Regulatory and legislative advisory

Title	Substantial Investments - Appendix A.5
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.5 – Trust and Loan Companies

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 TLCA and relevant regulations.

Notes:

1. In this Appendix,
    - **Company** refers to a trust company or a loan company, as the case may be;
    - **EAIRs** stands for *Exemption from Approval for Certain Investments in Intragroup Service Entities Regulations*;
    - **ERIRs** stands for *Exemption from Restrictions on Investments Regulations*; 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 TLCA and (b) provisions are to provisions of the TLCA.
4. Classes of entities 2 to 6 below comprise OEs only (i.e., 453(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 TLCA's investment regime.

Classes of Entities		Control Requirement?	Approval Requirement?	Business Restrictions?
1. REs This class comprises entities listed in 453(1).	a. FRE [453(1)(a) to (f)]	Control in fact, except if in compliance with MIRs. [453(4)(a)]	No, except that Minister's approval is required under ownership provisions of the applicable Statute.	No.
	b. Provincially regulated financial institution [453(1)(g) to (i)]	Same as 1(a) above.	Superintendent's approval in all cases except where Minister's approval is required. [453(6) and (7)(c)] Minister's approval is required where the Company acquires control of the entity from **a person** who is not a member of the Company's group, as defined in subsection 449(2) of the TLCA and section 5 of the *Entity Member of Group Regulations*. [453(5)(a)]	No.

c. Foreign regulated financial institution[1] [453(1)(j)]	Control in fact, except • if in compliance with MIRs; [453(4)(a)] or • where the foreign law does not permit control (Company, however, must add investment in calculating minority investment cap under MIRs). [453(8)]	Superintendent's approval in all cases except where Minister's approval is required. [453(6) and 7(c)] Minister's approval is required where the Company: • acquires control of the entity from **an FRE** that is not a member of the Company's group, as defined in subsection 449(2) of the TLCA and section 5 of the *Entity Member of Group Regulations*; [453(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 Company's consolidated assets, as shown in its last annual statement, either alone or when combined with all other acquisitions by the Company of control of foreign regulated financial institutions within the preceding 12 months. [453(5)(b.1)]	No.

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*) [453(2)(a)]	Control in fact, except • if in compliance with MIRs; [453(4)(b)] or • in the case of a foreign entity, where the foreign law does not permit control (Company, however, must add investment in calculating minority investment cap under MIRs). [453(8)]	Superintendent's approval, except where: • the Company is acquiring a controlling interest; [453(6) and (7)(b)] or • the entity provides services exclusively to the Company or members of the Company's group, as defined in subsection 449(2) of the TLCA and section 5 of the *Entity Member of Group Regulations.* [section 1 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. [453(3)]

b. Financial leasing entity (defined in 449(1)) [453(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. [449(1)] When raising money, however, the entity cannot engage in deposit-taking. [453(3)]

c. Finance entity (defined in the *Finance Entity Regulations*) [453(2)(a)]	Same as 2(a) above.	No approval where entity provides services exclusively to the Company or members of the Company's group, as defined in subsection 449(2) of the TLCA and section 5 of the *Entity Member of Group Regulations.* [section 1 of the EAIRs] In all other cases, • Superintendent's approval is required except where Minister's approval is required. [453(6) and (7)(c)] • Minister's approval is required where the Company acquires control of the entity from **an FRE** that is not a member of the Company's group. [453(5)(b)]	A finance entity is subject to the same restrictions as loan companies in the areas of fiduciary, leasing, residential mortgage lending, securities dealing, insurance business and substantial investments activities. [453(3). With respect to substantial investment activities, see also section 1 of the ERIRs where the Company does not control the entity] In addition, the entity cannot engage in deposit-taking. [453(3)]

d. Mutual fund entity and closed-end fund (both defined in 449(1)) [453(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 Companies in the area of substantial investments activities. [453(3)(f). See also section 1 of the ERIRs where the Company does not control the entity]

e. Other financial intermediaries, including • an investmen 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 **and** in one or	Same as 2(a) above.	Same as 2(c) above.	Same as 2(c) above, except that no restriction on insurance business activities.

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. [453(2)(a)] Also includes a mutual fund distribution entity, as defined in 449(1). [453(2)(e)]	No.	No.	A financial agent is subject to the same restrictions as Companies in the areas of leasing, residential mortgage lending and substantial investments activities. [453(3). With respect to substantial investment activities, see also section 1 of the ERIRs where the Company does not control the entity] In addition, a financial agent cannot engage in deposit-taking activities. [453(3)] A financial agent is also subject to the same restrictions as loan companies in the areas of: • fiduciary activities, except when acting as a trustee for a mutual fund entity or a closed-end fund; [453(3)(a) and (3.1)] • securities dealing, except in the case of a mutual fund distribution entity. [453(3)(b)]

4. Investment holding entities
 	
This class comprises OEs whose business includes acquiring or holding shares of, or ownership interests in, entities that a Company is permitted to hold or acquire. [453(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 Company may acquire control of, or hold, acquire or increase a substantial investment in, under 451(4))	Control in fact, except:
		
		• if in compliance with MIRs; [453(4)(c)]
		or
		• in the case of a foreign specialized financing entity, where the foreign law does not permit control (Company, however, must add investment in calculating minority investment cap under MIRs). [453(8)]
			Superintendent's approval in all cases. [453(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 loan companies in the areas of fiduciary, leasing, residential mortgage lending, securities dealing and substantial investments activities. [453(3). With respect to substantial investment activities, see also section 1 of the ERIRs where the Company does not control the specialized financing entity]

b. Other investment holding entity i.e., an OE that acquires or holds shares of, or ownership interests in, entities that a Company is permitted to acquire or hold under:
• 409 – less than substantial investments (portfolio investments);
• 453 – PEs;
• 451(2) –investments via an RE subsidiary;
• 456 – temporary investments (only if the Company controls the investment holding entity);
• 457 – loan workouts;
• 458 – realization of security
	Control in fact, except:
	• if in compliance with MIRs; [453(4)(c)(i) and (ii)]
	• in the case of a foreign investment holding entity, where the foreign law does not permit control (Company, however, must add investment in calculating minority investment cap under MIRs); [453(8)] or
	• where the investment holding entity does not control or hold any share of, or ownership interest in,
	  ○ an RE (class 1 entity)
	  ○ a financial intermediary (class
		Superintendent's approval only if the Company is acquiring a non-controlling interest. [453(6) and (7)(a)]	Such an investment holding entity is subject to the same restrictions as loan companies in the areas of fiduciary, leasing, residential mortgage lending, securities dealing and substantial investments activities (with the exception of temporary investment activities where the Company does not control the investment holding entity). [453(3). With respect to substantial investment activities, see also section 1 of the ERIRs where the Company does not control the investment holding entity]
			
			In addition, such an entity cannot engage in deposit-taking. [453(3)]

5. Non-financial services entities	a. Entity that engages in information processing activities (i.e., activities referred to in 410(1)(c) and(d)) [453(2)(a)]	No.	Minister's approval, except where the activities are carried on: • outside Canada; or • since May 31, 1992 or before that date. [453(5)(d)]	A non-financial services entity is subject to the same restrictions as loan companies in the areas of fiduciary, leasing, residential mortgage lending, securities dealing and substantial investments activities. [453(3). With respect to substantial investment activities, see also section 1 of the ERIRs where the Company does not control the entity] In addition, such an entity cannot engage in deposit-taking. [453(3)
	b. Entity that engages in information technology activities (i.e., activities referred to in 410(1)(d.1)) [453(2)(a)]	No.	Minister's approval, except where the conditions set out in section 5 of the *Information Technology Activities Regulations* are met (see class 6 below). [453(5)(d.1)]	

c. Entity that engages in the following activities (i.e., other activities referred to in 410(1)) : • managing, holding or dealing with real property; • acting as real estate agent; • specialized business managem or advisory services, including acting as a general partner of a limited partnershi [2] • promoting merchand or services to card holders; • selling lottery or urban transit tickets;	No.	No.

d. Entity that provides services to certain entities, so long as it provides those services to the Company or members of the Company's group, as defined in subsection 449(2) of the TLCA and section 5 of the Entity Member of Group Regulations.[3] [453(2)(c)]	No.	No.
e. Entity that engages in activities relating to promotion, sale delivery or distribution of financial services or products provided by certain entities. [453(2)(d)]	No.	Minister's approval. [453(5)(c)]

6. Prescribed entities A Company may acquire control of, or acquire or increase a substantial investment in, an entity that engages in prescribed activities. [453(2)(f)]	Prescribed activities are set out in subsection 3(1) of the *Information Technology Activities Regulations* (collectively, the "IT Activities").	Neither the TLCA nor the I*nformation Technology Activities Regulations* impose control requirements with respect to the IT Activities.	Where an entity limits its activities to IT Activities, no approval of the Minister is required under 453(5)(e).4 [section 5 of the *Information Technology Activities Regulations*]	In the case of an entity that engages in the IT Activities, the entity: • is subject to the same restrictions as loan companies 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 Regulations*]

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 subject to the TLCA or referred to in paragraph 453(1)(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 453(2)(c) and in another paragraph within 453(2), then the OE should be categorized under that other paragraph. For example, where a Company seeks to acquire control of an OE that will provide information technology services exclusively to members of the Company's group, that entity should be categorized as a 453(2)(a) entity rather than a 453(2)(c) entity. In such a case, the acquisition would require the Minister's approval under 453(5)(d.1), assuming the entity's services are not contemplated by the *Information Technology Activities Regulations*.

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