Regulatory and legislative advisory

Title	Substantial Investments - Appendix A.2
Category	Regulatory and legislative
Date	June 30, 2015
Sector	Bank Act Cooperative Credit Associations Act Insurance Companies Act Trust and Loan Companies Act

Appendix A.2 – Life Companies and IHCs

Permitted Entities

This document has been prepared for convenience of reference only and has no official sanction. For all purposes of interpreting and applying the law, users should consult the ICA and relevant regulations.

Notes:

1. In this Appendix,
    - **EAIRs** stands for *Exemption from Approval for Certain Investments in Intragroup Service Entities Regulations*;
    - **ERIRs** stands for *Exemption from Restrictions on Investments Regulations*;
    - **LifeCo** refers to a life insurance company; and
    - **MIRs** stands for *Minority Investment Regulations.*
2. Other abbreviations in this Appendix have the meaning ascribed to them on pages 1 and 2 of the Advisory.
3. Unless otherwise stated, references in this Appendix to (a) regulations are to regulations made under the ICA and (b) provisions are to provisions of the ICA.
4. Classes of entities 2 to 6 below comprise OEs only (i.e., 495(2) and 971(2) entities only).
5. A single OE can fall within more than one OE class listed below, depending on its business activities.

6. The control and approval requirements and business restrictions listed below refer to the ones imposed by the ICA's investment regime.

Classes of Entities		Control Requirement?	Approval Requirement?	Business Restrictions?
1. REs This class comprises entities listed in 495(1) and 971(1).	a. FRE [495(1)(a) to (f) and 971(1)(a) to (f)]	Control in fact, except if in compliance with MIRs. [495(6)(a) and 971(4)(a)]	No, except that Minister's approval is required under ownership provisions of the applicable Statute.	No.
	b. Provincially regulated financial institution [495(1)(g), (h), (i) and 971(1)(g), (h), (i)]	Same as 1(a) above.	Superintendent's approval in all cases except where Minister's approval is required. [495(8) and (9)(c); 971(6) and (7)(c)] Minister's approval is required where the LifeCo or IHC acquires control of the entity from **a person** who is not a member of the LifeCo's or IHC's group, as defined in subsections 490(2) and 966(2) of the ICA and sections 3 and 4 of the *Entity Member of Group Regulations*. [495(7)(a) and 971(5)(a)]	No.

Classes of Entities		Control Requirement?	Approval Requirement?	Business Restrictions?
c. Foreign regulated financial institution[1] [495(1)(j) and 971(1)(j)]	Control in fact, except • if in compliance with MIRs; [495(6)(a) and 971(4)(a)] or • where the foreign law does not permit control (LifeCo or IHC, however, must add investment in calculating minority investment cap under MIRs). [495(10) and 971(8)]	Superintendent's approval in all cases except where Minister's approval is required. [495(8) and (9)(c); 971(6) and 7(c)] Minister's approval is required where the LifeCo or IHC: • acquires control of the entity from **an FRE** that is not a member of the LifeCo's or IHC's group, as defined in subsections 490(2) and 966(2) of the ICA and sections 3 and 4 of the *Entity Member of Group Regulations*; [495(7)(b) and 971(5)(b)] or • has equity of at least two billion dollars and acquires control of an entity with consolidated assets that exceed 10% of the LifeCo's or IHC's consolidated assets, as shown in its last annual statement, either alone or when combined with all other acquisitions by the LifeCo or IHC of control of	No.	

Classes of Entities		Control Requirement?	Approval Requirement?	Business Restrictions?
2. Other financial intermediaries This class comprises OEs that engage in a financial intermediary activity that exposes the OE to material market or credit risk.	a. Factoring entity (defined in the *Factoring Entity Regulations*) [468(2)(a) and 930(2)(a)]	Control in fact, except • if in compliance with MIRs; [495(6)(b) and 971(4)(b)] or • in the case of a foreign entity, where the foreign law does not permit control (LifeCo or IHC, however, must add investment in calculating minority investment cap under MIRs). [495(10) and 971(8)]	Superintendent's approval, except where: • the LifeCo or IHC is acquiring a controlling interest; [495(8) and (9)(b); 971(6) and (7)(b)] or • the entity provides services exclusively to the LifeCo, IHC or members of the LifeCo's or IHC's group, as defined in subsections 490(2) and 966(2) of the ICA and sections 3 and 4 of the *Entity Member of Group Regulations*. [sections 1 and 2 of the EAIRs]	By definition, a factoring entity's activities are limited to acting as a factor in respect of accounts receivable, including the related raising and lending of money. [section 1 of the *Factoring Entity Regulations*] When raising money, however, the entity cannot engage in deposit-taking. [495(3) and 971(3)]

Classes of Entities		Control Requirement?	Approval Requirement?	Business Restrictions?
b. Financial leasing entity (defined in 490(1)) [495(2)(a) and 971(2)(a)]	Same as 2(a) above.	Same as 2(a) above.	By definition, a financial leasing entity's activities are limited to the financial leasing of certain personal property and the activities set out in section 3 of the *Financial Leasing Entity Regulations*, which include raising money. [490(1)] When raising money, however, the entity cannot engage in deposit-taking. [495(3) and 971(3)]	

Classes of Entities		Control Requirement?	Approval Requirement?	Business Restrictions?
c. Finance entity (defined in the *Finance Entity Regulations*) [495(2)(a) and 971(2)(a)]	Same as 2(a) above.	No approval where entity provides services exclusively to the LifeCo, IHC or members of the LifeCo's or IHC's group, as defined in subsections 490(2) and 966(2) of the ICA and sections 3 and 4 of the *Entity Member of Group Regulations.* [sections 1 and 2 of the EAIRs] In all other cases, • Superintendent's approval is required except where Minister's approval is required. [495(8) and (9)(c); 971(6) and (7)(c)] • Minister's approval is required where the LifeCo or IHC acquires control of the entity from **an FRE** that is not a member of the LifeCo's or IHC's group. [495(7)(b) and 971(5)(b)]	A finance entity is subject to the same restrictions as LifeCos in the areas of fiduciary, leasing, residential mortgage lending, securities dealing, credit information and substantial investments activities. [495(3) and 971(3). With respect to substantial investment activities, see also section 1 of the ERIRs where the LifeCo or IHC does not control the entity] In addition, the entity cannot engage in deposit-taking. [495(3) and 971(3)]	

Classes of Entities		Control Requirement?	Approval Requirement?	Business Restrictions?
d. Mutual fund entity and closed-end fund (both defined in 490(1)) [495(2)(e) and 971(2)(e)]	No.	No.	By definition, both of these entities' activities are limited to investing their funds so as to provide investment diversification and professional investment management to the holders of their securities. In addition, these entities are subject to the same restrictions as LifeCos in the area of substantial investments activities. [495(3)(d) and 971(3)(d). See also section 1 of the ERIRs where the LifeCo or IHC does not control the entity]	

Classes of Entities		Control Requirement?	Approval Requirement?	Business Restrictions?
e. Other financial intermediaries, including • an investment fund that is not a mutual fund entity or a closed-end fund; • an entity that engages in the business activities of a factoring entity **and** in one or more other business activities; and • an entity that engages in the business activities of a financial leasing entity	Same as 2(a) above.	Same as 2(c) above.	Same as 2(c) above, except that no restriction on credit information activities.	

Classes of Entities		Control Requirement?	Approval Requirement?	Business Restrictions?
3. Financial Agents	Includes OEs that engage in the following activities: • acting as a financial agent (including insurance broker); • providing investment counselling services; • providing portfolio management services; • networking financial services; or • acting as a trustee for a mutual fund entity or a closed-end fund. [495(2)(a) and 971(2)(a)] Also includes a mutual fund distribution entity, as defined in 490(1). [495(2)(e) and 971(2)(e)]	No.	No.	A financial agent is subject to the same restrictions as LifeCos in the areas of leasing, residential mortgage lending and substantial investments activities. [495(3) and 971(3). With respect to substantial investment activities, see also section 1 of the ERIRs where the LifeCo or IHC does not control the entity] In addition, a financial agent cannot engage in deposit-taking. [495(3) and 971(3)] A financial agent is also subject to the same restrictions as LifeCos in the areas of: • fiduciary activities, except when acting as a trustee for a mutual fund entity or a closed-end fund; [495(3)(a) and (3.1); and 971(3)(a) and (3.1)] • securities dealing, except in the case of a mutual fund distribution entity. [495(3)(b) and 971(3)(b)]

Classes of Entities		Control Requirement?	Approval Requirement?	Business Restrictions?

4. Investment holding entities
 	
This class comprises OEs whose business includes acquiring or holding shares of, or ownership interests in, entities that a LifeCo or IHC is permitted to hold or acquire. [495(2)(b) and 971(2)(b)]
	a. Specialized financing entity (defined in the *Specialized Financing Regulations* as an entity that acquires or holds shares of, or ownership interests in, entities that a bank may acquire control of, or hold, acquire or increase a substantial investment in, under 493(4))	Control in fact, except:
		
		• if in compliance with MIRs; [495(6)(c) and 971(4)(c)]
		or
		• in the case of a foreign specialized financing entity, where the foreign law does not permit control (LifeCo or IHC, however, must add investment in calculating minority investment cap under MIRs). [495(10) and 971(8)]
			Superintendent's approval in all cases. [495(8) and 971(6)]	A specialized financing entity is subject to the restrictions set out the *Specialized Financing Regulations*, including on controlling or holding shares of, or ownership interests in,
				
				• an RE; or
				• an OE that, in Canada,
				  ◦ primarily engages in financial leasing of motor vehicles,
				  ◦ primarily engages in operational leasing, or
				  ◦ acts as an insurance agent or broker.
				
				In addition, a specialized financing entity is subject to the same restrictions as LifeCos in the areas of fiduciary, leasing, residential mortgage lending, securities dealing and substantial investments activities. [495(3) and 971(3). With respect to substantial investment activities, see also section 1 of the ERIRs where the LifeCo or IHC

Classes of Entities		Control Requirement?	Approval Requirement?	Business Restrictions?
b. Other investment holding entity i.e., an OE that acquires or holds shares of, or ownership interests in, entities that a LifeCo or IHC is permitted to acquire or hold under: • 440 and 963 – less than substantia investmen (portfolio investmen • 495 and 971 – PEs; • 493(2) and 969(2) –investme via an RE subsidiary • 498 and 974 – temporary investmen (only if the LifeCo or IHC controls the investmen holding	Control in fact, except: • if in compliance with MIRs; [495(6)(c)(i) and (ii); and 971(4)(c)(i) and (ii)] • in the case of a foreign investment holding entity, where the foreign law does not permit control (LifeCo or IHC, however, must add investment in calculating minority investment cap under MIRs); [495(10) and 971(8)] or • where the investment holding entity does not control or hold any share of, or ownership interest in, ◦ an RE (class	Superintendent's approval only if the LifeCo or IHC is acquiring a non-controlling interest. [495(8) and (9)(a); and 971(6) and (7)(a)]	Such an investment holding entity is subject to the same restrictions as LifeCos in the areas of fiduciary, leasing, residential mortgage lending, securities dealing and substantial investments activities (with the exception of temporary investment activities where the LifeCo or IHC does not control the investment holding entity). [495(3) and 971(3). With respect to substantial investment activities, see also section 1 of the ERIRs where the LifeCo or IHC does not control the investment holding entity] In addition, such an entity cannot engage in deposit-taking. [495(3) and 971(3)]	

Classes of Entities		Control Requirement?	Approval Requirement?	Business Restrictions?
5. Non-financial services entities	a. Entity that engages in information processing activities (i.e., activities referred to in 441(1)(c) and(d)) [495(2)(a) and 971(2)(a)]	No.	Minister's approval, except where the activities are: • 441(1)(c) and are carried on in Canada; or • 441(1)(d) and are carried on outside Canada. [495(7)(d) and 971(5)(d)]	A non-financial services entity is subject to the same restrictions as LifeCos in the areas of fiduciary, leasing, residential mortgage lending, securities dealing and substantial investments activities. [495(3) and 971(3). With respect to substantial investment activities, see also section 1 of the ERIRs where the LifeCo or IHC does not control the entity] In addition, such an entity cannot engage in deposit-taking. [495(3) and 971(3)]
	b. Entity that engages in information technology activities (i.e., activities referred to in 441(1)(d.1)) [495(2)(a) and 971(2)(a)]	No.	Minister's approval, except where the conditions set out in section 5 of the *Information Technology Activities (Life Companies) Regulations* *or* section 4 of the *Information Technology Activities (IHC) Regulations* are met (see class 6 below). [495(7)(d.1) and 971(5)(d.1)]	

Classes of Entities		Control Requirement?	Approval Requirement?	Business Restrictions?
c. Entity that engages in the following activities (i.e., other activities referred to in 441(1) and (1.1)): • managing, holding or dealing with real property; • acting as real estate agent; • specialized business management or advisory services, including acting as a general partner of a limited partnership; [2] • promoting merchandise or services to card holders; • selling lottery	No.	No.	See above.	

Classes of Entities		Control Requirement?	Approval Requirement?	Business Restrictions?
d. Entity that provides services to certain entities, so long as it provides those services to the LifeCo, IHC or members of the LifeCo's or IHC's group, as defined in subsections 490(2) and 966(2) of the ICA and sections 3 and 4 of the *Entity Member of Group Regulations*.3 [495(2)(c) and 971(2)(c)]	No.	No.		

Classes of Entities		Control Requirement?	Approval Requirement?	Business Restrictions?
e. Entity that engages in activities relating to promotion, sale delivery or distribution of financial services or products provided by certain entities. [495(2)(d) and 971(2)(d)]	No.	Minister's approval. [495(7)(c) and 971(5)(c)]		

Classes of Entities		Control Requirement?	Approval Requirement?	Business Restrictions?
6. Prescribed entities A LifeCo or IHC may acquire control of, or acquire or increase a substantial investment in, an entity that engages in prescribed activities. [495(2)(f) and 971(2)(f)]	Prescribed activities are set out in subsection 3(1) of the *Information Technology Activities (Life Companies) Regulations* and subsection 2(1) of the *Information Technology Activities (IHC) Regulations* (collectively, the "IT Activities"). Prescribed activities are also set out in sections 2 and 5 of the *Ancillary Activities Regulations* (collectively, the "Ancillary Activities").	Neither the ICA nor the *Information Technology Activities Regulations* impose control requirements with respect to the IT Activities. Neither the ICA nor the *Ancillary Activities Regulations* impose control requirements with respect to the Ancillary Activities.	Where an entity limits its activities to IT Activities, no approval of the Minister is required under 495(7)(e) or 971(5)(e).[4] [section 5 of the *Information Technology Activities (Life Companies) Regulations* and section 4 of the *Information Technology Activities (IHC) Regulations*] The Minister's approval is required with respect to the Ancillary Activities. [495(7)(e) and 971(5)(e)]	In the case of an entity that engages in the IT Activities, the entity: • is subject to the same restrictions as LifeCos in the areas of fiduciary, leasing, residential mortgage lending, dealing in goods, securities dealing and substantial investments activities; and • cannot engage in deposit-taking. [subsection 3(3) and section 4 of the *Information Technology Activities (Life Companies) Regulations*; subsection 2(3) and section 3 of the *Information Technology Activities (IHC) Regulations*] In the case of the Ancillary Activities, no business restrictions except where specified in the Minister's approval.

Footnotes

1 OSFI is of the view that this class refers to foreign regulated entities that are subject to regulatory regimes that are substantially similar to the ones applicable to equivalent Canadian entities listed in classes 1(a) or (b) above. For example, in order to be a class 1(c) entity, a foreign entity that primarily engages outside Canada in a business that, if carried on in Canada, would be the business of providing fiduciary services would have to be regulated in a substantially similar manner as a trust company referred to in paragraph 495(1)(e) or (g).

2 Depending on the circumstances, an entity's role as general partner of a limited partnership may also cause the entity to be a financial agent (class 3 above). In addition, OSFI generally views a general partner's nominal interest in a limited partnership as being ancillary to its general partner activities and, as a result, generally does not view a general partner as also being an investment holding entity (class 4 above) with regards to the limited partnership.

3 OSFI is of the view that if an OE engages in services referred to in paragraph 495(2)(c) or 971(2)(c) and in another paragraph within 495(2) or 971(2), then the OE should be categorized under that other paragraph. For example, where a LifeCo seeks to acquire control of an OE that will provide information technology services exclusively to members of the LifeCo's group, that entity should be categorized as a 495(2)(a) entity rather than a 495(2)(c) entity. In such a case, the acquisition would require the Minister's approval under 495(7)(d.1), assuming the entity's services are not contemplated by the *Information Technology Activities (Life Companies) Regulations*.

4 This is effectively an exception to the general approval requirement referred to in class 5(b) above.