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# Ruling

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**Category:** Corporate Governance

[NOTICE\\*](#)

**Subject:** Voluntary Liquidation - Outstanding deposit liabilities

**No:** 2003-02 **Revised:** April 2004

**Issue:** The issue was whether a bank that was in the process of voluntary liquidation could make use of sections 364 and 366 of the [Bank Act](#) (BA) to discharge its obligation with respect to unclaimed deposit liabilities prior to the issuance of letters patent of dissolution.

**Background:** A bank had obtained the consent of the Minister to proceed with its voluntary liquidation and dissolution. As part of this process, the bank had attempted to contact all depositors to make arrangements to discharge all deposit liabilities. Although the vast majority of depositors instructed the bank either to pay out the funds direct to them or to transfer their funds to another institution, there were a limited number of cases where the bank was unsuccessful in contacting the depositor. Therefore, the bank needed to discharge these outstanding deposit liabilities in order to obtain its letters patent of dissolution.

**Considerations:** OSFI noted that the circumstances of the case were such that the outstanding deposit liabilities could not be dealt with as dormant accounts. The accounts had not been dormant for 10 years and could therefore not be forwarded direct to the Bank of Canada, as provided for in section 438 of the BA.

Sections 364 and 366 of the BA provide that where creditors to whom property is to be distributed on the dissolution of a bank cannot be found, the amount owed to those creditors shall be paid to the Minister of Finance before the final dissolution of the bank. It is OSFI's view that the term "creditor", as used in those sections, includes a "depositor."

**Conclusion:** OSFI concluded that section 364 could be applied to this case (i.e., a bank in voluntary liquidation that has outstanding deposit liabilities related to depositors who cannot be found). Therefore, the funds and related documentation could be dealt with in accordance with section 366 of the BA.

OSFI expects that when a bank in voluntary liquidation would make use of these sections to discharge its unclaimed deposit liabilities, the bank would proceed as follow.

1. The bank would make a reasonable effort to contact all outstanding depositors.

2. As close as possible to the date on which a recommendation will be made by OSFI to the Minister of Finance to issue letters patent of dissolution, the bank would send to the officer at OSFI who is processing its application for letters patent of dissolution:
  - a) a description of both the measures it has taken to contact all depositors and the arrangements it has made to discharge its obligations;
  - b) with regard to depositors in respect of whom the bank was not successful in discharging its obligations, a cheque payable to the Receiver General for Canada in an amount equal to the principal of the outstanding unclaimed deposit liabilities, plus interest calculated in accordance with the terms of the deposit that has accrued up to the date of the payment;
  - c) the particulars of each of the bank's outstanding unclaimed deposit liabilities, including:
    - i) the name of the depositor,
    - ii) the recorded address of each depositor,
    - iii) the outstanding amount and terms and conditions of each deposit,
    - iv) the address of the branch of the bank at which the last transaction took place in respect of the deposit and the date of that transaction; and
  - d) the signature cards and signing authorities, or copies of them, relating to each of the unclaimed deposit liabilities.

It should be noted that the Minister would pay to the Bank of Canada all amounts received from the bank in respect of the outstanding deposit liabilities and will also provide the Bank of Canada with all related documentation received from the bank.

**Legislative References:**

Section 364 of the BA states that where a creditor to whom property is to be distributed on the dissolution of a bank cannot be found, the portion of the property to be distributed to that creditor shall be converted into money and paid in accordance with section 366 of the BA.

Section 366 of the BA states, in part, that where the business of a bank is being wound up, the liquidator or the bank shall pay to the Minister on demand and in any event before the final winding-up of its business any amount that is payable by the liquidator or the bank to a creditor of the bank to whom payment thereof has not, for any reason, been made.

**Table of Concordance:**

Section Description	BA	TLCA	ICA	CCAA
Where creditor cannot be found	364	369	402	348
Unclaimed money on winding-up	366	371	404	350

The table of concordance makes cross-references to other provisions of FRFI legislation that may be of relevance to the reader.

\* Rulings describe how OSFI has applied or interpreted provisions of the federal financial institutions legislation, regulations or guidelines to specific circumstances. They do not negate the need to obtain any necessary approval of the transaction under the relevant federal financial institutions legislation. Rulings are not necessarily binding on OSFI's consideration of subsequent transactions as these transactions may raise additional or different considerations. Legislative references in a Ruling are not meant to substitute provisions of the law; readers should refer to the relevant provisions of the legislation, regulation or guideline, including any amendments that came into effect subsequent to the Ruling's publication.