would hold in respect of the FBB,
 - (ii) details of whether the individual, and/or any entity in which the individual is or was a senior officer at the time, have been the subject of any administrative sanctions or convicted of any criminal offenses,
 - (iii) the individual's current *curriculum vitae* demonstrating that the individual has the necessary qualifications and expertise to manage or direct the business of the FBB, and
 - (iv) in respect of the proposed principal officer and senior officers, a completed [OSFI Security Information Form](#)²¹; and
 - (e) the name and address of the proposed external audit firm, and the specific partner of that firm, that will be responsible for auditing the FBB, and confirmation that the proposed external auditor meets the suitability requirements set out in section 585 of the BA.

1.3 Risk Management: Policies, Procedures and Risk Management Controls

The Applicant is expected to provide:

- (a) draft copies of the FBB's proposed:
 - (i) funding and liquidity risk management policies,
 - (ii) operational risk management policies,²²
 - (iii) investment and lending policies, including a self-assessment against OSFI's [Guideline B-20, Residential Mortgage Underwriting Practices and Procedures](#) (if applicable to the proposed business), and
 - (iv) business continuity management policy, business impact analysis and plans for business continuity and disaster recovery;²³

²¹ See footnote 19.

²² OSFI generally expects operational risk management policies to include policies related to the following: outsourcing risk, business continuity and disaster recovery, privacy risk, information technology, information management and security, physical security, fraud risk and records retention. Please also see OSFI's [Supervisory Framework](#). Additionally, OSFI may request that an Applicant provide a self-assessment against OSFI's [Cyber Security Risk Self-Assessment Guidance](#).

²³ In particular, a FBB's business continuity plan should ensure that the FBB has in its possession or can readily access all records necessary to allow it to sustain business operations, meet its regulatory obligations, and provide all information as may be required by OSFI to meet its legislated mandate.

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- (b) a detailed description of any other material risks to which the FBB would be exposed as well as the manner in which it would monitor and manage these risks;
 - (c) the name of the proposed senior officer to be responsible for risk management oversight of the FBB and a description of the resources and authority allocated to discharge this responsibility; and
 - (d) details of any proposed risk management and control processes that will be integrated with those of the operations of other entities in the foreign bank's (or its owners') groups.

1.4 Internal Audit

The Applicant is expected to provide:

- (a) a description of the proposed mandate, organization structure, methodology and practices of the internal audit function, and a copy of the proposed Internal Audit Plan for the first year of operations of the FBB (including audits planned for outsourced activities); and
- (b) where applicable, a description of the involvement of any internal audit group(s) of the home office or any of its affiliates to assess the FBB's internal controls.

1.5 Regulatory Compliance Management

The Applicant is expected to provide a detailed description of the internal controls, policies and procedures that it would follow to ensure compliance with:

- (a) the BA and applicable OSFI issued guidance, including the name of the senior officer that would be responsible for the oversight of such compliance, and a description of the resources and authority to be allocated to that person to discharge this responsibility;
- (b) sections 83.08 to 83.12 of the *Criminal Code* and the *Regulations Implementing the United Nations Resolutions on the Suppression of Terrorism* (UNSTR) and related directives issued by OSFI and the Government of Canada, including the name of the senior officer that is, or would be, responsible for the oversight of such compliance with the *Criminal Code* and UNSTR, and a description of the resources and authority allocated to that person to discharge this responsibility;
- (c) the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA), and related guidelines issued by the [Financial Transactions and Reports Analysis Centre of Canada](#) and OSFI [Guideline B-8 - Deterring and Detecting Money Laundering](#), including the name of the proposed Chief Anti-Money Laundering Officer that is, or would be, appointed under the PCMLTFA, a description of the resources and authority allocated to that person to discharge this responsibility, and an assessment of the money laundering and terrorist financing risks relevant to the proposed business plan; and
- (d) all other pertinent Canadian legislation.²⁴

²⁴ Please see OSFI [Guideline E-13 - Regulatory Compliance Management \(RCM\)](#).

1.6 Information Technology

The Applicant is expected to provide:

- (a) a risk assessment of the IT operations including copies of its proposed data management policies and cyber risk management policies and practices;²⁵
- (b) a description of any integration with head office, other branches and any third party systems; and
- (c) the proposed IT policy and governance structure, including roles and responsibilities, and details on resources and staffing.

1.7 Other Requirements

The Applicant is also expected to provide:

- (a) the proposed name under which it intends to carry on business in Canada, in English, French, or both (as required) and a name search report²⁶ accompanied by an analysis in support of the Applicant's conclusion that the proposed name:
 - (i) is available for use in Canada, and
 - (ii) is not prohibited by the BA and meets the requirements of any other relevant Canadian legislation, including all pertinent financial institution statutes;²⁷
- (b) a statutory declaration or affidavit by a representative of the newspaper and *Canada Gazette* confirming the dates that the Applicant's Notice was published, along with a copy of the published Notice (please see section 525 of the BA);
- (c) an executed undertaking to the Superintendent, generally in the form attached as Appendix I of this Guide;²⁸
- (d) if the Applicant is a non-WTO Member foreign bank²⁹, evidence that treatment as favourable for banks exists or will be provided in the jurisdiction in which the foreign bank principally carries on business, either directly or through a subsidiary (please see section 524 of the BA);

²⁵ Please see OSFI [Cyber-Security Self-Assessment Guidance](#).

²⁶ OSFI will accept a NUANS corporate name search report, which includes a list of business names and trademarks that sound similar to the name being proposed. If the FBB would conduct business in the Province of Québec, a search of the Québec Corporations Database at "Registraire des entreprises" is also required.

²⁷ If the FBB will use both an English and French form of the proposed name, a name search report and corresponding analysis must be provided in respect of both forms of that proposed name. Reference should also be made to OSFI [Advisory 2002-01-R1 - Corporate Names, Registered Names and Trade Names](#).

²⁸ Prior to executing the undertaking, the Applicant must confirm that its contents are acceptable to OSFI.

²⁹ Please see section 2 of the BA for the definition of "non-WTO Member foreign bank".

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- (e) the non-refundable service charge in respect of the application, as required by the [Service Charges \(Office of the Superintendent of Financial Institutions\) Regulations](#).³⁰

(iv) Ministerial Order

The Applicant is permitted to establish a branch in Canada to carry on business in Canada under Part XII.1 of the BA upon the making of a Ministerial Order. The Minister may set out in the Ministerial Order any provision that the Minister considers advisable, and impose any terms and conditions that the Minister considers appropriate.³¹ OSFI is required to publish a notice of the making of the Order in the Canada Gazette.³²

Please note that the FBB may not carry on any business in Canada until the Superintendent has made a Superintendent Order in respect of the FBB.

Step 2 – Superintendent Order – Approving the Commencement and Carrying on of Business in Canada

Once the Ministerial Order permitting the establishment of the FBB has been made, OSFI will continue its review of the application to ensure that the FBB has the necessary systems, management structure, control processes and regulatory compliance management systems in place to carry on business in Canada. All policies and procedures should be finalised and approved prior to the making of a Superintendent Order. The information requirements related to the Superintendent Order are set out below.

The Superintendent may not make an Order more than one year after the date the Ministerial Order becomes effective.³³ Accordingly, in circumstances where OSFI requests additional information or documents from the Applicant with respect to the making of a Superintendent Order, the Applicant should respond to the request in a complete and timely manner.

A pre-commencement on-site review will be arranged after the making of the Ministerial Order and the anticipated areas for review and discussion will be provided by OSFI at that time. The purpose of the pre-commencement review is to determine whether the FBB is sufficiently prepared to commence business operations in Canada. The review is intended to assess, among other things, the operational readiness and control processes and management systems referred to in section 1.3, 1.4, 1.5 and 1.6 of the Step 1 Ministerial Order - Formal Requirements. The pre-commencement on-site review will also assess whether the FBB is capable of producing the required statutory and supervisory information in an accurate and timely manner at the commencement of operations.

³⁰ A wire transfer, cheque or draft should be made payable to the “Receiver General for Canada”.

³¹ Please see subsections 527(2) and (3) of the BA.

³² Please see subsection 527(4) of the BA.

³³ Please see subsection 534(9) of the BA.

OSFI will provide the FBB with a pre-commencement letter prior to a scheduled on-site review. The letter will request additional information that the Applicant is expected to provide sufficiently in advance of the pre-commencement review so that OSFI can consider the submissions prior to the review.

Following the pre-commencement review, OSFI will provide the FBB with a letter setting out any outstanding concerns and OSFI's expectations regarding their resolution.

(i) *Superintendent Order – Information Requirements*

In support of its application for a Superintendent Order, the Applicant is generally expected to provide:

- (a) a copy of any material outsourcing arrangement contracts or service contracts with the foreign bank referred to in section 1.1(i) of the Step 1 Information Requirements;
- (b) a confirmation that the AFB has deposited in Canada the required amount of assets;
- (c) a completed power of attorney provided to the principal officer³⁴; and
- (d) a signed letter of commitment by the AFB³⁵ to the effect that it will provide OSFI with adequate advance notice of any proposed material changes to its business in Canada.³⁶

(ii) *Superintendent Order*

The FBB may only commence business on the date provided in the Superintendent Order. The Superintendent may set out in the order conditions or limitations on the FBB's business to address supervisory and regulatory concerns.

The AFB will be required to publish notice of the making of the Superintendent Order in a newspaper in general circulation in the city where its principal office is located. OSFI is also required to publish a notice of the making of the Superintendent Order in the *Canada Gazette*.³⁷

³⁴ Please see subsection 536(2) of the BA.

³⁵ OSFI will provide a copy of the letter of commitment that the AFB is expected to sign.

³⁶ Material changes to the business in Canada may include new product offerings, changes in management structure or growth of the business beyond what was contemplated in the initial business plan submitted in support of the application for the establishment of an FBB.

³⁷ Please see subsections 534(7) and (8) of the BA.

Administrative Guidance

This portion of the Guide provides additional guidance to Applicants in respect of the matters for consideration relative to the approvals addressed in this Guide and the factors the Superintendent will take into account in determining OSFI's ability to supervise and regulate the business in Canada of the FBB.

I. Minimum Expectations for Entry

In addition to any requirements specified in the BA, OSFI expects foreign banks that seek to establish an FBB in Canada to satisfy the following conditions, which are relevant to demonstrate their ability to support the operations of an FBB:

- (a) be adequately capitalized and meet, as a minimum, the BIS liquidity ratios, risk-based capital ratios and leverage ratio to which they are subject in their home jurisdiction;³⁸
- (b) in the case of an application for a full-service branch, be of sufficient size, which may be demonstrated by having a minimum of C\$5 billion in consolidated assets and either being widely-held or having a widely-held controlling owner;
- (c) have a proven record in international banking, which may generally be demonstrated by the existence of international subsidiaries, branches, representative offices or correspondent banking relationships; and
- (d) be in good financial health, which may generally be demonstrated by a favourable financial performance over the last five years, based on indicators such as return on assets, return on capital and level of non-performing assets.

II. Factors to be considered in relation to a Ministerial Order

The Minister may make an order permitting the foreign bank to establish an FBB³⁹ only if the Minister is of the opinion, after consultation with the Superintendent, that:

- the Applicant is a bank in the jurisdiction under whose laws it was incorporated and is regulated in a manner acceptable to the Superintendent; and
- the Applicant's principal activity⁴⁰ is the provision of financial services or services that a bank is permitted to provide in Canada.

OSFI will review the whole application with a view to ascertaining whether the criteria related to the Ministerial Order have been met. Prior to recommending that the Minister make an order establishing the FBB, OSFI's review will focus on determining whether the following broad considerations have been satisfied:

³⁸ Please note that, in certain circumstances, OSFI may expect an Applicant to meet Canadian Capital standards.

³⁹ Please see subsection 524(4) of the BA.

⁴⁰ At least 50 per cent of the Applicant's gross revenues are derived from financial services or at least 50 per cent of the Applicant's assets are related to financial services.

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- (a) the Applicant has sufficient and adequate financial resources to continuously support the operations of the FBB;
 - (b) the business plan for the proposed FBB is sound and feasible;
 - (c) the business record and past performance of the Applicant are appropriate;
 - (d) the Applicant is operated in a manner that is consistent with standards of good character and integrity;
 - (e) the application does not raise any national security concerns;
 - (f) any concerns raised by the application relative to Canada's international relations and international legal obligations are addressed;⁴¹
 - (g) the Applicant has adequately assessed the risks related to the Authorized Foreign Bank's business in Canada and has satisfied OSFI that it has the capability to implement, prior to the commencement of business, proper policies, processes and systems to monitor and mitigate those risks;
 - (h) the persons who will be responsible for the operations of the FBB have the necessary experience and competence to fulfil their roles;
 - (i) any integration of the FBB's businesses and operations with those of a Canadian affiliate of the foreign bank or home office is appropriate;
 - (j) any regulatory compliance management concerns raised by the application are addressed;
 - (k) any public policy issues raised by the application are addressed; and
 - (l) the establishment of the FBB will be in the best interests of the financial system in Canada.

III. Factors to be considered in relation to a Superintendent Order

The Superintendent may make an order approving the commencement and carrying on of business in Canada by an Authorized Foreign Bank⁴² only if the Superintendent is satisfied that the Authorized Foreign Bank has:

- (a) deposited in Canada unencumbered assets of a type approved by the Superintendent, the total value of which are,
 - in the case of a lending branch, \$100,000; and
 - in any other case, \$5 million or any greater amount that the Superintendent specifies;
- (b) submitted a power of attorney⁴³ provided to its principal officer; and
- (c) complied with all other relevant requirements of the BA.

⁴¹ Please see section 973.01 of the BA.

⁴² Please see subsection 534(3) of the BA.

⁴³ Please see Appendix II for a sample form OSFI 512.

OSFI's review relative to the Superintendent Order will focus on whether the FBB's management, policies, processes and systems are in place and meet OSFI's expectations. This component of the process will culminate in an on-site review of the FBB by OSFI to determine whether the FRFI is sufficiently prepared to commence business operations.

IV. Part XII of the *Bank Act*

Upon receipt of a Ministerial Order, the Authorized Foreign Bank will be deemed to have a financial establishment in Canada.⁴⁴ As a result, the foreign bank and any entity associated with the foreign bank become subject to an operating framework in Canada that is substantively equivalent to the one applicable to Canadian banks in certain areas, such as substantial investments. Please refer to [OSFI Advisory 2006-01-R1 – Legislative Framework for Foreign Banks](#) for additional information on the consequences of having a financial establishment in Canada.

V. Restrictions on leasing activities

No foreign bank may establish an FBB if it, or any entity that is affiliated with it:

- (a) has control, or a substantial investment in an entity that engages in Canada in any personal property leasing activity in which a bank is not permitted to engage; or
- (b) engages in Canada in any financial leasing of personal property in which a bank is not permitted to engage.⁴⁵

Authorized Foreign Banks are also prohibited from engaging in the activities referred to in (a) and (b).⁴⁶

VI. Role of the Principal Officer

With respect to matters of corporate governance, OSFI looks to the Principal Officer to oversee the management of the FBB. The Principal Officer must be a natural person who is ordinarily resident in Canada and is expected to be able to receive in Canada all notices from the Minister or the Superintendent.⁴⁷ This person must be familiar with the FBB's day-to-day operations and is required to maintain records in Canada related to the Authorized Foreign Bank's business in Canada.⁴⁸ Additional information regarding OSFI's expectations relative to the selection and duties of the Principal Officer are set out in OSFI [Guideline E-4B – Role of the Principal Officer and Record Keeping Requirements](#) and OSFI [Guideline E-17 - Background Checks on Directors and Senior Management of FREs](#).

⁴⁴ Please see paragraph 507(15)(a) of the BA.

⁴⁵ Please see section 524.1 of the BA.

⁴⁶ Please see section 524.2 of the BA.

⁴⁷ Please see section 536 of the BA.

⁴⁸ Please see section 597 of the BA.

VII. Foreign Bank Branch Deposit

A lending branch is required to maintain assets on deposit equal to \$100,000. A full-service branch is required to maintain assets on deposit equal to \$5 million or five per cent of the liabilities of the Authorized Foreign Bank in respect of its business in Canada, whichever is greater. OSFI expects a full-service branch to maintain a buffer above this amount to take into account the projected fluctuations in the FBB's liabilities. The assets held on deposit must be of a type approved by the Superintendent and must be kept with a Canadian financial institution approved by the Superintendent. The Superintendent may also require an Authorized Foreign Bank to maintain additional assets as necessary to protect depositors and creditors.⁴⁹ Please refer to OSFI Guideline A-10 [Capital Equivalency Deposit](#) for information on the types of qualifying assets, the approval of a depository and other relevant matters related to the deposit requirements.

VIII. Other Stakeholders

Applicants should also note that the consumer provisions in the BA are administered by the [Financial Consumer Agency of Canada](#) (FCAC). OSFI will inform the FCAC of any application for a Ministerial Order.

Full-service branches must register with Payments Canada. Lending branches are not eligible to become members of Payments Canada.

OSFI will, on request, provide an Applicant with an appropriate contact at FCAC or Payments Canada.

Contact Details for Additional Information

All enquiries regarding the establishment of an FBB should be directed to:

Office of the Superintendent of Financial Institutions
Deposit-taking Institutions Approvals
Regulatory Affairs Division
15th Floor, 255 Albert Street
Ottawa, Ontario, Canada, K1A 0H2

Telephone: (613) 990-6282

Facsimile: (613) 991-0325

Website: <http://www.osfi-bsif.gc.ca/>

Email: approvalsandprecedents@osfi-bsif.gc.ca

⁴⁹ Please see section 617 of the BA.

Appendix I

Undertaking to the Office of the Superintendent of Financial Institutions

In consideration of the Minister of Finance (Canada) making an order pursuant to Section 524(1) of the *Bank Act* authorizing (name of the foreign bank) [the Bank] to establish a branch in Canada to carry on in Canada the business of banking and any other business generally that appertains to the business of banking, the Bank hereby undertakes as follows:

- To provide the Superintendent of Financial Institutions copies of the annual financial statements of the Bank;
- To send the Superintendent copies of **significant** regulatory disclosures and press releases including, but not limited to, those involving significant corporate actions and management changes and events that may have a **material** financial impact on the Bank;
- To annually provide a certificate from a duly authorized senior officer certifying that, after due inquiry and to the best of the senior officer's knowledge and belief, the Bank is in compliance with this undertaking, and
- To provide translations of the above, as appropriate.

Signature
Name
Title

Date