



Index A No. 12

AMALGAMATIONS

Legislative Authorities

- Sections 225, 229 and 805 and 809 of the [Bank Act](#) (“BA”)
- Sections 230 and 234 of the [Trust and Loan Companies Act](#) (“TLCA”)
- Sections 247, 251 and 859 and 863 of the [Insurance Companies Act](#) (“ICA”)
- Sections 228 and 232 of the [Cooperative Credit Associations Act](#) (“CCAA”)

Types of Amalgamations

The statutes listed above (collectively, the “Statutes”) provide for two types of amalgamations: short-form and long-form. Both types require the amalgamating entities (i.e., the applicants) to jointly apply to the Minister for letters patent of amalgamation (“Letters Patent”) continuing them as one federally regulated entity (“FRE”). Certain conditions, however, must be met before being eligible to apply for Letters Patent.

In the case of long-form amalgamations, the Statutes require applicants to submit an amalgamation agreement to the Superintendent for approval. Under the ICA, the agreement submitted to the Superintendent must be accompanied by a report of an independent actuary (“IA”). OSFI expects that its permission be sought to engage the IA.¹ Once the Superintendent has approved the agreement, each applicant must submit the agreement for approval by special resolution of its shareholder(s), members and/or policyholders entitled to vote, as the case may be.

In the case of short-form amalgamations, the Statutes require applicants to meet the short-form eligibility requirements (applicants provide evidence of this by providing the applicable information requirements set out under the heading “*Information Specific to Short-form Amalgamations*” below). Otherwise, applicants must proceed by long-form amalgamation. Short-form amalgamations distinguish themselves from long-form amalgamations mainly as follows: first, they do not require that an amalgamation agreement be submitted to, or be approved by, the Superintendent; second, they do not require approval by special resolution, but rather by resolution of each applicant’s directors. The Statutes provide two types of short-form amalgamations: horizontal (the amalgamation of two or more wholly-owned sister entities) and vertical (the amalgamation of an FRE with one or more of its wholly-owned subsidiaries).

Only after meeting these and other applicable conditions set out in the Statutes can the applicants jointly apply to the Minister for Letters Patent.

¹ The information in support of seeking OSFI’s permission to engage the IA is listed in item 24(a) below.



Information Requirements

The information requirements that follow, which are in support of both short- and long-form applications, are structured as follows:

- information for all amalgamations;
- information specific to short-form amalgamations; and
- information specific to long-form amalgamations.

Information Required for All Amalgamations

The following information is generally expected to be provided in support of both long- and short-form amalgamation applications:

1. the names of the applicants;
2. the rationale for the proposed amalgamation from the perspective of each FRE applicant, and each applicant seeking to continue as an FRE prior to the amalgamation (where applicable)², including details regarding the benefits that are expected to accrue to each of them;
3. where the name of the proposed amalgamated FRE (“Amalco”) is different from the name of the sole FRE applicant, or in the case of multiple FRE applicants, all of their names, the information required in [Transaction Instruction A No. 5 – Change of Name – Letters Patent](#), with such modifications as are appropriate in the circumstances;
4. with regard to the applicants and any of their affiliates, details regarding whether the proposed amalgamation is subject to or will trigger any regulatory approval or notification requirement, other than under the Statutes (and where any of these requirements apply, confirmation that they have been met, together with the details of the related regulatory response, if any)³;
5. proof of publication of the joint notice of intention to make an application for the issuance of Letters Patent (“Notice”)⁴;
6. a confirmation from each applicant that it has not received any objections related to the Notice or otherwise with regard to the proposed amalgamation, or has addressed any objection received (together with a description of the manner in which each objection has been addressed);
7. in the case of an applicant that is neither an FRE nor an entity seeking to continue as an FRE prior to the amalgamation,
 - (a) evidence that it is incorporated or formed by or under an Act of Parliament (e.g., under the *Canada Business Corporations Act*),

² See item 8(d) of the Administrative Guidance below for more information.

³ For example, a proposed amalgamation may be subject to a review under the *Competition Act*.

⁴ The Notice is described in paragraphs 228(2)(a) of the BA, 233(2)(a) of the TLCA, 250(2)(a) of the ICA and 231(2)(a) of the CCAA. See also items 4 to 6 of the Administrative Guidance below for more information.

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- (b) its most recent annual financial statements, together with the related report of the auditor (where available), and its most recent interim financial statements,
 - (c) a detailed description of each of its business activities and of the business activities of any entities it controls or in which it holds a substantial investment, and
 - (d) details of whether it, or any entity it controls or in which it holds a substantial investment, has been the subject of any administrative sanctions or convicted of any criminal offences;
8. where applicable, a description of the transactions involving each applicant that are proposed to be carried out in connection with the amalgamation both prior to and following the amalgamation (the “Connected Transactions”), together with the rationale for the Connected Transactions and flow-charts depicting them;
 9. organizational charts showing the persons:
 - (a) that currently hold a significant ownership interest (together with percentages owned) in each applicant,
 - (b) who will hold a significant ownership interest (together with percentages owned) in Amalco upon the Letters Patent becoming effective, and
 - (c) where applicable, who will hold a significant ownership interest (together with percentages owned) in Amalco upon the completion of the Connected Transactions that will occur after the amalgamation;⁵
 10. the names of Amalco’s directors and senior officers, and the positions for each of them, and
 - (a) where any such individual is a director or a senior officer of an FRE applicant, a confirmation from the FRE applicant that it is in compliance with [Guideline E-17 – Background Checks on Directors and Senior Management of FREs](#), and
 - (b) for each individual that is not currently a director or a senior officer of an FRE applicant:
 - (i) a completed [OSFI Security Information Form](#),⁶
 - (ii) details of whether the individual and/or any entity in which the individual is or was a director or senior officer, have been the subject of any administrative sanctions or convicted of any criminal offences, and
 - (iii) the individual’s current *curriculum vitae* demonstrating that the individual has the necessary qualifications and expertise to manage or direct Amalco’s business;

⁵ For the purpose of this information requirement, a person holds a “significant ownership interest” in an entity where the person:

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

⁶ See item 3 of the Administrative Guidance below for more information.

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11. a *pro forma* balance sheet for each applicant, and a *pro forma* capital position for each FRE applicant (and liquidity position, where the FRE applicant is a deposit-taking institution), immediately before the proposed amalgamation, together with relevant assumptions;
 12. a *pro forma* balance sheet and capital position (and liquidity position, where Amalco will be a deposit-taking institution) for Amalco immediately following the proposed amalgamation that confirms compliance with Amalco's proposed internal target(s), together with relevant assumptions and a breakdown of:
 - (a) in the case where Amalco will be a deposit-taking institution, all elements used to calculate:
 - (i) the capital ratios, in accordance with the *Capital Adequacy Requirements Guideline*,
 - (ii) the leverage ratio, in accordance with the *Leverage Requirements Guideline*, and
 - (iii) the liquidity coverage ratio, in accordance with the *Liquidity Adequacy Requirements Guideline*,
 - (b) in the case where Amalco will be a life insurance company or a fraternal benefit society, all elements used to calculate the Life Insurance Capital Adequacy Test, or
 - (c) in the case where Amalco will be a property and casualty insurance company, all elements of the Minimum Capital Test or the Mortgage Insurer Capital Adequacy Test, as applicable;
 13. a business plan for Amalco, together with three years of financial projections, including income statement, balance sheet, capital ratios and key assumptions – and in the case where Amalco will be a deposit-taking institution, the liquidity coverage ratio;
 14. an integration plan for Amalco;
 15. if Amalco's financial position or business strategy will be materially different from each FRE applicant's:
 - (a) in the case where Amalco will be a deposit-taking institution, an internal solvency assessment process document (e.g., Internal Capital Adequacy Assessment Process) for Amalco,
 - (b) in the case where Amalco will be an insurance company or a fraternal benefit society, a scenario stress testing report (e.g., [Financial Condition Testing](#)), together with a risk assessment report (e.g., the proposed Own Risk and Solvency Assessment for Amalco), in support of Amalco's proposed internal target,
 - (c) where applicable, a description of the anticipated material differences between each FRE applicant's risk appetite framework and Amalco's, and
 - (d) where any FRE applicant has a recovery plan, a description of the material revisions that will be made to the plan, including the timelines outlining when the revisions will be made; and

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16. where any transitional permission is requested⁷, details regarding the nature of the activity as well as the rationale for, and the requested duration of, the permission.

Information Specific to Short-form Amalgamations

Where the applicants seek to proceed with a short-form amalgamation, each applicant is also generally expected to provide:

17. a certified copy of the resolution of its board of directors approving the amalgamation;⁸
18. in the case of an application for a horizontal short-form amalgamation, a confirmation that it is (or will become, prior to the amalgamation) a wholly-owned subsidiary of the same holding body corporate as that of the other applicant(s);⁹
19. in the case of an application for a vertical short-form amalgamation, for each applicant that is (or will become, prior to the amalgamation) a subsidiary of the holding body corporate FRE applicant, a confirmation that it is (or will become, prior to the amalgamation) a wholly-owned subsidiary of that FRE applicant;¹⁰ and
20. in the case of an applicant that is an insurance company,
- (a) a confirmation that it does not have any participating policyholders,¹¹ and
 - (b) details regarding whether it has any policies that entitle it to change the premium, the amount of insurance or the surrender value (and where this is the case, a description of why the applicant believes that the rights and interests of the holders of these policies will not be prejudiced by the amalgamation, taking into account, among other things, their reasonable expectations).

Information Specific to Long-form Amalgamations – Superintendent’s Approval of the Amalgamation Agreement

Where the applicants seek to proceed with a long-form amalgamation, the following information is generally expected to be provided in support of the request for the Superintendent’s approval of the amalgamation agreement:

21. details regarding the due diligence that each FRE applicant, and each applicant seeking to continue as an FRE prior to the amalgamation, has carried out with regard to the other applicant(s), and the views of each such applicant regarding the results of the due diligence;

⁷ Under subsection 231(1) of the BA, 236(1) of the TLCA, 253(1) of the ICA or 233(3) of the CCAA.

⁸ These resolutions are required to address certain items. In the case of an application for a horizontal short-form amalgamation, see paragraphs 227(2)(d) of the BA, 232(2)(d) of the TLCA, 249(2)(f) of the ICA and 230(2)(d) of the CCAA. In the case of an application for a vertical short-form amalgamation, see paragraphs 227(1)(b) of the BA, 232(1)(b) of the TLCA, 249(1)(e) of the ICA and 230(1)(b) of the CCAA.

⁹ This is in support of the eligibility requirement set out in paragraphs 227(2)(b) of the BA, 232(2)(b) of the TLCA, 249(2)(b) of the ICA and 230(2)(b) of the CCAA.

¹⁰ This is in support of the eligibility requirement set out in subsections 227(1) of the BA and 232(1) of the TLCA, paragraph 249(1)(b) of the ICA and subsection 230(1) of the CCAA.

¹¹ This is in support of the eligibility requirement set out in paragraphs 249(1)(c) and (2)(c) of the ICA.

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22. a copy of the executed version of the amalgamation agreement¹² that will be submitted for approval by special resolution of the shareholder(s), members and/or policyholders entitled to vote, as the case may be, of each applicant;
 23. any other agreement between the applicants that relates to the implementation of the amalgamation;
 24. in the case of an amalgamation under the ICA,¹³
 - (a) prior to engaging an IA who will prepare the report on the amalgamation agreement:
 - (i) the name of the proposed IA, and
 - (ii) the rationale for proposing this person, including a summary of the due diligence performed by the applicant to confirm the person's independence¹⁴, and
 - (b) following the engagement of the IA,
 - (i) a draft version of the IA report on the amalgamation agreement and, if applicable, a draft version of the summary of the IA report,¹⁵ and
 - (ii) a signed IA report (after OSFI is satisfied with the draft IA report) and, if applicable, the final version of the summary of the IA report.

Information Specific to Long-form Amalgamations – Minister's Issuance of Letters Patent

Where the applicants seek to proceed with a long-form amalgamation, each applicant is generally expected to provide the following information in support of the joint application to the Minister for the issuance of Letters Patent:

25. where applicable, a copy of the materials sent to the shareholders, policyholders or members of each FRE applicant, and each applicant seeking to continue as an FRE prior to the amalgamation, in connection with the meeting to approve the amalgamation agreement by special resolution (the "Voting Package"), together with the date on which the Voting Package was sent;
26. a certified copy of the special resolution approving the amalgamation agreement; and
27. where applicable, a confirmation that the meeting during which the special resolution was passed took place in accordance with the requirements of the applicant's by-laws and the statute governing the applicant.

¹² The amalgamation agreement is required to address certain items: see subsections 224(2) of the BA, 229(2) of the TLCA, 246(2) of the ICA and 227(2) of the CCAA.

¹³ This is in connection with the requirement set out in subsection 247(2) of the ICA.

¹⁴ This is for the purpose of seeking OSFI's permission to engage the IA. See OSFI's [Guideline E-14: Role of the Independent Actuary](#) for more information. As it relates to property and casualty companies, the Guideline should be read with appropriate modifications as the circumstances require.

¹⁵ See OSFI's [Guideline E-14: Role of the Independent Actuary](#) for more information. As it relates to property and casualty companies, the Guideline should be read with appropriate modifications as the circumstances require.

Administrative Guidance

Effect of Letters Patent

1. While the Superintendent must make an order approving the commencement and carrying on of business (“OCCB”) where Letters Patent are issued¹⁶, OSFI is of the view that, for other purposes of the applicable Statute, Letters Patent do not create a new entity. Rather, Letters Patent combine the applicants into a single FRE that is a continuation of the applicants.¹⁷ As a result,
 - (a) any conversion of shares of the applicants into shares of Amalco does not trigger any significant interest approval under the ownership rules that govern Amalco;
 - (b) Amalco does not acquire or increase a substantial investment in, or acquire control of, any entity held by an applicant under the investments rules that govern Amalco; and
 - (c) with the exception of an FRE applicant’s OCCB, any order or approval granted to, or any undertaking with regard to, an applicant is unaffected (unless it is amended or revoked in conjunction with the taking effect of the Letters Patent).

Despite this, the Minister and the Superintendent will consider the implications of the amalgamation, and the suitability of the significant owners of Amalco, and may impose related measures (e.g., the Minister or the Superintendent may, in connection with the issuance of Letters Patent, amend or revoke an approval previously granted to an FRE applicant if he or she considers appropriate to do so).

2. Where an applicant has a significant interest in a class of shares of an FRE, or controls an FRE, upon the Letters Patent becoming effective, Amalco is deemed to be acquiring that significant interest or control for which approval of the Minister is required.¹⁸

Security Information Forms

3. 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 request the Minister’s decision to issue Letters Patent 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.

Notice

¹⁶ See subsections 48(4) of the BA, 52(5) of the TLCA, 52(4) of the ICA and 56(4) of the CCAA.

¹⁷ Based on the effect of Letters Patent described in sections 230 of the BA, 235 of the TLCA, 252 of the ICA and 233 of the CCAA. See also *R. v. Black & Decker Manufacturing Co.*, [1975] 1 S.C.R. 411.

¹⁸ See subsections 373(2) and 377.1(2) of the BA, 375(2) and 375.1(2) of the TLCA, 407(2) and 407.1(2) of the ICA, and 354(2) and 354.1(2) of the CCAA.

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4. OSFI generally expects the Notice to set out, among other things:
 - (a) the names of the applicants;
 - (b) the date on or after which the applicants intend to jointly apply for Letters Patent (note: the date on which the joint application is made cannot be more than three months after the date of the approval of (i) the amalgamation agreement by special resolution of the owners of each applicant, in the case of a long-form amalgamation, or (ii) the amalgamation by resolution of the board of directors of each applicant, in the case of a short-form amalgamation¹⁹);
 - (c) the proposed name (in English and French languages, where applicable) of Amalco;
 - (d) the proposed city and province or territory in which Amalco's head office is to be situated; and
 - (e) the Statute and related provision under which the Notice is given.
 5. In the case of a long-form amalgamation under the ICA, OSFI also expects the Notice to state that copies of the IA report (and the summary of the IA report, if applicable),
 - (a) are available for inspection by policyholders, members or shareholders of each FRE applicant and each applicant seeking to continue as an FRE prior to the amalgamation; and
 - (b) will be sent to any of these persons upon request in writing to the head office of each FRE applicant and each applicant seeking to continue as an FRE prior to the amalgamation.
 6. Applicants may publish the Notice at any time prior to making their joint application to the Minister for the issuance of Letters Patent (e.g., in the case of a long-form amalgamation, applicants may publish the Notice prior to requesting the Superintendent's approval of the amalgamation agreement).

Drafts

7. Applicants are encouraged to provide OSFI with a draft version of the Notice and, in the case of long-form amalgamations, draft versions of the Voting Package to be sent to an applicant's policyholders or members (where applicable) and the amalgamation agreement, with a view to obtain OSFI's comments regarding these documents. Where an applicant provides OSFI with a draft version of the amalgamation agreement, the applicant is generally expected to concurrently provide OSFI with items 1, 2, 7, 8, 9, 11 and 12 of the Information Requirements.

¹⁹ See subsection 228(1) of the BA, 233(1) of the TLCA, 250(1) of the ICA and 231(1) of the CCAA.

Other Matters

8. As it relates to the types of applicants, OSFI is of the view that:
 - (a) where one of the applicants is a mutual insurance company, Amalco must also be a mutual insurance company;²⁰
 - (b) a fraternal benefit society may amalgamate only with another fraternal benefit society;²¹
 - (c) mutual insurance companies, fraternal benefit societies and federal credit unions cannot proceed with short-form amalgamations;²² and
 - (d) a provincial entity may co-apply for Letters Patent if it also concurrently applies for letters patent continuing it as an FRE for the purpose of amalgamating under the applicable Statute immediately after continuance.
9. As it relates to the related party rules, OSFI is of the view that they do not prevent an FRE applicant from entering into, with a related party applicant, an amalgamation agreement or an agreement relative to the steps to be followed in respect of the amalgamation. This is assuming that neither of these agreements result in the acquisition or disposition of any property, or in the incurrence of any financial obligation.
10. The Minister or the Superintendent may consider whether the amalgamation would hinder the effective implementation of corrective measures in the future, and may request information to that effect.
11. The following email address should be used for the initial submission of documents in support of requests for approval(s) that are addressed in this document: approvalsandprecedents@osfi-bsif.gc.ca. Once the initial submission has been received, a case officer will be assigned to the matter. Thereafter, all case-related documents and correspondence should be directed to the case officer.
12. Requests for approval(s) that are addressed in this document are not subject to a service charge.²³

The information requirements and administrative guidance are intended to satisfy typical applications. They have been derived from OSFI's experience in assessing applications. Applicants who provide all information and material requested can generally expect a more timely assessment of their applications. As appropriate to the circumstances, OSFI may request additional information, take into account other matters, impose terms and conditions, or require undertakings.

²⁰ See subsections 245(1) and (2) of the ICA.

²¹ See subsection 245(3) of the ICA.

²² See subsections 227(1) and (2) of the BA and the conditions listed in section 249 of the ICA.

²³ See [Charges for Services Provided by the Office of the Superintendent of Financial Institutions Regulations 2002](#).