



Ruling

Category: Foreign Banks

NOTICE*

Subject: Foreign remittance activities through representative offices

Document No: 2003-06

Issue: Certain foreign banks (FBs) that have representative offices (ROs) in Canada are using their ROs to facilitate the operation of a foreign money remittance business by maintaining an account at a Canadian deposit-taking institution (DTI) where customers¹ of the FB may deposit money ultimately to be credited to their account with the FB or remitted to a third party. The issue was whether the ROs are undertaking business activities in Canada other than those permitted under the *Foreign Bank Representative Offices Regulations* (Regulations).

Background: Several FBs that have ROs in Canada are using their ROs to facilitate the operation of a money remittance business by maintaining an account at a Canadian DTI where customers of the FB may deposit money to be credited to their account with the FB or remitted to a third party. The transactions generally follow a process similar to the following:

1. The customer obtains a deposit slip from the RO.
2. The customer completes the slip (RO staff may assist) and takes it, together with the money, to the DTI designated by the RO.
3. The money is deposited in the FB's account at the DTI.
4. Depending on the arrangement between the DTI and the RO, the customer provides the RO or the DTI with instructions as to what the customer wishes to be done with the money (i.e., credit to his/her account maintained with the FB at an office located outside Canada or remit to a third party).
5. The RO or the DTI sends instructions to the appropriate office of the FB located outside Canada in order for it to act on the customer's instructions.
6. The RO sporadically gives instructions to the DTI to transfer all, or a portion, of the funds held in the FB's account to an office of the FB outside Canada.

¹ A person who has, outside Canada, entered into, or is seeking to establish, an arrangement with the FB or with an affiliate of the FB, other than an affiliate incorporated in Canada.

Considerations: With respect to the preceding activities, OSFI noted that:

- a) by establishing a RO, the FB has a physical presence in Canada;
- b) the RO's employees are employees of the FB, because a RO is not a legal entity separate from the FB;
- c) in some cases, the FB's employees at the RO are:
 - (i) providing to customers deposit slips that include the name and account number of the FB,
 - (ii) confirming with the Canadian DTI that the customer has deposited money in the account of the FB,
 - (iii) forwarding instructions to the appropriate office of the FB located outside Canada in order for it to act on the customer's instructions;
- d) the customers are placing money in an account of the FB at the Canadian DTI and not in a temporary account maintained by the Canadian DTI in respect of its money transfer activities; thus, as a result of this transaction, the customer has no claim against the Canadian DTI, but only against the FB;
- e) where the customer, on the advice of the RO, deposits funds in the FB's account at the Canadian DTI and provides either the RO or DTI with instructions that the money be credited to his/her FB account outside Canada, the FB is undertaking to: (i) give credit to the customer's account, and (ii) repay the money on a fixed day, on demand, or within any other specified period, to the customer; and
- f) where the customer, on the advice of the RO, deposits funds in the FB's account at the Canadian DTI and provides either the RO or DTI with instructions that the funds be remitted to a third party, the FB is undertaking to remit the funds to the third party.

Based on these facts, OSFI is of the opinion that when an RO facilitates the making of money remittances to a customer's account maintained with the FB at an office located outside Canada, the FB, through its RO, is accepting a deposit liability in Canada. When the RO facilitates the making of money remittances to a third party, the FB, through its RO, is undertaking money transfer activities in Canada.

The *Bank Act* (BA) provides that a FB may maintain ROs in Canada in accordance with rules set out in the Regulations, which limit the business activities of ROs to promoting the services of the FB and acting as a liaison between customers of the FB and other offices of the FB.

The Regulations do not define the terms "promoting the services of the foreign bank" or "acting as a liaison between customers of the FB and other offices of the FB." However, these terms have generally been interpreted by OSFI to mean providing information on the services offered by the FB and providing information to customers of the FB with respect to how they may apply for services of the FB, obtain information about their banking arrangements with the FB, or deal with the FB (generally by referring the customer to a Canadian DTI with which the FB has a correspondent banking arrangement).

Conclusion: OSFI is of the opinion that when an RO facilitates the operation, in Canada, by the FB of a money remittance business in the manner described previously, the RO is not limiting its business activities to promoting the services of the FB or acting as a liaison between customers of the FB and other offices of the FB. The FB, through its RO, is accepting deposit liabilities or undertaking money transfer activities in Canada. The Regulations do not allow ROs to undertake these business activities in Canada, and the BA does not permit FBs to engage in these business activities in Canada through ROs.

Although FBs are not permitted to engage, in Canada, in the business of accepting deposit liabilities or undertaking money transfers through ROs, the BA provides other options for FBs. With respect to the business of accepting deposit liabilities, a FB may establish an authorized foreign bank branch (which is subject to certain deposit restrictions) or incorporate a Canadian deposit-taking subsidiary. With respect to money transfer, if a FB that wishes to carry out that business other than through an authorized foreign bank branch or a Canadian deposit-taking subsidiary, it must first obtain a designation order or an exemption order under Part XII of the BA. In addition, where a designation order is required, these activities must be carried out through a separate Canadian entity.

Legislative References:

Paragraph 522(a) of the BA states that a FB may, “with the approval of the Superintendent and

- i) subject to any terms and conditions that are attached to the approval, and
- ii) subject to and in accordance with rules that are prescribed in relation to the operation of ROs and the conduct of their personnel,

maintain ROs in Canada that are registered with the Superintendent in the prescribed manner.”

Section 6 of the Regulations stipulates that “no RO shall undertake a business activity other than

- a) promoting the services of the FB or an affiliate of the FB other than an affiliate incorporated in Canada; or
- b) acting as a liaison between clients of the FB and other offices of the FB or of affiliates of the FB other than an affiliate incorporated in Canada.”

Table of Concordance: Other federal financial institution legislation does not contain similar provisions.

<p>* 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.</p>
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