

Guide To Foreign Bank Branching (March 2002 Revisions)



Criteria, Information Requirements and Procedures for the Establishment and Commencement of Business of a Foreign Bank Branch (FBB) in Canada



Office of the Superintendent
of Financial Institutions

Bureau du surintendant
des institutions financières

Canada

OSFI's Mission

We are the primary regulator of federal financial institutions and pension plans. Our mission is to safeguard policyholders, depositors and pension plan members from undue loss. We advance and administer a regulatory framework that contributes to public confidence in a competitive financial system. We also provide actuarial services and advice to the Government of Canada.

We are committed to providing a professional, high quality and cost-effective service.

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INTRODUCTION

On June 28, 1999, Bill C-67, *An Act to amend the Bank Act, the Winding-up and Restructuring Act and other Acts relating to financial institutions and to make consequential amendments to other Acts*, came into force. The legislation allows foreign banks to establish specialized, commercially focused branches in Canada. Previously, foreign banks operating in Canada were required to establish separate Canadian subsidiaries.

Foreign banks have the choice of two vehicles for establishing and operating bank branches in Canada: a "full-service branch" or a "lending branch".¹ (Both are covered under the term "foreign bank branch" or FBB). Foreign banks that currently operate through a deposit-taking subsidiary in Canada can maintain the subsidiary and establish a branch, or they can "convert" the existing subsidiary into an FBB.

The approval procedure for a foreign bank to establish (*de novo* or by conversion of an existing deposit-taking subsidiary) and operate a bank branch in Canada is a two-step process:

- i) The Minister of Finance (Minister) is required, pursuant to subsection 524(1) of the *Bank Act*, to make an order authorizing the foreign bank to establish a branch in Canada to carry on business in Canada; and
- ii) the Superintendent of Financial Institutions (Superintendent) is required, pursuant to subsection 534(1) of the *Bank Act*, to make an order approving the commencement and carrying on of business in Canada by the authorized foreign bank (Schedule III bank).

Each of these approvals is based on its own set of criteria, the assessment of which will be performed on the basis of a single application administered by OSFI. The Minister's decision to issue an order pursuant to sub-section 524(1) of the *Bank Act* is subject to consultation with the Superintendent.

¹ For the purposes of this Guide, an FBB whose order is subject to the restrictions and requirements referred to in subsection 524(2) of the *Bank Act*, is referred to as a lending branch.

The purpose of this Guide is to identify:

- the specific criteria that must be met by a foreign bank (herein also referred to as applicant) to establish and operate an FBB in Canada;
- the specific information that must be submitted to OSFI in support of an application to establish and operate an FBB; and
- the procedures to be followed in making such application.

Where the applicant currently operates a deposit-taking subsidiary in Canada, the application and assessment process may be streamlined, where possible. A crucial part of the assessment process will be the deposit-taking institution's regulatory history with OSFI and other regulators.

On October 24, 2001, the federal Government promulgated legislation (Bill C-8) to reform the policy framework for Canada's financial services sector. The Bill implements the measures contained in the Government's June 25, 1999 policy paper entitled *Reforming Canada's Financial Services Sector: A Framework for the Future*, which includes legislative amendments to the foreign bank entry regime.

To reflect these legislative changes, the Guide has been modified from its previous version as follows:

1. The minimum capital equivalency deposit for a full-service branch has been reduced to the greater of \$5 million or 5% of Canadian liabilities.
2. Foreign banks wishing to establish a lending branch are no longer required to wind-up deposit taking subsidiaries in Canada
3. A foreign bank wishing to convert its deposit-taking subsidiary and to avail itself of transitional tax measures was required to provide OSFI with two copies of a substantially complete application to establish a FBB, along with the application fee, on or before December 14, 2001. Further, relief must be sought within one year of receiving approval under section 534 (1) of the *Bank Act* (order to commence and carry on business in Canada), or June 14, 2004, except in the case of an authorized foreign bank that received its order to commence and carry on business prior to October 24, 2001. In this case, the second deadline will not fall earlier than June 14, 2002.

4. Upon receipt of an order to establish a bank branch in Canada, the foreign bank applicant will be deemed to have a financial establishment in Canada (paragraph 507(15)(a) of the *Bank Act*). Therefore, the foreign bank applicant and all entities associated with the applicant (“entity associated with the foreign bank” is defined in subsections 507(2) and (3) of the *Bank Act*) will be subject to Part XII of the *Bank Act*, and particularly to the prohibitions on activities set out in section 510 of the *Bank Act* and to the investment regime in Division 4 of Part XII of the *Bank Act*. As such, the information requirements of section 5 c) of the Guide have been modified.
5. Section 7.2 c) of the Guide has been modified to make reference to OSFI’s new policy to recover from foreign bank applicants, OSFI’s out of pocket costs as they relate to home country and home bank visits.
6. The statutory provisions relating to the Minister making an order permitting a foreign bank to establish a branch, as outlined in section 2.0 (c) of the Guide, have been modified.

Portions of this Guide summarize the requirements and information set out in the Bank Act and other federal statutes. The applicant should consult these statutes. If there is any discrepancy between the contents of this Guide and the relevant statutes, the latter take precedence.

1.0 APPLICATION PROCEDURES

1.1 Pre-Notice Period

- a) A foreign bank intending to proceed with a formal application should file a draft application with OSFI. However, potential applicants are strongly encouraged to first meet with OSFI to discuss their plans to establish an FBB. At this meeting, OSFI will inform the potential applicant of any issues or problems that need to be addressed by the applicant prior to submitting an application.
- b) After meeting with OSFI, the applicant should provide OSFI with a draft application (two copies) containing all, or substantially all, of the information itemized in Sections 4.0 and 5.0 of this Guide (an application index is attached as Appendix I, and must be completed with the draft application). Any outstanding information can be forwarded to OSFI at a later date.
- c) A non-refundable fee of \$20,000 payable to the Receiver General for Canada must accompany the draft application pursuant to the *Service Charges (Office of the Superintendent of Financial Institutions Act) Regulations*.
- d) The applicant must publish, pursuant to subsection 525(2) of the *Bank Act*, once a week for four consecutive weeks in the Canada Gazette and in a newspaper in general circulation at or near the place where the FBB plans to locate its principal office, a notice of its formal intention to apply to the Minister for an order to establish an FBB. The notice will contain the name of the foreign bank and the name under which the FBB intends to carry on business in Canada. The form of the notice must be satisfactory to the Superintendent.
- e) OSFI will review the draft application and will contact the applicant to discuss its completeness, status, and outstanding issues. OSFI will respond to applicants and, where necessary, will request additional information from the applicant on as timely a basis as possible. A draft application will not be certified as complete by OSFI until all requested information is received and in a form satisfactory to OSFI. Following receipt of all requisite information, the draft application is certified as complete by OSFI and a notice to that effect will be provided to the applicant.

- f) The assessment of an application by OSFI is not subject to specified timeframes, although the nature of the assessment process dictates that the process may take up to six months or longer. It is anticipated that the time period will be less once an affirmative determination of the home system of supervision has been made involving a similar bank from the foreign bank's home jurisdiction. The Minister's decision on an application is not constrained by specified timeframes.

1.2 Post-Notice Period

- a) Once the draft application has been certified as complete, the applicant should formalize the application by letter to OSFI, requesting:
 - i) that the Minister make an order, pursuant to subsection 524(1) of the *Bank Act*, authorizing the foreign bank to establish a branch in Canada to carry on business in Canada pursuant to the *Bank Act*; and
 - ii) that the Superintendent make an order, pursuant to subsection 534(1) of the *Bank Act*, approving the commencement and carrying on of business in Canada by the authorized foreign bank.

The applicant must include a statutory declaration of publication of the notice of its formal intent to apply to the Minister for an order to establish an FBB.

- b) Once the Minister has made an order authorizing the foreign bank to establish an FBB, and prior to the Superintendent issuing the authorized bank an order to commence and carry on business, OSFI supervisory staff will perform a commencement review of the FBB and report to the Superintendent. See OSFI's FBB Bulletin No. 2 – *Foreign Bank Branch Commencement Review Requirements* for further details. This review will ensure that all requirements to commence business are met.
- c) On the making of an order to commence and carry on business by the Superintendent, the applicant must publish, pursuant to subsection 534(7) of the *Bank Act*, a notice of the making of an order in a newspaper in general circulation at or near the place where the FBB plans to locate its principal office.

- d) An FBB cannot, pursuant to subsection 534(9) of the *Bank Act*, be issued an order to commence and carry on business by the Superintendent if the order is not issued within one year from the date on which the order from the Minister authorizing the foreign bank to establish an FBB in Canada becomes effective.
- e) An order issued by the Minister authorizing a foreign bank to establish an FBB is revoked, pursuant to subsection 534(10) of the *Bank Act*, if an order approving the commencement and carrying on of business is not made by the Superintendent within one year of the Minister's order becoming effective.

1.3 "Conversion" of a Deposit Taking Subsidiary

- a) Section 529 of the *Bank Act* includes transitional measures for an authorized foreign bank that chooses to convert its deposit-taking subsidiary to an FBB. Pursuant to subsection 529(1) of the *Bank Act*, permission of the Minister is required in the case of the transitional provision, referred to below:
 - i) where an authorized foreign bank is in the process of liquidating the operations of its deposit-taking subsidiary and wishes to establish a full-service branch, the minimum deposit of \$5 million, as required under subparagraphs 534(3)(a)(ii) and 582(1)(b)(i), of the *Bank Act* may be waived. The authorized foreign bank will, however, be subject to the requirement to maintain a deposit equal to five per cent of liabilities in respect of its business in Canada as required by subparagraph 582(1)(b)(ii) of the *Bank Act*.
- b) The transitional provision above is for a period of two years, although the Minister may extend this period of "transition" for a period not to exceed seven years (inclusive of the initial two-year period).
- c) An authorized foreign bank wishing to avail itself of the transitional provision under section 529 of the *Bank Act* must, at the time of application to establish an FBB, file a detailed plan for the disposition of the assets and liabilities of its deposit-taking subsidiary in Canada, along with a discussion of the plans, if any, to transfer these assets and liabilities to the FBB.
- d) Changes to the *Income Tax Act* were announced on August 8, 2000 to provide special transitional tax measures to foreign banks that carried on business in Canada through a deposit-taking subsidiary prior to February 11, 1999.

The relief will be available on a time-limited basis. To qualify for relief, an authorized foreign bank must establish:

- i) that it complied, on or before December 14, 2001, with paragraphs 1.0(1.1)(b) and (c) of this Guide; and
- ii) that it completed the transaction in respect of which the relief is sought on or before the earlier of:
 - the day that is one year after the Superintendent makes an order in respect of the foreign bank under subsection 534(1) of the *Bank Act*, and
 - June 14, 2004.

In the case of authorized foreign banks having received an order to commence and carry on business prior to October 24, 2001, this second deadline will not fall earlier than June 14, 2002.

For further information, applicants are advised to contact the Department of Finance's Tax Legislation Division.

**2.0 STATUTORY PROVISIONS RELATING TO THE MINISTER MAKING AN ORDER
PERMITTING A FOREIGN BANK TO ESTABLISH A BRANCH**

- a) The Minister will not issue an order to the foreign bank permitting it to establish an FBB until the Minister, pursuant to subsection 524(3) of the *Bank Act*, is satisfied that if the application is made by an applicant from a non-World Trade Organization (WTO) member country, treatment as favourable for banks to which the *Bank Act* applies exists or will be provided in the jurisdiction in which the authorized foreign bank principally carries on business, either directly or through a subsidiary.
- b) The Minister may make an order permitting the foreign bank to establish an FBB only if the Minister is of the opinion, pursuant to subsection 524(4) of the *Bank Act* and after consultation with the Superintendent, that:
 - i) the applicant is a bank in the jurisdiction under whose laws it was incorporated and is regulated in a manner acceptable to the Superintendent;
and
 - ii) the applicant's principal activity² is the provision of services that would be permitted by the *Bank Act* if they were provided by a bank in Canada.
- c) Before making an order under subsection 524(1) of the *Bank Act* (permitting the foreign bank to establish an FBB), the Minister shall take into account all matters that the Minister considers relevant to the application and, without limiting the generality of the foregoing, the Minister shall have, pursuant to section 526 of the *Bank Act*, particular regard to:
 - i) the nature and sufficiency of the financial resources of the foreign bank as a source of continuing financial support for the carrying on of its business in Canada;
 - ii) the soundness and feasibility of the plans of the foreign bank for the future conduct and development of its business in Canada;
 - iii) the business record and past performance of the foreign bank;
 - iv) the reputation of the foreign bank for being operated in a manner that is consistent with the standards of good character and integrity;

² At least 50 per cent of the applicant's gross revenues are derived from financial services, or at least 50 per cent of the applicant's assets are related to financial services.

- v) whether the proposed authorized foreign bank will be operated responsibly by persons with the competence and experience suitable for involvement in the operation of a financial institution;
- vi) the impact of any integration of the businesses and operations in Canada of the authorized foreign bank with those of its affiliates in Canada on the conduct of those businesses and operations; and
- vii) the best interests of the financial system in Canada³.

³ The applicant should provide an analysis of its target market and outline how it intends to service this market. This type of information may be included with the applicant's business plan.

3.0 STATUTORY PROVISIONS RELATING TO THE SUPERINTENDENT MAKING AN ORDER TO COMMENCE AND CARRY ON BUSINESS

- a) The Superintendent may make an order approving the commencement and carrying on of business in Canada by an authorized foreign bank only if, pursuant to subsection 534(3) of the *Bank Act*, the Superintendent is satisfied that the authorized foreign bank has:
- i) deposited in Canada unencumbered assets of a type approved by the Superintendent, the total value of which, determined in accordance with the accounting principles referred to in subsection 308(4) of the *Bank Act*, are:
 - in the case of an authorized foreign bank that is subject to the restrictions and requirements referred to in subsection 524(2) of the *Bank Act*, (i.e. a lending branch) \$100,000; and
 - in any other case, \$5 million or any greater amount that the Superintendent specifies;
 - ii) submitted a copy of the power of attorney (sample form OSFI 512 attached as Appendix II) provided to its principal officer in accordance with subsection 536(2) of the *Bank Act*; and
 - iii) complied with all other relevant requirements of the *Bank Act*.

4.0 ADDITIONAL CRITERIA RELEVANT TO THE APPROVAL BY THE MINISTER AND THE SUPERINTENDENT

Each applicant, in addition to meeting statutory requirements, must satisfy certain minimum entry criteria in order to be considered for entry into Canada as an FBB:

- a) the applicant must demonstrate that its risk-based capital ratio meets the minimum international standards established by the Bank for International Settlements (BIS) and set out in OSFI's *Guideline A - Capital Adequacy Requirements*. (The Superintendent has formally established capital targets for Canadian banks of 7 per cent for Tier 1 and 10 per cent for total capital);
- b) the applicant must be of sufficient size, experience and financial health to support the operations of an FBB in Canada. To meet these criteria, the applicant would generally be required to have:
 - i) a minimum of C\$5 billion in consolidated assets;
 - ii) a proven track record in international banking;⁴
 - iii) a favourable financial performance over the last five years;⁵ and
 - iv) a controlling parent which is widely-held in its home jurisdiction.⁶

In the case of an application to establish a lending branch, item i) above does not apply;
- c) the applicant must be able to explain in detail the business opportunities it proposes to undertake in Canada in a three-year business plan; and

⁴ International banking expertise may be demonstrated through the existence of correspondent banking relationships, representative offices, branches, agencies and subsidiaries. Alternatively, OSFI will consider an applicant's familiarity with Canadian banking practices and regulatory environment.

⁵ The applicant should be able to demonstrate that on the basis of an international comparison, it is well capitalized, meets as a minimum the Bank for International Settlements (BIS) standards, as applied in both its home jurisdiction and Canada, and has satisfactory financial capability, strength and sound performance. Its performance record may be demonstrated through such indicators as return on assets, return on capital and level of non-performing assets.

⁶ Widely-held is defined in the *Bank Act* as a body corporate that has no major shareholder, i.e., a person who beneficially owns more than 20 per cent of any class of voting shares or 30 per cent of any class of non-voting shares.

- d) the applicant must provide an undertaking (sample attached as Appendix III) that it will, as required, provide OSFI with copies of its financial accounts and immediately inform OSFI of:
- any significant developments that adversely affect the applicant's soundness and reputation globally; and
 - significant media releases (with translation where appropriate).

5.0 INFORMATION REQUIREMENTS

The following information is requested as part of the application process:

- a) General Information
 - i) the name by which the applicant proposes to operate the FBB in Canada, along with a name search report that confirms the availability of the name in Canada. It is generally expected that the FBB will include in its name, the corporate name under which the foreign bank carries on business outside Canada. In the case where the name of the foreign bank is similar to the name of an entity carrying on business in Canada, the Minister may permit the use of a name that does not include the corporate name;
 - ii) the location of the proposed FBB. Generally, an FBB will be prohibited from sharing premises or a portion of the premises with an affiliate that is a member of the Canada Deposit Insurance Corporation (CDIC) where:
 - both the FBB and the affiliate carry on business with the public; and
 - the public has access to the space referred to above.In the case where the premises of an FBB are adjacent to an affiliate that is a member of CDIC, the FBB must clearly indicate to its customers that its business and premises are separate and distinct from that of the affiliate referred to above;
 - iii) the name(s), position(s) and telephone number(s) of principal officer or contact person(s) of the FBB; and
 - iv) a letter authorizing OSFI to discuss the application with the contact person(s).
- b) Evidence of Corporate Authorization
 - i) Certified copies of the corporate resolution of the applicant's Board of Directors authorizing the establishment of the FBB; and
 - ii) authenticated or certified copies of:
 - the applicant's incorporating documents, indicating date of incorporation, jurisdiction of incorporation, duration of charter and address of head office and principal place of business (if different); and
 - the applicant's bylaws and amendments.

- c) Business of Applicant
- i) A brief history of the applicant, including a summary of its experience in international banking;
 - ii) a brief summary of the current banking business undertaken by the applicant in its home jurisdiction and internationally, including but not limited to:
 - a list of jurisdictions where the applicant or a subsidiary/branch/agency identified in the ownership chart operates;
 - the approximate proportion of the applicant's total business in each jurisdiction accounting for at least five per cent of the total business;
 - the nature of the business;
 - the number and (asset) size of existing foreign offices;
 - number of staff in each jurisdiction;
 - a ranking by asset size in the home country and number of offices operated in the home country; and
 - the existing or planned operations in Canada of the applicant and all entities associated with the applicant (pursuant to subsection 507(2) of the *Bank Act*), including bank subsidiaries and non-bank affiliated operations;
 - iii) if at the time of consummation of this proposal⁷, the applicant or any entity associated with the applicant, will:
 - engage in or carry on any business in Canada,
 - maintain a branch in Canada other than a bank branch, or

⁷ Upon receipt of an order to establish a bank branch in Canada, the foreign bank applicant will be deemed to have a financial establishment in Canada (paragraph 507(15)(a) of the *Bank Act*). Therefore, the foreign bank applicant and all entities associated with the applicant ("entity associated with the foreign bank" is defined in subsections 507(2) and (3) of the *Bank Act*) will be subject to Part XII of the *Bank Act*, and particularly to the prohibitions on activities set out in section 510 of the *Bank Act* and to the investment regime in Division 4 of Part XII of the *Bank Act*.

- establish, maintain or acquire for use in Canada an automated banking machine, a remote services unit or a similar automated service, or in Canada accept data from such a machine, unit or service,

the applicant must provide the following for each entity:

- name, location, and detailed description of its activities in Canada; and
 - the specific provisions of Part XII of the *Bank Act* that the applicant believes provides authority for the applicant or any entity associated with the applicant to continue to engage in, or carry on, these activities in Canada; and
- iv) if at the time of consummation of this proposal⁸, the applicant or any entity associated with the applicant, will acquire or hold control of, or a substantial investment in, a Canadian entity, provide the following for each Canadian entity:
- name, location, and detailed description of its activities in Canada; and
 - the specific provisions of Part XII of the *Bank Act* that the applicant believes provides authority for the applicant or any entity associated with the applicant to continue to hold control of, or a substantial investment in, the entity.
- d) Ownership Structure
- i) A current organization chart for the applicant and all entities associated with the applicant showing:
- all subsidiaries of the applicant and its ultimate parent;
 - all entities in the control chain (with percentage owned) between the applicant and its ultimate parent and the affiliates of the parent and applicant; and

⁸ Upon receipt of an order to establish a bank branch in Canada, the foreign bank applicant will be deemed to have a financial establishment in Canada (paragraph 507(15)(a) of the *Bank Act*). Therefore, the foreign bank applicant and all entities associated with the applicant ("entity associated with the foreign bank" is defined in subsections 507(2) and (3) of the *Bank Act*) will be subject to Part XII of the *Bank Act*, and particularly to the prohibitions on activities set out in section 510 of the *Bank Act* and to the investment regime in Division 4 of Part XII of the *Bank Act*.

- any entities in which the applicant beneficially owns more than 10 per cent of the voting rights or 25 per cent of the shareholders' equity. (*Please indicate by an asterisk if any of the entities shown on the charts operate in Canada*);
- ii) the name and address of each person who directly or indirectly beneficially owns more than 10 per cent of any class of shares of the applicant including:
- the number of shares held; and
 - the class and attributes of the class;
- iii) information on any voting agreement or other arrangements that exist involving persons exercising control over the applicant or its ultimate parent;
- iv) the percentage of each share class and total equity of the applicant that is beneficially owned by directors or executive officers of the applicant. (Where shares are held in nominee form, the applicant should, to the extent possible, provide information about beneficial ownership);
- v) where shares are held by the government of a foreign country, or a political subdivision, agent, or agency, a summary of their involvement with the applicant should be provided;
- vi) a current list of every Canadian entity that is a non-bank affiliate of the applicant or entity associated with the applicant. (See subsection 507(1) of the *Bank Act* for the definition of a non-bank affiliate of a foreign bank). Include in this list:
- the number, class and percentage of each class of shares and total equity held by the applicant or entity associated with the applicant;
 - the business activities conducted;
 - for every entity listed, the most recent audited financial statements. (If data on the previous financial year is unavailable or if the previous financial year ended more than six months prior to the application submission date, a copy of the latest interim financial statements must also be provided); and
- vii) the name, address and principal business of each entity in which the applicant, a person who controls the applicant or an entity associated with the applicant, controls or has a substantial investment. (See sections 10 and 507 of the *Bank Act* for definitions).

- e) Financial Information on the Applicant
- i) The following information must be provided for each of the last five financial years:
- a copy of the annual report containing consolidated audited financial statements of the applicant and its parent. If an annual report is not yet available for the previous financial year or if that financial year ended more than six months prior to the application date, provide a copy of the last annual report as well as the latest interim statements; and
 - a copy of the financial statements in the form submitted to the bank supervisory authorities in the applicant's home jurisdiction (if different from the consolidated financial statements);
- ii) details of major differences in generally accepted accounting principles and regulatory requirements for banks between the applicant's home jurisdiction and Canada, covering, as a minimum, consolidation rules, on- and off-balance sheet items (with special emphasis on asset valuation), income and expense items, tax considerations and disclosure rules. The significant accounting practices to be addressed are listed in Appendix IV;
- iii) a copy of the most recent 10K form (if applicable) or any similar public documents filed with securities regulators over the last five years;
- iv) a copy of the most recent report on any controlling company and the applicant by a recognized credit-rating agency;
- v) detailed capital calculations according to the applicant's home jurisdiction methodology and based on OSFI's capital rules. In support of its capital adequacy calculations, the applicant should provide, on a consolidated basis:
- a breakdown of its risk-based assets as at the end of the most recent fiscal quarter, showing each principal group of on- and off-balance sheet assets and the relevant risk weights; and
 - the components of Tier 1, 2 and 3 capital, along with the calculations of the applicant's Tier 1 and total capital to risk-based assets.

(If the applicant is from a jurisdiction having capital rules not in accordance with the minimum international standards established by the BIS, including the market-risk amendments, the applicant must provide information on the capital

standards applied by the home-jurisdiction supervisor so OSFI can evaluate the applicant's capital position);

- vi) current information on asset quality of the applicant and any parent foreign bank. The information should be presented for the consolidated organization. If consolidated figures are not available, indicate what proportion of the consolidated assets of the applicant and any parent foreign bank is not reflected in the response. The information should include, but need not be limited to, the following (with definitions of the terms as used in its home jurisdiction or that of the parent foreign bank):
 - explanation of asset rating system and amounts classified in each category;
 - asset ratings made by home regulators;
 - delinquencies or past due loans;
 - assets acquired in satisfaction of debts previously contracted (i.e., foreclosed assets);
 - restructured loans (e.g., loans with reduced interest charges);
 - nonaccrual loans;
 - vii) detailed explanation of the methodology for general allowances, (see OSFI's *Guideline C-5 - General Allowances for Credit Risk*); and
 - viii) total allowance for credit losses available to cover on- and off-balance sheet credit-related losses for the end of the most recent quarter and the two most recent financial years. The total allowance should be broken down into specific allowances, general allowances and/or other relevant categories, with definitions of the terms used.
- f) Other Information
- i) A list of all correspondent banks, representative offices, branches, agencies or subsidiaries of the applicant, indicating location;

- ii) for the past five years, details of any refusals by regulatory authorities in any jurisdiction to permit the applicant from establishing or acquiring an entity, agency, subsidiary or branch (collectively referred to as "foreign offices") to carry on financial activities. If an application was not refused, but accepted with entry requirements more stringent than that normally applied to such foreign offices or with other special conditions, provide a description of the nature of any such specific requirements/conditions. Similarly, if the applicant withdrew an application from consideration, provide full details;
- iii) for the past five years, provide details of material regulatory actions, criminal convictions or breaches of statutory or other administrative or regulatory enactments (if any), pertaining to the applicant;
- iv) describe the actions taken and internal controls implemented by the applicant to prevent money-laundering activities from occurring in both its own operations and all of its foreign offices;
- v) describe the general frequency, nature, and scope of review of the applicant (including subsidiaries and foreign offices) performed by external auditors, particularly with respect to the review of asset quality, compliance and internal controls. Include a brief discussion of the generally accepted auditing standards or requirements that apply to the external auditors. Discuss whether the home supervisor or regulator sets standards for such reviews and the manner in which the external audit results are communicated to them; and
- vi) provide details on any aspects of the internal audit function that are outsourced.

6.0 FOREIGN BANK BRANCH INFORMATION

- a) A three-year business plan for the proposed FBB that contains:
 - i) The reason why the applicant wants to establish an FBB;
 - ii) an analysis of target markets and opportunities that the FBB will pursue in Canada and the plans to address them;
 - iii) an overview of business to be conducted by the FBB and the services to be offered;
 - iv) pro-forma financial statements for the first three years of the operations of the proposed FBB, (outlining assumptions used) including start-up costs;
 - v) a breakdown of the FBB's funding requirements and, for a full-service branch, a forecast of its capital equivalency deposit level as at each year-end. Include in these statements a summary of the contingent liabilities to be booked by the FBB;
 - vi) the projected staff complement and reporting lines in the FBB over the three-year period and a description of the functions the individuals will perform;
 - vii) an identification of the risks to which the FBB will be exposed in executing its business plan and a detailed description of the risk management and control systems that will be utilized by the FBB to control its risk exposure (including provisioning policies); and
 - viii) a detailed description of how the risk management and control systems described as per vii) above are integrated with those of the foreign bank on a global basis.
- b) Management of FBB
 - i) Describe the level of involvement that senior foreign bank management will have in the FBB's operations. Indicate the reporting lines between the FBB's principal officer and the individuals in the foreign bank to whom the principal officer will report;
 - ii) provide the following information for each senior executive officer and director of the applicant directly responsible for oversight to the FBB and for the principal officer and each officer who will work in the FBB:

- full name and address;
 - title;
 - birth place and date;
 - citizenship;
 - principal business or description (if not a full time employee of the applicant);
 - details of any material regulatory actions, criminal convictions or breaches of statutory or other administrative/regulatory enactments against the individual or company for which he/she was a senior officer; and
 - a current curriculum vitae;
- iii) for the principal officer and senior officers who will work in the FBB submit a completed Securities Fraud Information Centre Form [RCMP 2674, available from OSFI upon request] in order that suitability checks may be conducted; and
- iv) provide the name and address of the external audit firm and partner who will audit the FBB.
- c) Other Information
- i) Where the applicant plans to convert an existing Canadian deposit-taking subsidiary to an FBB by voluntary liquidation, it is required to file an application to the Minister under section 344 of the *Bank Act* for letters patent dissolving the deposit-taking subsidiary along with its plan and target date for accomplishing this voluntary liquidation;
- ii) where the applicant currently operates a deposit-taking subsidiary in Canada and plans to also establish a full-service branch, OSFI must be apprised of the steps the applicant plans to take to ensure that the public will be able to clearly distinguish which is the CDIC-insured subsidiary and which is the FBB;
- iii) the applicant must indicate the steps it will take to implement controls to prevent money laundering at the FBB consistent with OSFI's *Guideline B8 - Deterring and Detecting Money Laundering*; and
- iv) the applicant must indicate the intended financial year-end of the FBB pursuant to subsection 583(1) of the *Bank Act*.

7.0 HOME COUNTRY SUPERVISOR/REGULATOR

7.1 General Information

- a) The name, address of the home country supervisor and home country regulator, if different, that has ultimate supervisory responsibility; and
- b) the name, title and telephone number of the contact person of the home country supervisor and regulator, if different, having supervisory responsibility for the applicant.

7.2 Minimum Entry Information

- a) a statement from the applicant's home country supervisor(s) (or from the home country supervisor(s) of the banking group of which the applicant is a member) consenting to the establishment of the FBB;
- b) a statement from the home country supervisor that it does not object to OSFI visiting the applicant to discuss the foreign bank's operations and/or its FBB operations; and
- c) where the home country is not a signatory to the WTO Agreement, confirmation of reciprocity arrangements, which are acceptable to the Minister. Once this information is received, OSFI's practice is to provide the applicant's home country supervisor(s) with a Questionnaire encompassing the home bank and the home regulatory regime. OSFI will also conduct visits, as required, with both the home bank and the home country supervisors. Effective August 1, 2001, OSFI will recover from new applicants out of pocket costs related to home country and home bank visits.⁹

⁹ Out of pocket costs would include expenses related to staff travel, including air and ground; translator/interpreter fees; hotel accommodations and a per diem allowance for meals and incidentals.

8.0 CONDITIONS AND REQUIREMENTS FOR COMMENCEMENT AND CARRYING ON OF BUSINESS IN CANADA

- a) In the case of a full-service branch, the FBB will generally not be permitted to accept "retail" deposits, defined for this purpose as amounts less than \$150,000. Certain exceptions or "carve-outs" to this requirement are included in the *Prescribed Deposits (Authorized Foreign Banks) Regulations*. Notwithstanding these "carve-outs", the deposits in a full-service branch are not eligible for CDIC insurance. Lending branches are prohibited from accepting deposits or otherwise borrowing money except from financial institutions;
- b) FBBs are subject to the *Notices of Deposit Restrictions (Authorized Foreign Banks) Regulations*. Full-service branches are required to provide written notice to individuals opening an account and to post notices in their branches that deposits with the branch are not insured by CDIC. Lending branches are required to post notices in their branches that they do not accept deposits from the public and that they are not members of CDIC.

A full-service branch must also provide written notice that OSFI is responsible for supervising the FBB in Canada and is not the primary regulator of the foreign bank. The expectation of OSFI is that the required notice will, in addition to English and/or French, be produced and made available in the language of the home jurisdiction of the foreign bank;

- c) a full-service branch will be subject to an examination by OSFI at least once a year. Under section 613 of the *Bank Act*, the Superintendent has the discretion to establish the frequency of examination of lending branches;
- d) a full-service branch is generally required to maintain assets on deposit equal to at least five per cent of branch liabilities or \$5 million, whichever is greater. These must be deposited with a Canadian financial institution approved by the Superintendent. A lending branch will be required to maintain assets on deposit equal to \$100,000. The deposits must consist of cash or acceptable securities, free of any encumbrances. See OSFI's *Guideline A-10 - Capital Equivalency Deposit* for further details.

Subsequent to the commencement of operations, the Superintendent may consider it necessary to impose more stringent asset maintenance requirements on the FBB. This power will be used to safeguard the FBB's depositors and creditors by ordering that the FBB maintain additional eligible assets, in Canada, qualified as a specified percentage of the FBB's liabilities.

- e) OSFI regulatory limits normally expressed as a percentage of regulatory capital, will apply to the FBB based on the applicant's regulatory capital and not the deposit referred to above, unless otherwise specified;
- f) a foreign bank must appoint a principal officer to head the FBB, and that principal officer must reside in Canada. The principal officer will be OSFI's official contact with the FBB. Where a foreign bank operates a Schedule II bank, a full-service branch and a representative office in Canada, the ability exists to share management;
- g) the principal officer is responsible for maintaining adequate records at the FBB, in English or French, with sufficient detail to identify the FBB's business in Canada and to enable OSFI to conduct an examination of the FBB;
- h) an FBB will be subject to an annual audit by an external auditor meeting the qualifications outlined in section 585 of the *Bank Act* in accordance with generally accepted Canadian accounting principles. Pursuant to subsection 594(1) of the *Bank Act*, the FBB's auditor will be required to report to the principal officer in writing (with a copy to the Superintendent, as per subsection 595(2) of the *Bank Act*) that the annual return was prepared in accordance with generally accepted Canadian accounting principles and presents fairly the financial position of the business in Canada of the authorized foreign bank; and
- i) in accordance with section 600 of the *Bank Act*, the authorized foreign bank will be required to file any and all information that the Superintendent may require at the time and in the form specified. The form of financial reporting is further described in the *Manual of Reporting Forms and Instructions for Deposit Taking Institutions*, which is available from OSFI on request.

9.0 ENQUIRIES

All enquiries regarding FBBs should be directed to:

Foreign Bank Branch Supervision
Office of the Superintendent of Financial Institutions
255 Albert Street
Ottawa, Ontario
K1A 0H2
Telephone: (613) 990-3482
Facsimile: (613) 990-6904
e-mail: fbbs@osfi-bsif.gc.ca

FOREIGN BANK BRANCHING (FBB) APPLICATION INDEX

A. Minister Approval: Order authorizing the Foreign Bank (FB) to establish a "full-service branch" or "lending branch" (FBB) in Canada (section 524(1) of the *Bank Act*)

Requirement	Applicable Section of the <i>Bank Act</i>	Cross Reference to the Guide to Foreign Bank Branching	TAB or Date Available
"Conversion" of a Deposit-Taking Subsidiary		1.3	
An Authorized Foreign Bank (AFB) wanting to avail itself of the transition provisions at the time of its FBB application, must file a detailed plan for disposition of assets and liabilities of deposit taking subsidiary with discussion plans to transfer assets and liabilities to FBB		1.3 c)	
DRAFT APPLICATION			
Statutory Provisions		2.0	
If application made by non-WTO member FB, treatment as favourable for banks to which this Act applies exists in home country	524(3)(a)	2.0 a)	
Recognized and supervised as a bank in home country	524(4)(a)	2.0 b)i)	
FB's principal activity is the provision of services permitted by the <i>Bank Act</i>	524(4)(b)	2.0 b)ii)	
Nature and sufficiency of the financial resources of FB	526(a)	2.0 c)i)	
Soundness and feasibility of the plans of FB for its business in Canada	526(b)	2.0 c)ii)	
Business record and past performance of FB	526(c)	2.0 c)iii)	
Reputation of the FB as being operated within standards of good character and integrity	526(d)	2.0 c)iv)	
Proposed AFB to be operated by persons with competence and experience suitable to the operation of a financial institution	526(e)	2.0 c)v)	
Impact of any integration of operations and businesses of the AFB in Canada with those of its affiliates in Canada, on the conduct of those businesses and operations	526 (f)	2.0 c)vi)	
Best interests of the financial system in Canada	526(g)	2.0 c)vii)	

Requirement	Applicable Section of the Bank Act	Cross Reference to the Guide to Foreign Bank Branching	TAB or Date Available
Minimum Entry Criteria		4.0	
FB's risk-based capital ratio meets minimum international standards (BIS)		4.0 a)	
FB's minimum C\$5 billion in consolidated assets (does not apply for "lending branch")		4.0 b)i)	
Proven track record in international banking		4.0 b)ii)	
Favourable financial performance over last 5 years		4.0 b)iii)	
Widely-held		4.0 b)iv)	
Business opportunities FB plans to undertake in Canada explained in a 3 year business plan		4.0 c)	
Undertaking to provide financial and significant non-financial information to OSFI		4.0 d)	
Other Information		5.0	
Name of FBB in Canada including name search (nuance) report		5.0 a)i)	
Location of proposed FBB		5.0 a)ii)	
Principal officer or contact person of FBB – name, position and telephone #		5.0 a)iii)	
Letter authorizing OSFI to discuss application with contact person(s)		5.0 a)iv)	
Certified copies of Board of Directors resolution authorizing establishment of the FBB		5.0 b)i)	
Certified copies - incorporating documents - bylaws & amendments		5.0 b)ii)	
Brief history including experience in international banking		5.0 c)i)	
Current banking business in home jurisdiction and internationally		5.0 c)ii)	
If engaged or planning to engage in non-banking activities in Canada: - name, location, description of activities for each - section of the <i>Act</i> re. Authority for acquisition of any non-bank affiliate operations in Canada		5.0 c)iii)	
Organization chart of FB and parent - all subsidiaries of the applicant and parent - all entities in the control chain (with percentage ownership) - any entities applicant owns more than 10% voting rights or 25% shareholder's equity		5.0 d)i)	

Requirement	Applicable Section of the Bank Act	Cross Reference to the Guide to Foreign Bank Branching	TAB or Date Available
Person who owns more than 10% of any class of shares of applicant <ul style="list-style-type: none"> - name and address of each person - number of shares held - class and attributes of the class 		5.0 d)ii)	
Voting agreement or other arrangements		5.0 d)iii)	
Beneficial ownership		5.0 d)iv)	
Shares held by government of a foreign country		5.0 d)v)	
List of every Canadian entity that is a non-bank affiliate of the applicant <ul style="list-style-type: none"> - number, class and percentage of each class of shares - business activities conducted - recent audited financial statements 	507(1)	5.0 d)vi)	
Name, address, principal business of each entity in which the applicant controls or has a substantial investment	10 507(1)	5.0 d)vii)	
Last 5 financial years <ul style="list-style-type: none"> - annual report - financial statements in form submitted to FB's supervisory authority in home jurisdiction 		5.0 e)i)	
Major differences in GAAP between applicant's home jurisdiction and Canada		5.0 e)ii)	
Recent 10K form or similar documents filed with securities regulators over last 5 years		5.0 e)iii)	
Credit rating report on any controlling company and applicant		5.0 e)iv)	
Detailed capital adequacy calculations based on FB's home jurisdiction methodology and OSFI's capital rules <ul style="list-style-type: none"> - risk-based assets - Tier 1,2,3 capital & total capital to risk-based assets 		5.0 e)v)	
Information on asset quality of applicant and parent FB <ul style="list-style-type: none"> - explanation of asset rating system - asset ratings made by home regulators - delinquencies or past due loans - foreclosed assets - restructured loans - non-accrual loans 		5.0 e)vi)	
Detailed explanation of methodology for general allowances. <i>(See OSFI's Guideline C-5, General Allowances for Credit Risk.)</i>		5.0 e)vii)	

Requirement	Applicable Section of the Bank Act	Cross Reference to the Guide to Foreign Bank Branching	TAB or Date Available
Total allowance for credit losses, broken down into specific, general and other relevant categories, with definitions and terms		5.0 e)viii)	
List of correspondent banks, representative offices, branches, agencies or subsidiaries of applicant, with location		5.0 f)i)	
Details of any refusal by regulators in any jurisdiction and/or requirements/conditions re: establishing or acquiring a foreign operation, for the past 5 years		5.0 f)ii)	
Details of material regulatory actions pertaining to applicant, for the past 5 years		5.0 f)iii)	
Actions taken to prevent money laundering activities		5.0 f)iv)	
Frequency, nature and scope of review of the applicant by external auditors		5.0 f)v)	
Details on aspects of outsourced internal audit function		5.0 f)vi)	
Foreign Bank Branch – Information requirements		6.0	
A 3 year Business Plan for the Proposed FBB		6.0 a)	
Rationale for establishing a FBB		6.0 a)i)	
Analysis of target markets		6.0 a)ii)	
Overview of business and services offered by FBB		6.0 a)iii)	
Pro-forma financial statements and start-up costs		6.0 a)iv)	
Breakdown of FBB funding requirements; for "full service branch"-forecast of its capital equivalency deposit level, any contingent liabilities to be booked		6.0 a)v)	
Projected staff complement, reporting lines in FBB and functions of individuals		6.0 a)vi)	
Risk exposure and risk management system		6.0 a)vii)	
Integration of risk management system of FBB with FB's on a global basis		6.0 a)viii)	
Name address of external audit firm and partner who will audit the FBB.		6.0 b)vi)	
Level of involvement for senior FB management in FBB's operations; reporting lines between FB and FBB		6.0 b)i)	
Senior executive officer and director of FB/principal officer and officer of FBB: - name, address, title, birth place & date, citizenship, principal business, any criminal convictions, and curriculum vitae		6.0 b)ii)	

Requirement	Applicable Section of the Bank Act	Cross Reference to the Guide to Foreign Bank Branching	TAB or Date Available
RCMP Check of principal officer and senior officers of FBB	585(1)	6.0 b)iii)	
Other Information		6.0 c)	
"Converting" by voluntary liquidation: - required to file application for letters patent of dissolution along with target date	344	6.0 c)i)	
"Existing" DTI in Canada – establish "full-service branch": - steps to distinguish CDIC-insured subsidiary from FBB		6.0 c)ii)	
Steps taken to implement anti-money laundering		6.0 c)iii)	
Financial year-end for FBB	583(1)	6.0 c)iv)	
Home Country Supervisor (HCS)/Regulator (HCR)		7.0	
HCS and HCR - name, address		7.1 a)	
Contact person of HCS and HCR – name, title and phone #		7.1 b)	
Statement consenting to the establishment of the FBB		7.2 a)	
Statement of no objection from HCS to OSFI visiting the applicant		7.2 b)	
Where the home is not a signatory to the WTO Agreement, confirmation of reciprocity arrangements which are acceptable to the Minister		7.2 c)	
DRAFT APPLICATION “COMPLETE”			
Applicant must publish notice (wording must be approved by OSFI) of intent: Canada Gazette & newspaper for four consecutive weeks (notice must contain both the name of FB & FBB)	525(2)	1.1 d)	
FORMAL APPLICATION		1.2	
Post – Notice Period			
- Request for order to establish a branch in Canada - Request for order to commence business - Provide statutory declaration of publication of notice	525(1)	1.2 a)	

B. Superintendent Approval: Order to Commence and Carry on Business OCCB (pursuant to section 534(1) of the *Bank Act*)

Requirement	Applicable Section of the <i>Bank Act</i>	Cross Reference to the Guide to Foreign Bank Branching	TAB or Date Available
Statutory Provisions		3.0	
AFB has deposited in Canada unencumbered assets of a type approved by Superintendent the total value of which are: a) " <i>lending branch</i> " - \$100,000 deposit b) " <i>full service branch</i> " - \$5 million deposit (<i>See OSFI's Capital Equivalency Deposit Guideline for standard deposit agreement</i>)	534(3)(a)(i) 534(3)(a)(ii)	3.0 a)i)	
Submitted a copy of the power of attorney provided to its principal officer (<i>See Guide for sample forms</i>)	534(3)(b)	3.0 a)ii)	
Complied with all relevant requirements of the <i>Act</i>	534(3)(c)	3.0 a)iii)	
Conditions and Requirements		8.0	
" <i>Full service branch</i> " - wholesale deposits (greater than \$150,000) [<i>See Prescribed Deposit (Authorised Foreign Bank)Regulations</i>] " <i>Lending branch</i> " - no deposits or borrowing, except from other Financial Institutions	540	8.0 a)	
On-site Commencement Review [<i>see Notices of Deposit Restrictions (Authorised Foreign Banks)Regulations</i>]		8.0 b)	
" <i>Full service branch</i> " - maintain assets on deposit of the greater of \$5 million or 5% liabilities " <i>Lending branch</i> " - maintain assets on deposit = \$100,000		8.0 d)	
FB must appoint principal officer to head FBB and must reside in Canada	536(1)	8.0 f)	
FBB must be capable of producing statutory information electronically (confirm in writing)		8.0 i)	
Submit an Access to Record undertaking			
Order must be given within one year from the date of the Order from Minister	534(9)	1.2 d)	
ORDER TO COMMENCE AND CARRY ON BUSINESS			
Applicant must publish notice of OCCB in Newspaper	534(7)	1.2 c)	

OFFICE OF THE SUPERINTENDENT OF FINANCIAL INSTITUTIONS CANADA

FORM OSFI 512

POWER OF ATTORNEY

(pursuant to section 536(2) of the *Bank Act* Canada)

KNOW ALL MEN BY THESE PRESENTS that _____
 (“Company”)

- (a) has nominated, constituted and appointed, and by these presents does nominate, constitute and appoint, _____ of the _____ of _____, in the _____ of _____ in the Province of _____, Canada, to be its principal officer for the purposes of the Bank Act;
- (b) authorizes its principal officer to receive process in all suits and proceedings against it in any province or territory in Canada in respect of any liabilities incurred by it therein;
- (c) authorizes its principal officer to receive all notices under the laws of Canada from the Minister of Finance or the Superintendent of Financial Institutions; and
- (d) declares that service of process or receipt of notice on or by its principal officer shall be legal and binding on it to all intents and purposes whatsoever.

IN WITNESS WHEREOF _____ has executed this Power of Attorney this _____ day of _____, 20__ as witnessed by the signatures of its _____ and _____ in that behalf.

IN THE PRESENCE OF

COMPANY NAME

By: _____
Name: _____ Title: _____

By: _____
Name: _____
Title: _____

Witness

AFFIDAVIT RE: POWER OF ATTORNEY

} I, _____ of the
} _____ of _____, in the _____
} of _____,
} in the Province of _____,
} make oath and say:

1. That I was personally present and did see the annexed power of attorney signed by _____ and _____ the _____
Name Name Title
and _____ respectively of _____ (“Company”).
Title

2. That I know of my own knowledge that _____ and
Name
_____ by whom the power of attorney was signed are the
Name
_____ and _____ respectively of the Company.
Title Title

3. That the names _____ and _____ subscribed to
Name Name
the power of attorney are of the proper handwriting of _____ and
Name
_____ and the name “_____” thereto subscribed
Name Name of Witness
as the party witnessing the same is my proper handwriting.

Sworn before me at the

_____ of _____,
in the _____
of _____, this _____
day of _____, 20 ____.

}
}
} _____
} **Witness**

AFFIDAVIT RE: SIGNATURE OF PRINCIPAL OFFICER

} I, _____ of the
} _____ of _____, in the _____
} of _____, in the Province of _____,
} make oath and say:

1. That I was personally present and did see the annexed signature of principal officer signed by _____ the Principal Officer of _____,
Name
hereinafter called "the Company".

2. That I know of my own knowledge, that _____ by whom the
Name
signature of principal officer was signed is the principal officer of the Company.

3. That the name _____ subscribed to the signature of principal officer is
Name
of the proper handwriting of _____, and the name " _____ " Name
Name of Witness
thereto subscribed as the party witnessing the same is my proper handwriting.

Sworn before me at the

_____ of _____,
in the _____
of _____, **this** _____
day of _____, **20** ____ .

}
}
}
}

Witness

SIGNATURE OF PRINCIPAL OFFICER

IN THE PRESENCE OF

Witness

By: _____
Name:

Appendix III

Undertaking to the Office of the Superintendent of Financial Institutions

In consideration of the Minister of Finance (Canada) making an order pursuant to Section 524(1) of the *Bank Act* authorizing (name of the foreign bank) [the Bank] to establish a branch in Canada to carry on in Canada the business of banking and any other business generally that appertains to the business of banking, the Bank hereby undertakes as follows:

- To provide the Superintendent of Financial Institutions copies of the annual financial statements of the Bank;
- To send the Superintendent copies of **significant** regulatory disclosures and press releases including, but not limited to, those involving significant corporate actions and management changes and events that may have a **material** financial impact on the Bank;
- To annually provide a certificate from a duly authorized senior officer certifying that, after due inquiry and to the best of the senior officer's knowledge and belief, the Bank is in compliance with this undertaking, and
- To provide translations of the above, as appropriate.

Signature
Name
Title

Date

SIGNIFICANT ACCOUNTING PRACTICES

1. Asset Valuation

- a. Non-performing definition/accrual practices
- b. Provisioning policies
- c. Charge-off policies
- d. Revaluation reserves
 - i. Fixed assets
 - ii. Securities portfolio
- e. Undisclosed reserves
- f. Inflation accounting/monetary correction
- g. Intangibles/goodwill
- h. Accounting for subsidiaries and affiliates

2. Capital

- a. Definition of Tier 1, Tier 2 and Tier 3 capital
- b. Calculation of risk-weighted assets
- c. Capital requirement for market risk

3. Income and Expense Items

- a. Provisioning policies
- b. Accrual Methods
- c. Inflation accounting/monetary correction

4. Consolidation Rules

- a. Accounting for subsidiaries and affiliates
- b. Accounting for inter-company transactions

5. Off- versus On-Balance Sheet

6. Tax Considerations

7. Disclosure Rules

- a. Adoption of internationally accepted accounting standards
- b. Financial reporting requirements