



Advisory

Category: Regulatory & Legislative

NOTICE*

Subject: Investments – Large asset transactions

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Introduction: This Advisory provides an overview of how the Office of the Superintendent of Financial Institutions (OSFI) administers and interprets the provisions of the legislation regarding asset transactions that require the Superintendent's approval in the context of transactions that are part of, or in the course of, reinsurance arrangements or the distribution of assets to shareholders by a bank, federally regulated insurance, trust or loan company, cooperative credit association, bank or insurance holding company (hereinafter referred to as a federally regulated entity, or FRE).

Legislative References:

Sections 482 and 944 of the *Bank Act*

Section 470 of the *Trust and Loan Companies Act*

Sections 512, 569 and 987 of the *Insurance Companies Act*

Section 406 of the *Cooperative Credit Associations Act*

Interpretation: These provisions require a FRE to obtain the approval of the Superintendent prior to the FRE or any of its subsidiaries entering into a single large asset transaction (a transaction where the value of the assets to be acquired or transferred exceed 10 per cent of the FRE's total assets) or a series of direct or indirect transactions with a single person over any 12-month period that together amount to a large asset transaction. The purpose of these "large asset transaction provisions" is to provide OSFI with an opportunity to review these transactions, as they may signal an important change to the FRE's business strategy and the composition of its assets. This requirement does not apply to transactions involving certain assets (e.g., government securities and widely distributed debt obligations) or to transactions relating to the sale of all or substantially all of the FRE's assets that have been approved by the Minister.

Inquiries have raised interpretation issues as to whether these provisions apply to assets acquired or transferred as part of, or in the course of:

- a) reinsurance arrangements; or

- b) arrangements where assets are distributed to shareholders by way of the purchase or redemption of the FRE's shares, the reduction of the FRE's stated capital, the payment of a dividend, or the distribution of the FRE's remaining assets in the course of a voluntary liquidation.

Reinsurance arrangements: It is common practice for an insurance company (the ceding company) to enter into reinsurance arrangements with another insurance company (the reinsurer) to offset or mitigate some or all of its risks. Usually, as a consideration for the reinsurer assuming all or a portion of its risks, the ceding company will pay to the reinsurer a stipulated portion of the insurance premium that it collects from its policyholders. There are circumstances, such as where the consideration to be paid to the reinsurer is very large, when the ceding company will transfer certain assets (bonds, shares, real property, etc.) to the reinsurer.

Where assets are transferred to a reinsurer to settle the reinsurance premium under an *indemnity reinsurance arrangement* (i.e., an arrangement where the ceding company remains fully liable to its policyholders for the insurance obligations, with recourse to the reinsurer, and generally continues to perform administrative functions and deal with the policyholders), it is OSFI's view that such a transaction is not an asset transaction. The ceding company is paying the reinsurer for its commitment to indemnify the ceding company against all or a part of losses that could arise from policies that are subject to the reinsurance arrangement. Accordingly, assets acquired or transferred as part of, or in the course of, indemnity reinsurance arrangements are not subject to the "large asset transaction provisions".

Where assets are transferred to a reinsurer to settle the reinsurance premium under an *assumption reinsurance arrangement* (i.e., an arrangement where the reinsurer assumes the obligations of the ceding company toward the insured and generally takes over the administration of the ceded policies), it is OSFI's view that this is an asset transaction. The ceding company is essentially assigning its insurance obligations to the reinsurer and transferring to the reinsurer assets that it had set aside to meet these obligations. Accordingly, assets acquired or transferred as part of, or in the course of, assumption reinsurance arrangements should be taken into account in determining whether the approval of the Superintendent is required under the "large asset transaction provisions".

Distribution of assets to shareholders: Transactions involving the purchase or redemption of a FRE's shares, the reduction of the FRE's stated capital, the payment of a dividend, or the distribution of a FRE's remaining assets in the course of a voluntary liquidation are considered to be a return of a FRE's capital to its shareholders. It is OSFI's view that such transactions are not asset transactions, and therefore, these transactions are not subject to the "large asset transaction provisions". It should be noted that these various transactions are subject to a review mechanism in the legislation (i.e., an approval requirement or a notification requirement).

Blanket Approval: Where the FRE's business plan encompasses a series of direct or indirect transactions with a single person over any 12-month period that together would exceed 10 per cent of the FRE's assets, the FRE may contemplate approaching OSFI to request a blanket approval from the Superintendent in advance of such a series of transactions.

Information to support the application: When making an application for the Superintendent's approval (including a blanket approval) for the acquisition or transfer of assets by a FRE or its subsidiaries in excess of 10 per cent of the FRE's assets, a FRE should refer to [Instruction Guide – Deemed Approvals](#) and to the document [DA No. 18](#) of Appendix A – Index of Instructions for guidance on the nature of information to be provided in support of its application.

<p>* Advisories describe how OSFI administers and interprets provisions of existing legislation, regulations or guidelines, or provide OSFI's position regarding certain policy issues. Advisories are not law; readers should refer to the relevant provisions of the legislation, regulation or guideline, including any amendments that came into effect subsequent to the Advisory's publication, when considering the relevancy of the Advisory.</p>
