



**WALKER
SORENSEN**

Lawyers

**ESTABLISHING
LIFE INSURANCE
OPERATIONS IN CANADA**

MAY 2017

The discussion in this document is intended to provide general guidance, and is not an exhaustive analysis of all provisions of Canadian law with which an applicant wishing to establish life insurance operations in Canada may be required to comply. For this reason, we recommend that you seek legal advice from one of our lawyers on the specific legal aspects of your proposed investment or activity

TABLE OF CONTENTS

1.0	1
2.0	2
3.0	7
4.0	18
5.0	19
	20
(A)	21
(B)	22
(C)	23
(D)	26



FREQUENTLY ASKED QUESTIONS

1. *Can a foreign insurer establish a branch in Canada?*
Yes.
2. *Can a foreign insurer incorporate an insurance company in Canada?*
Yes.
3. *Can a foreign life insurer operate in Canada as a “non-admitted” or “surplus lines” carrier?*
No. All insurers operating in Canada must be fully licensed.
4. *Is it better to establish a Canadian branch or a Canadian insurance company?*
Other than with respect to corporate governance requirements and possible tax consequences, there are only minor differences between the use of a Canadian branch and a Canadian insurance company (see Section 2.5). Canadian law imposes onerous corporate governance requirements on a Canadian insurance company, but not on a Canadian branch.
5. *How much capital does a Canadian insurance company require?*
Sufficient capital to achieve a Minimum Continuing Capital and Surplus Requirements (“MCCSR”) ratio of at least 300%.
6. *What assets must a Canadian branch have in Canada?*
A Canadian branch of a foreign life insurer must vest in trust with the federal insurance regulator sufficient assets to achieve a Test of Adequacy of Assets in Canada and Margin Requirements (“TAAM”) ratio of at least 300%.
7. *Who regulates insurers in Canada?*
The federal government regulates solvency and corporate governance. Provincial and territorial governments regulate market conduct.
8. *What licences does an insurer need?*
A life insurance company incorporated under the federal laws of Canada must obtain an order from the federal insurance regulator approving the commencement and carrying on of business by the Company. A Canadian branch of a foreign life insurer must be registered federally and the foreign insurer must obtain an order from the federal insurance regulator approving the insuring in Canada of risks by the foreign insurer. In addition, a life insurer (whether a Canadian insurance company or a Canadian branch of a foreign insurer) must be licensed in each province and territory in which it undertakes insurance or carries on the business of insurance.
9. *How long does it take to become fully licensed?*
Approximately 15 to 27 months in total. Federal approval for the incorporation of a Canadian insurance company or registration of a Canadian branch of a foreign insurer requires approximately 12 to 18 months from the date that the applicant has provided the federal insurance regulator with a complete application and all required documents. Provincial and territorial licences require an additional 3 to 9 months to obtain.
10. *Can we acquire a shell company?*
There are no true “shell” insurance companies available in the sense of companies that have been incorporated, organized and licensed, but never used to write insurance business. However, from time to time, there are insurance companies in run-off available for purchase. The regulatory approval process for establishing a Canadian insurance company and acquiring a Canadian insurance company are comparable. Accordingly, little time or money could be saved by acquiring such an insurance company. However, time and money will be saved if the insurance company has maintained provincial licenses. This could shorten the process by up to 9 months and reduce costs considerably.



BACKGROUND ON CANADIAN INSURANCE REGULATION

2.01 Federal and Provincial Jurisdiction

Insurance is regulated at both the federal and provincial/territorial levels. There are ten provinces and three territories in Canada.

Only three types of insurers are allowed to sell insurance in Canada:

- (a) insurers incorporated under the federal Insurance Companies Act (the “ICA”) (“Canadian Companies”);
- (b) foreign insurers registered under the ICA to operate through Canadian branches (“Canadian Branches”); and
- (c) insurers incorporated under the legislation of one of the provinces (“Provincial Companies”).

A foreign life insurer may only establish a Canadian Branch if the foreign insurer is registered under the ICA. The provinces have no jurisdiction to permit a foreign Canadian Branch of a life insurer to carry on business in Canada.

There is no category for “non-admitted” or “surplus lines” insurers in Canada.

There is no category for “non-admitted” or “surplus lines” insurers in Canada.

2.02 Federal Regulation

Federal regulation of insurers pursuant to the ICA is primarily directed at regulating the solvency and corporate governance of Canadian Companies and the solvency of Canadian Branches. This regulatory oversight is performed by the Superintendent of Financial Institutions (the “Superintendent”) through the Office of the Superintendent of Financial Institutions (“OSFI”). The ICA also contains consumer protection provisions regulated by the Financial Consumer Agency of Canada.

Federal regulation concentrates on regulating solvency & corporate governance.

The ICA, the Regulations thereto and guidelines developed by OSFI provide the framework for establishing insurance operations in Canada.

2.03 Provincial & Territorial Regulation

The provinces and territories have exclusive jurisdiction to regulate the marketing of insurance products, as well as market conduct with respect to the sale of insurance, within their jurisdictions, including the types of insurance that may be sold and who may sell insurance. Provincial and territorial insurance legislation contains general provisions with respect to insurance policies (other than life, accident and sickness and marine insurance policies)¹ and specific provisions with respect to fire², automobile³, life⁴ and accident and sickness⁵ policies, including statutory provisions⁶ that are deemed to be included in certain policies). In addition, the provinces regulate the solvency and corporate governance of Provincial Companies.

Regardless of its jurisdiction of incorporation or whether it operates as a Canadian Branch of a foreign insurer, an insurer must be licensed in each province and territory in which it undertakes insurance or carries on the business of insurance. Until a licence is obtained from a particular province or territory, an insurer may not undertake insurance or carry on the business of insurance in that province or territory. Certain provinces and territories require that, in addition to obtaining an insurance licence, an insurer must also be extra-provincially registered under general corporate legislation in the jurisdiction.

An insurer must be licensed in each province & territory in which it carries on business.

Each province and territory has its own insurance legislation, administered by an insurance commission or other regulatory body run by a commissioner or superintendent of insurance.

All of the provinces and territories, except Quebec, have common law legal systems. Quebec has a civil law legal system.

2.04 Form and Rate Filings

An insurer may be required to file copies of policy forms and forms of applications for insurance proposed to be used as part of its application for a provincial or territorial licence.⁷ There is no requirement that forms be filed on a continuous basis after the licence is granted; however, an insurer may be required to file policy forms or application forms with a provincial or territorial insurance regulator upon request.⁸ There are no requirements for life insurers to file policy forms with OSFI.

There is no requirement that forms be filed on a continuous basis. Rates do not need to be filed for life or accident & sickness insurance.

Insurers are, however, required to file an information folder in all provinces with respect to segregated fund products (known as separate account products in the U.S.). In addition, a copy of the information folder must be provided to each prospective segregated fund policyholder. This folder is similar to the type of prospectus required to distribute mutual funds in Canada.

No rates are required to be filed for any class of life or accident and sickness business with federal or provincial/territorial insurance regulators.

¹ See, for example, [Part III of the Insurance Act \(Ontario\)](#).

² See, for example, [Part IV of the Insurance Act \(Ontario\)](#).

³ See, for example, [Part VI of the Insurance Act \(Ontario\)](#).

⁴ See, for example, [Part V of the Insurance Act \(Ontario\)](#).

⁵ See, for example, [Part VII of the Insurance Act \(Ontario\)](#).

⁶ See, for example, [Sections 148, 234 and 300 of the Insurance Act \(Ontario\)](#).

⁷ See, for example, [Section 50\(1\) of the Insurance Act \(Ontario\)](#).

⁸ See, for example, [Section 117 of the Insurance Act \(Ontario\)](#).

2.05 Choice of Canadian Company or Canadian Branch

As noted above, insurance companies may be incorporated either federally under the ICA or provincially under applicable provincial business corporation legislation.

Incorporation under the ICA is generally chosen, as it is easier for a Canadian Company to obtain licences in all provinces and territories. Alternatively, a Canadian Branch may be registered in Canada.

A Canadian Company requires a board of directors and must comply with the corporate governance provisions in the ICA and OSFI's *Corporate Governance Guidelines*, whereas a Canadian Branch is not required to have a separate board for its Canadian operations or to comply with the corporate governance provisions in the ICA or OSFI's *Corporate Governance Guidelines*.

A Canadian Company requires a board of directors, whereas a Canadian Branch is not required to have a separate board for its Canadian operations.

The board of a Canadian Company must meet the composition requirements described in Appendix A and must meet at least four times each year in Canada. Outside directors will normally to be paid director's fees. A Canadian Company also requires audit and conduct review committees.

A Canadian Branch may be managed entirely by directors, officers and employees of the foreign company and meetings of such individuals may take place outside of Canada. The management of the branch must be overseen by an individual (usually an employee) appointed as a chief agent (see Section 3.10). This provides greater flexibility and avoids the need to introduce outsiders to the management of the Canadian business.

There are no material differences between the accounting and reporting requirements of a Canadian Branch and a Canadian Company.

A Canadian Company must invest its assets in accordance with the investment restrictions set forth in Part IX of the ICA and described in Section 3.8 and Appendix B. A Canadian Branch must do likewise, with the following exception: it may hold assets outside of the trust described in Section 3.7 that do not comply with the limits on commercial lending that apply to a Canadian Company.

A Canadian Company must comply with the self-dealing restrictions set forth in Part XI of the ICA. These are summarized in Appendix C. A Canadian Branch is only required to comply with these rules in respect of assets it wishes to vest in trust.

There are no material differences between the accounting and reporting requirements for a Canadian Company and a Canadian Branch. Both are required to file substantially the same financial information with OSFI. A Canadian Company is required to maintain books and records in Canada⁹, and is subject to a separate Canadian audit.¹⁰ A Canadian Branch is required to maintain records in Canada¹¹ and have a separate Canadian audit.¹²

Before a decision is made to establish a Canadian Branch as opposed to a Canadian Company, tax rules in Canada and the foreign life company's home jurisdiction must be considered.

⁹ Section 262 of the ICA.

¹⁰ Section 356 of the ICA.

¹¹ Section 647 of the ICA.

¹² Section 641 of the ICA.

2.06 Office in Canada

OSFI has not stated explicitly that a Canadian Company or a Canadian Branch must have a presence in Canada and employees in Canada who have expertise in underwriting, accounting and claims settlement. However, OSFI has published several guidelines and advisories that strongly suggest that this may be the case. See OSFI's: [Guideline B-10 on Outsourcing of Business Activities, Functions and Processes](#); [Guideline E-4 on the Role of the Canadian Chief Agent and Record keeping Requirements](#); and [Insurance in Canada of Risks](#).

2.07 Financial Reporting

Canadian Companies are required to file [quarterly and annual statements](#) in a format prescribed by OSFI. Canadian Branches of foreign insurers are required to file similar statements with OSFI. These statements must report on all of the business underwritten by the Canadian Branch in Canada (including insured risks located outside Canada) and include an income statement and balance sheet prepared as if the Canadian Branch were a separate corporation (which, legally, it is not).

All of the provinces and territories except Quebec require that the OSFI filings be filed with them. Quebec requires insurers to file special Quebec filings which are similar, but not identical to, the OSFI filings.

Canadian Companies and Canadian Branches are required to file quarterly and annual statements with OSFI.

2.08 Regulatory Fees and Assessments

OSFI annually assesses each federally regulated insurer a proportion of its operating costs based on the insurer's prior year's net premiums. In addition, OSFI charges user fees for reviewing applications to incorporate a Canadian Company or register a Canadian Branch (currently \$32,000).¹³

All of the provinces and territories charge annual or periodic licensing fees. In addition, the Financial Services Commission of Ontario and several other provincial insurance commissions assess annually each insurer licensed in Ontario a proportion of their operating costs based on the insurer's prior year's net premium in the relevant province.

2.09 Guaranty Fund

Canadian Companies and Canadian Branches are required to be members of [Assuris](#).¹⁴

Assuris is an industry-run guaranty fund that protects Canadian policyholders against loss of benefits due to the financial failure of a member company. "Protection" benefits (death benefit, health expense, cash value, annuity payment and accumulated value) are covered as follows:

- Death benefits: up to \$200,000 or 85% of the promised death benefit, whichever is higher;
- Critical illness: up to \$60,000 or 85% of the promised benefits, whichever is higher;
- Health expense: up to \$60,000 or 85% of the promised benefit, whichever is higher;
- Disability: up to \$2,000 per month or 85% of the promised monthly income benefit, whichever is higher;
- Payout annuity: \$2,000 per month or 85% of the promised monthly income benefit, whichever is higher;

¹³ See [Charges for Services](#) Provided by the Officer of the Superintendent of Financial Institutions Regulations 2002, SOR/2992-337

¹⁴ Sections [449](#) and [591](#) of the ICA..

- Long term care: up to \$2,000 per month or 85% of the promised monthly income benefit, whichever is higher;
- Segregated funds: up to \$60,000 or 85% of the promised guaranteed amounts, whichever is higher;
- Cash value: up to \$60,000 or 85% of the cash value, whichever is higher; and
- Accumulation annuity: 100% of the accumulated value up to \$100,000.

Assuris retro-assesses insurers based on payouts it is required to make with respect to life insurance insolvencies.

2.10 CLHIA

The *Canadian Life and Health Insurance Association* is a life and health industry group that establishes industry standards and lobbies regulators and politicians with respect to industry issues. Membership is voluntary and membership fees are based on an insurer's premium volume. Most life insurers outside of Quebec are members.

2.11 Premium and Sales Taxes

Insurers must pay the provinces and territories a premium tax on all premiums collected on insurance policies sold to residents of a province or territory. This tax is generally 2% of premiums.¹⁵ In addition, provincial sales taxes apply to certain insurance products.¹⁶

2.12 French Language

An insurance policy issued in Quebec must be written in French, unless the policyholder specifically requests that it be in English.¹⁷

2.13 Required Statement on Policies Issued by a Canadian Branch

A Canadian Branch is required to include the following statement on all insurance policies it issues: "For the purposes of the *Insurance Companies Act* (Canada), this document was issued in the course of Company X's insurance business in Canada."¹⁸

2.14 Bank Accounts Must Be Controlled in Canada

All bank accounts must be controlled by officers resident in Canada or, in the case of a Canadian Branch, by the insurer's chief agent in Canada, or a formally-appointed designate who is a Canadian resident.¹⁹ OSFI will not permit non-resident officers to have signing authority with respect to withdrawals from such bank accounts.

OSFI will not permit non-resident officers to have signing authority with respect to withdrawals from bank accounts.

¹⁵ See, for example, *Section 74 of the Corporations Tax Act* (Ontario).

¹⁶ See, for example, *Section 2.1 of the Retail Sales Tax Act* (Ontario).

¹⁷ *Section 55 of the Charter of the French Language* (Quebec).

¹⁸ *OSFI's Implementation Instructions - Amendments to Part XIII of the Insurance Companies Act*.

¹⁹ See, for example, *OSFI Guideline E-4A - Role of the Chief Agent and Record Keeping Requirements*.



THE INSURANCE COMPANIES ACT (CANADA)

3.01 Incorporation of a Canadian Life Company

Incorporation of a Canadian Company is granted at the discretion of the Minister of Finance (the “Minister”) upon the recommendation of the Superintendent.²⁰ In determining whether or not to approve an application to incorporate a Canadian Company, the Minister must take into account the nature and sufficiency of the financial resources of the applicant, the soundness and feasibility of the applicant’s plans for the future conduct and development of the Canadian Company, the applicant’s business record and experience, the character and integrity, competence and experience of management and the best interests of the financial system in Canada.²¹

A government or government agency (whether Canadian or foreign) or an entity controlled by a foreign government (other than an entity that is a foreign financial institution or a Canadian Company of a foreign financial institution) is not eligible to apply to incorporate a Canadian Company under the ICA.²²

OSFI has published a *Guide for Incorporating Federally Regulated Insurance Companies* which explains in detail OSFI’s requirements for incorporating a Canadian Company.

The Guide states that OSFI generally expects the internal MCCSR target ratio to be at least 300% for all newly established Canadian Companies and that the initial amount of paid-in capital will be sufficient, at all times, to maintain the Canadian Company’s MCCSR internal target ratio above its selected internal target for at least the first three years of operations. The MCCSR ratio requirements are discussed in Section 3.7.

OSFI also requires that the applicant submit a detailed business plan that demonstrates the potential for a successful business operation and compliance with the Life Insurance Capital Adequacy Test.

An applicant seeking to incorporate a Canadian Company must prepare a comprehensive submission that addresses the applicant’s financial strength and business record and experience and includes a detailed, three-year business plan.

Significant shareholders of a proposed Canadian Company will be required to provide OSFI with an acknowledgement of the OSFI’s expectation that a person controlling the Canadian Company will provide ongoing financial, managerial and operational support to its subsidiary should such support prove necessary (the “support principle”). See OSFI’s *Guidance Note on Implementation of Support Principle to Replace Requesting Letters of Comfort*.

Finally, where the applicant for incorporation is a non-resident, the applicant must provide evidence that Investment Canada has been notified under the Investment Canada Act (see Section 4).

²⁰ Section 22 of the ICA.

²¹ Section 27 of the ICA.

²² Section 27 of the ICA.

3.02 Registration of Foreign Insurance Companies

A Canadian Branch may be registered under the ICA by applying to the Superintendent for an order permitting the foreign insurer to insure risks in Canada.²³ Final approval must be obtained from the Minister of Finance.

OSFI has published a Transaction Instruction for the Establishment of a Canadian Branch by a Foreign Insurer ([Order to Insure in Canada Risks – Index A No.4](#)) which explains in detail OSFI's requirements for registering a Canadian Branch.

The Transaction Instruction states that a foreign insurer applying to register a Canadian Branch is generally required to have consolidated assets of at least \$1 billion, with a capital and surplus of between 5% and 10% of liabilities.

OSFI also generally expects the internal TAAM target ratio to be at least 300% for all newly established Canadian Branches. OSFI also expects that the initial amount of vested assets will be sufficient, at all times, to maintain the Canadian Branch's TAAM ratio above its selected internal target for at least the first three years of operations. The TAAM ratio requirements are discussed in Section 3.7.

A foreign life insurer seeking to establish a Canadian Branch must prepare a comprehensive submission that addresses the financial strength of the foreign life insurer and includes a detailed three-year business plan.

A foreign life insurer seeking to establish a Canadian Branch must prepare a comprehensive submission that addresses the financial strength of the foreign life insurer and includes a detailed three-year business plan.

In addition, the foreign company must provide evidence that Industry Canada has been notified under the Investment Canada Act (see Section 4).

Registration may be denied on the grounds that the name of the foreign company is liable to be confused with the name of a company already registered or that the name is otherwise objectionable. As a result, a computerized name search that indicates that the name of the foreign company is available for use in Canada must also be submitted to OSFI.

3.03 Security Background Checks

All proposed directors and senior officers of a Canadian Company, and the proposed chief agent of a Canadian Branch, must submit biographical information to OSFI and undergo to a security background check using the OSFI Security Form attached as Appendix D. OSFI will need to be satisfied that the proposed directors and officers or chief agent possess the competence, skill and integrity commensurate with the proposed position of the individual. The role and functions of a chief agent closely resemble those of a chief executive officer of a Canadian Company.

3.04 Background Checks on Directors and Senior Management

OSFI expects every Canadian Company and Canadian Branch to have a written policy regarding the performance of assessments of the suitability and integrity of its directors and senior officers and, in the case of a Canadian Branch, its chief agent (see OSFI [Guideline E-17 – Background Checks on Directors and Senior Management of FRE's](#)).

OSFI expects that this policy will require that an assessment be conducted before a person is appointed as a director, senior officer or chief agent and at intervals of no longer than five years. Independent verification of criminal records must be conducted at least every seven years.

²³ [Section 574](#) of the ICA.

3.05 Corporate Governance

A Canadian Company requires a board of directors and must comply with the corporate governance provisions in the ICA and OSFI's *Corporate Governance Guideline* (along with other OSFI Guidelines that, in part, contain corporate governance requirements), whereas a Canadian Branch is not required to have a separate board of directors for its Canadian operations or to comply with the corporate governance provisions in the ICA or OSFI's Corporate Governance Guideline.

The Guideline states OSFI's position that the board and senior management of a Canadian Company are ultimately responsible for the company's safety and soundness, and its compliance with governing legislation. It contains a list of essential duties that OSFI considers a board should discharge, at a minimum. These include approving:

- short-term and long-term enterprise-wide business objectives, strategy and plans, including a Risk Appetite Framework;
- significant strategic initiatives or transactions, such as mergers and acquisitions;
- an internal control framework;
- the appointment, performance review and compensation of the CEO; and
- the mandate, resources and budget for oversight functions.

A Canadian Branch is not required to have a separate board of directors for its Canadian operations or to comply with the corporate governance provisions in the ICA or OSFI's Corporate Governance Guideline.

The Guideline states OSFI's position that the board should, among other things, probe, question and seek assurances from senior management that their decisions, plans and policies are consistent with the board-approved Risk Appetite Framework.

The Risk Appetite Framework should set basic goals, benchmarks, parameters and limits (e.g., level of losses) as to the amount of risk a Canadian Company is willing to accept.

The board of a Canadian Company must meet the composition requirements described in Appendix A (including a requirement that at least one third of the directors must be unaffiliated) and must meet at least four times during each financial year. Outside directors will normally be paid directors' fees. A Canadian Company also requires audit and conduct review committees.

A Canadian Branch may be managed entirely by officers, directors and employees of the foreign company and meetings of such individuals may take place outside of Canada. The management of the branch must be overseen by an individual (usually an employee) appointed as a chief agent (see Section 3.10). This provides greater flexibility and avoids the need to introduce outsiders to the management of the Canadian business.

3.06 Reserves

The liabilities shown in the annual return of a Canadian Company or a Canadian Branch must contain a reserve for the value of the actuarial and other policy liabilities of the company or branch. Such a company or branch must have an appointed actuary who must value the actuarial and other policy liabilities of the company or Canadian Branch in accordance with Canadian accepted actuarial practice, subject to such changes and additional directions that may be made by OSFI. OSFI Guideline E-15 *Appointed Actuary 3: Legal Requirements, Qualifications and Peer Review* describes the role of the appointed actuary and OSFI's expectations with respect to that role.

3.07 Capital/Assets in Canada

A Canadian Company or Canadian Branch must maintain sufficient assets to comply with OSFI's Minimum Continuing Capital and Surplus Requirements. This Guideline includes a detailed description of the MCCR for Canadian Companies and the TAAM for Canadian Branches.

A Canadian Company's minimum required capital is the sum of the capital requirements for each of the following risk components:

- asset default risk;
- mortality, morbidity or lapse risks;
- changes in interest rate environment;
- segregated fund risk; and
- foreign exchange risk.

A Canadian Branch is required to maintain assets in Canada in respect of its life insurance business in Canada, that are sufficient to cover:

- reserves for actuarial and other policy liabilities;
- unpaid claims;
- other liabilities and amounts related to the carrying on of its life insurance business in Canada; and
- a margin of assets in Canada over liabilities in Canada.

This Guideline requires Canadian Companies to maintain a minimum amount of capital and Canadian Branches to maintain a minimum and adequate margin of assets over liabilities, as measured by an MCCR/TAAM ratio of at least 150%. OSFI will start to intervene progressively where an insurer's MCCR/TAAM ratio falls below 150%. As a result, OSFI expects the board or chief agent of a Canadian Branch to establish and maintain an internal MCCR/TAAM ratio in excess of 150% pursuant to OSFI Guideline A-4 Regulatory Capital and Internal Capital Targets.

In the case of a Canadian Branch, these assets must be vested in trust with OSFI by establishing a trust with a Canadian trust company. The Canadian Branch, trust company and OSFI must enter into a trust agreement in the form approved by OSFI: OSFI Form No. 541 – Standard Form Trust Agreement and OSFI Form No. 542 – Terms and Conditions of Standard Form Trust Agreement.

Effective January 1, 2018, OSFI's Life Insurance Capital Adequacy Test guideline will replace the current Minimum Continuing Capital and Surplus Requirements guideline.

Effective January 1, 2018, OSFI's Life Insurance Capital Adequacy Test ("LICAT") guideline will replace the current Minimum Continuing Capital and Surplus Requirements guideline. This new guideline will also replace the TAAM with a new test for Canadian Branches – the Life Insurance Margin Requirements and Adequacy of Assets in Canada Test ("LIMAT").

Canadian Companies and Canadian Branches will be required to maintain a Total Ratio of at least 90% and a Core Ratio of at least 60%. OSFI has established a Supervisory Target Total Ratio of 100% and a Supervisory Target Core Ratio of 70%. The Supervisory Targets provide cushions above the minimum requirements and facilitates OSFI's early intervention process.

(a) Canadian Companies (LICAT Ratios)

The formula to calculate the Total Ratio of a Canadian Company is:

$$\frac{\text{Available Capital} + \text{Surplus Allowance} + \text{Eligible Deposits}}{\text{Base Solvency Buffer}}$$

The formula to calculate the Core Ratio of a Canadian Company is:

$$\frac{\text{Tier 1 Capital} + 70\% \text{ of Surplus Allowance} + 7\% \text{ of Eligible Deposits}}{\text{Base Solvency Buffer}}$$

“Available Capital” is comprised of Tier 1 and Tier 2 capital. “Surplus Allowance” is based on provisions for adverse deviation (“PfADs”) calculated under the Canadian Asset Liability Method (“CALM”). “Eligible Deposits” are excess deposits placed by reinsurers and claims fluctuation reserves. “Tier 1 Capital” is the most permanent form of capital and consists of common shares issued by the Canadian Company and certain other qualifying capital instruments, contributed surplus, retained earnings, adjusted accumulated other comprehensive income (“AOCI”), participating account (joint stock companies) and non-participating account (mutual companies). “Tier 2 Capital” is less permanent capital and consists of qualifying instruments such as unsecured, subordinated debt issued by the Canadian Company with a minimum original maturity of at least five years that also meets a number of additional qualifications.

A Canadian Company’s capital requirements are set at a supervisory target level that, based on expert judgment, aims to align with a conditional tail expectation (“CTE”) of 99% over a one-year time horizon including a terminal provision.

A Canadian Company’s “Base Solvency Buffer” is equal to aggregate capital net of credits, multiplied by a scalar of 1.05. Aggregate capital requirements comprise requirements for each of the following five risk components:

- credit risk
- market risk
- insurance risk
- segregated fund guarantee risk
- operational risk

Aggregate requirements are reduced by credits for:

- qualifying in-force participating and adjustable products
- other risk mitigation and risk transfer
- risk diversification

The Base Solvency Buffer is calculated net of registered reinsurance (i.e. reinsurance provided by reinsurers regulated under the ICA or a provincially/territorially regulated insurer approved by OSFI).

(b) Canadian Branches (LIMAT Ratios)

The formula to calculate the Total Ratio of a Canadian Branch is:

$$\frac{\text{Available Margin} + \text{Surplus Allowances} + \text{Eligible Deposits}}{\text{Required Margin}}$$

The formula to calculate the Core Ratio of a Canadian Branch is:

$$\frac{\text{Available Margin} + 70\% \text{ of Surplus Allowance} + 70\% \text{ of Eligible Assets} - \text{Other Admitted Assets}}{\text{Required Margin}}$$

The “Available Margin” is the difference between Assets Available and Assets Required. “Assets Available” consists of assets vested in trust with OSFI and investment income due and accrued thereon and other admitted assets, less certain deductions and adjustments. “Assets Required” consists of:

- insurance contract liabilities and other policy liabilities net of all reinsurance ceded
- provisions for policyholder dividends, experience rating refunds and discretionary participation features
- outstanding claims and adjustment expenses
- policyholder amounts on deposit
- accounts payable
- income taxes payable
- mortgage loans and other real estate encumbrances
- deferred income tax liabilities
- each net defined benefit pension plan recognized as a liability on the Canadian Branch’s balance sheet net of any associated deferred tax asset that could be extinguished if the liability were otherwise derecognized under relevant accounting standards
- other liabilities
- adjusted negative reserves calculated policy by policy and negative reserves ceded to unregistered reinsurers (i.e. reinsurers that are not regulated under the ICA or provincial/territorially regulated insurers not approved by OSFI)
- cash surrender value deficiencies on a group and aggregate basis,

less:

- loans secured by policies in Canada
- agents’ debit balances and outstanding premiums
- amounts due from insurers and reinsurers regulated under the ICA that cannot be legally netted against the insurance contract liabilities of the Canadian Branch

“Surplus Allowance” is based on PfADs that are calculated under CALM. “Required Margin” is calculated in the same way that Base Solvency Buffer is for Canadian Companies (see above) and applies to:

- assets vested in trust with OSFI
- liabilities in respect of insurance business in Canada
- balance sheet values of assets under the control of the Chief Agent, if these are taken into consideration in determining other admitted assets.

3.08 Investment Restrictions

A Canadian Company must invest its assets in accordance with the investment restrictions set forth in Part IX of the ICA. A Canadian Branch must invest its assets in accordance with the restrictions set forth in Sections 615 to 620 of the ICA.

All investments must be made in accordance with written investment and lending policies, standards and procedures developed by the insurer.

All investments must be made in accordance with written investment and lending policies, standards and procedures developed by the insurer. These must be standards that a reasonable and prudent person would apply in respect of a portfolio of investments and loans to avoid undue risk of loss and obtain a reasonable return.²⁴ In addition, there are general limits on commercial lending and investments in real estate and equities. These are summarized in Appendix B.

OSFI has published *Guideline B-1 Prudent Person Approach* that describes what OSFI expects the management and board of directors of an insurer (including a foreign insurer with a Canadian Branch) to consider in establishing investment and lending policies and in ensuring that they are effectively implemented. Investment policies must describe the objectives

of the investment and the overall risk philosophy of the insurer. Such policies should take into account the ability of the insurer to absorb potential loss and the strength of the insurer's capital. Investment policies should also note the liability structure of the insurer, the anticipated demands for funds and describe how maturity profiles are to be established on the investment portfolio of the insurer in consideration of these demands.

The investment procedures of an insurer should:

- (a) identify responsibilities and accountabilities within the institution;
- (b) establish a process for recommending, approving and implementing investment decisions;
- (c) establish the frequency and format of internal reporting;
- (d) describe the method for classifying investments; and
- (e) describe all custodial arrangements respecting the insurer's investment portfolio.

OSFI expects insurers to avoid currency risks with the result that, generally, an insurer must hold assets that match the currency of its policy liabilities. Hedging is permitted in order to deal with extraordinary asset/liability mismatches that may arise from time to time, but not as a general practice.

Finally, the written investment procedures of an insurer should address exposures arising from both on-balance sheet and off-balance sheet items.

3.09 Self-Dealing Restrictions

A Canadian Company must comply with the self-dealing restrictions set forth in Part XI of the ICA. These are summarized in Appendix C. A Canadian Branch is only required to comply with these rules in respect of assets it wishes to vest in the trust described in Section 3.7.

²⁴ Sections 492 and 615 of the ICA.

3.10 Chief Agency and Records in Canada

Prior to registration of a Canadian Branch, a foreign company must establish a chief agency and appoint a chief agent in Canada.²⁵ The chief agency is, in effect, the Canadian head office of the foreign company. The chief agent is the official representative of the company in Canada for receipt of notices from OSFI and for all other official purposes. OSFI expects the chief agent to oversee the management of the Canadian Branch and to be accountable for its operations. The chief agent is required to maintain records at the chief agency in sufficient detail to identify the Canadian business of the foreign company and to enable OSFI's examiners to verify the assets, liabilities, revenue and expenditures recorded in the Canadian Branch's regulatory returns and to assess the risk profile of the branch. These records include full policy, accounting and claims records. These requirements are described in OSFI Guideline E-4A - *Role of the Chief Agent and Record Keeping Requirements*.

3.11 Outsourcing Policy

A Canadian Company or a Canadian Branch may, subject to the requirements set forth in the OSFI Guideline B-10 on *Outsourcing of Business Functions by Federally Regulated Financial Institutions* and the self-dealing restrictions set forth in Part XI of the ICA (summarized in Appendix C), outsource services to affiliates or non-affiliates, within Canada or outside Canada. Outsourcing occurs when an entity contracts out a business function to a service provider instead of performing the function itself.

The Guideline states that OSFI expects the board (or a committee of the board) of a Canadian Company and the chief agent of a Canadian Branch to ensure that the company or branch has appropriate risk management policies and practices for outsourcing. In general, OSFI expects that a federally regulated insurer will design a risk management program that applies to all of its outsourcing arrangements, except those that are clearly immaterial. OSFI expects federally regulated insurers to conduct an internal due diligence to determine the nature and scope of the business activity to be outsourced and how the activity is managed. The Guideline also states that OSFI expects material outsourcing arrangements to be documented by written contracts that include certain specific provisions including the right of OSFI to audit the service provider. A federally regulated insurer's business continuity plan should address reasonably foreseeable situations where the service provider fails to continue providing service. Where the material outsourcing results in services being provided in a foreign jurisdiction, a federally regulated insurer's risk management program should be enhanced to address any additional concerns linked to the economic and political environment, technological sophistication, and the legal and regulatory risk profile of the foreign jurisdiction.

A Canadian Company or a Canadian Branch may outsource services to affiliates or non-affiliates, within Canada or outside Canada.

3.12 Regulatory Examinations

OSFI's *Supervisory Framework* describes its principles-based approach to the supervision of federal financial institutions, including Canadian Companies and Canadian Branches. OSFI's supervision of a Canadian Company or a Canadian Branch depends on the nature, size, complexity and risk profile of the company or branch, and the potential consequences of its failure. OSFI designates a relationship manager for each company or branch to conduct periodic assessments. OSFI's approach is based on the following principles:

- focus on material risk;
- forward-looking assessments and early intervention;
- sound, predictive judgment;

²⁵ Subsection 579(3) of the ICA.

- understanding the drivers of risk;
- differentiation of inherent risks and management thereof;
- continuous and dynamic adjustment; and
- assessment of the whole institution.

OSFI conducts a risk assessment of each federally regulated institution and assigns each institution a composite risk weighting of low, moderate, above average or high. The intensity of OSFI's supervisory strategy for each institution depends on the nature, size, complexity and risk profile of the institution. Many federally regulated insurers are reviewed annually by OSFI.

Canadian provinces and territories have exclusive jurisdiction to regulate market conduct with respect to the sale of insurance, and the relevant provincial or territorial insurance regulators conduct separate assessments of an insurance company's market conduct in each province or territory in which it sells insurance.

3.13 Reinsurance

OSFI *Guideline B-3 Sound Reinsurance Practices and Procedures* requires Canadian Companies and Canadian Branches to ensure that the terms and conditions of reinsurance contracts provide clarity and certainty on reinsurance coverage. The Guideline provides that, if a final, comprehensive contract cannot be executed prior to the effective date, the parties must have entered into, prior to such date, a binding written slip, cover note or letter of intent that sets out the principal terms and conditions of the reinsurance. The parties are required to enter into a final, comprehensive reinsurance contract within a relatively short time frame that has regard to the nature, complexity and materiality of the agreement.

A Canadian Company or Canadian Branch must have a sound and comprehensive reinsurance risk management policy.

The Guideline further requires that reinsurance contracts contain an insolvency clause clarifying that the reinsurer must continue to make full payments to an insolvent cedent without any reduction resulting solely from the cedent's insolvency. In addition, "off-set" and "cut-through" clauses and the structure of the "funds withheld" arrangements and other such types of terms and conditions must not be used to frustrate the scheme of priorities under the Winding-Up and Restructuring Act (Canada), which applies to the distribution of the assets of a Canadian Company or a Canadian Branch. Finally, the Guideline states that OSFI expects all reinsurance contracts to stipulate a choice of forum and a choice of law.

This Guideline also requires a Canadian Company or Canadian Branch to have a sound and comprehensive reinsurance risk management policy ("RRMP"). OSFI expects the RRMP to document the company's or branch's approach to managing risks through reinsurance risk diversification objectives, risk concentration limits, ceding limits and the practices and procedures for managing and controlling its reinsurance risks. The Guideline also requires a Canadian Company or Canadian Branch to conduct due diligence on their reinsurance counterparties on an on-going basis. If a Canadian licensed insurer fails to meet the principles set out in the Guideline, on a case-by-case basis, OSFI may not grant capital/asset credit for the reinsurance arrangement, or may, commensurate with the risk, use its discretionary powers under the ICA, to adjust the insurer's capital/asset requirements or target solvency ratios to compensate for reinsurance that is not, or may not be, wholly effective or reliable.

The Guideline states that a Canadian Company or Canadian Branch generally should not, in the normal course of business, cede 100% or substantially all of its risks in the main areas in which it conducts business. A company or branch may, however, occasionally cede a substantial portion, or even 100%, of a specific line of business or a particular type of risk that is ancillary to its core business. OSFI has recently indicated that it has concerns over a shift by some Canadian licensed insurers toward a business model of insuring commercial risks in Canada and reinsuring a significant portion, or virtually all, of the risk offshore. In OSFI's view this practice appears to be being

used by Canadian licensed insurers to increase policy limits and sizes without changing net risk retention, meaning that the Canadian insurers' exposures are increasing without a commensurate increase in the capital. OSFI has indicated that this shifting business model could pose a very concentrated credit risk to Canadian policyholders, which raises prudential concerns given the possibility of distress in the unregistered reinsurer (see: [Remarks by Superintendent Jeremy Rudin, June 4, 2015](#)).

A reinsurance company is not required by law to post collateral in a reinsurance transaction. However, a Canadian Company or a Canadian Branch is not permitted to take credit for reinsurance ceded to an unregistered reinsurer unless that reinsurer posts collateral or withholds funds. This restriction is described in OSFI's [Minimum Continuing Capital and Surplus Requirements](#) Guideline. Accordingly, most reinsurance contracts with unregistered reinsurers require that they post collateral or permit the cedent to withhold funds. The amount of collateral required is negotiable; however, in order for the cedent to take full credit for the reinsurance, the amount must equal the actuarial value of the ceded liabilities (including reserves for outstanding claims and unearned premium, if any), plus the margin held by the cedent with respect to such ceded liabilities under the MCCSR or TAAM (see Section 3.7).

Where the cedent is a Canadian Company or a Canadian Branch, such collateral must be deposited with a custodian in Canada pursuant to a reinsurance security agreement, and the unregistered reinsurer must have granted a security interest in favour of the cedent over the collateral. The company or branch must also obtain an opinion from legal counsel that confirms that the security interest in the pledged assets is legally enforceable against all other creditors of the unregistered reinsurer, including in the event of insolvency, and that the security interest over the collateral constitutes a valid, first-ranking security interest. These requirements are described in OSFI's [Guidance for Reinsurance Security Agreements](#).

Alternatively, an unregistered reinsurer may deposit sufficient assets with the Canadian Company or Canadian Branch (sometimes referred to as "funds withheld"). If this option is used, the reinsurance contract must clearly provide that, in the event of the cedent's or reinsurer's insolvency, the funds withheld, less any surplus due back to the reinsurer, must form part of the cedent's general estate.

A letter of credit can only be used to collateralise a maximum of 30% of the liabilities reinsured with an unregistered reinsurer. The letter of credit must adhere strictly to [OSFI's General Guidelines for Use of Letters of Credit](#).

3.14 Own Risk and Solvency Assessment

OSFI's [Guideline E-19 - Own Risk and Solvency Assessment](#) sets out OSFI's expectations with respect to an Own Risk and Solvency Assessment ("ORSA") of Canadian Companies and Canadian Branches with respect to their risks, capital needs (in the case of Canadian Branches, their margin of assets over liabilities) and solvency position, and for setting internal capital targets (see OSFI [Guideline A-4 Regulatory Capital and Internal Capital Targets](#)).

OSFI expects an ORSA to be tailored to and cover the consolidated operations of an insurer. At a minimum, an ORSA should contain a comprehensive identification and assessment of risks, relate risk to capital and include: board oversight and senior management responsibility, monitoring and reporting procedures and requirements and internal controls and periodic objective reviews by a skilled and experienced internal or external resource or individual who reports directly to or is a member of the board.

3.15 Operational Risk Management

OSFI [Guideline E-21 Operational Risk Management](#) sets out OSFI's expectations for the management of operational risk by Canadian Companies and Canadian Branches. The Guideline provides that an insurer's documented framework for operational risk management should include establishing and monitoring risk appetite and related limits for operational risk exposure. Operational risk is defined in the Guideline as the risk of loss resulting from people, inadequate or failed internal processes and systems, or from external events. OSFI expects Canadian

Companies and Canadian Branches to adopt a “three lines of defence” approach, or an appropriately robust structure. The first line of defence is the business owners of the risk. The second line of defence provides for specialized peer review, independent challenge and an accountability function. The third line of defence is a more traditional audit function.

3.16 Stress Testing

OSFI *Guideline E-18 Stress Testing* sets out OSFI’s expectations with respect to stress testing by Canadian Companies and Canadian Branches. OSFI expects such insurers to have written policies and procedures governing their stress testing programs. Stress tests should cover a range of risks and business areas (e.g. claim frequency and severity, liquidity risk, operational and legal risk, concentration risk, risk to reputation, securitization risk, new business risk and regulatory risk). They should apply across business and product lines and cover a range of scenarios, including non-historical scenarios. In addition, they should feature a range of severities, including events capable of generating the most damage.

3.17 Regulatory Compliance Management

OSFI’s *Guideline E-13 Regulatory Compliance Management* sets out OSFI’s expectations with respect to the key controls through which regulatory compliance risk is managed by Canadian Companies and Canadian Branches.

Regulatory compliance risk is defined in the Guideline as the risk of potential non-conformance with laws, rules, regulations and prescribed practices in any jurisdiction in which the Canadian Company or Canadian Branch operates.

Overall responsibility for the assessment and management of regulatory compliance risk should be assigned to an individual who is independent from operational management, has sufficient stature, authority, resources and support to influence the insurer’s activities, and who should be designated as the insurer’s Chief Compliance Officer, or equivalent.

At a minimum, OSFI expects a regulatory compliance management framework to include the following: the role of the Chief Compliance Officer; procedures for identifying, risk assessing, communicating, effectively managing and maintaining knowledge of applicable regulatory requirements; day-to-day compliance procedures; independent monitoring and testing procedures; internal reporting; the role of internal audit or other independent reviews function; adequate documentation; the role of senior management; and the role of the board.

INVESTMENT CANADA ACT

4.01 Notifiable Investments

A non-resident is required to notify Industry Canada under the *Investment Canada Act* with respect to an investment to establish a “new Canadian Business”. Notification must be filed prior to the implementation of the investment or within 30 days thereafter using the following form: *Industry Canada – Notification Form*.

The term “new Canadian business” means, in relevant part, a business that is not already being carried on in Canada by the non-Canadian and that is unrelated to any other business being carried on by such non-Canadian.²⁶

Once Industry Canada receives a complete notice, it is required to issue a receipt to the foreign investor. The investment is not reviewable by Industry Canada if the information provided by the non-Canadian and relied on by the Director in sending the receipt is accurate.²⁷

A non-resident is required to notify Investment Canada with respect to an investment to establish a “new Canadian Business”.

²⁶ *Section 3 of the Investment Canada Act.*

²⁷ *Section 13 of the Investment Canada Act.*

ANTI-MONEY LAUNDERING & ANTI-TERRORISM FINANCING

5.01 Anti-money Laundering & Anti-terrorism Financing

The fight against financial crime and terrorist financing is of ongoing importance for governments around the world. Over the past several years there has been extensive action in many countries to apply permanent measures to fight money laundering and terrorist financing. This action has been driven largely by the leadership of the Financial Action Task Force (“FATF”), of which Canada is a founding member. FATF is an independent inter-governmental body that develops and promotes policies to protect the global financial system against money laundering and terrorist financing.

Life insurers (both Canadian Companies and Canadian Branches) are required to report to OSFI about their compliance with measures against terrorists, terrorist groups and other listed and sanctioned individuals and entities (“Designated Persons”). These measures are found in the regulations under the United Nations Act (Canada) and the Criminal Code (Canada) and the regulations thereto. Life insurers are also required to comply with the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (Canada) (“PCMLTFA”). Under the PCMLTFA, life insurers are required to, among other things, report to the Financial Transactions and Reports Analysis Centre of Canada (“FINTRAC”) every financial transaction that occurs or is attempted in the course of their activities and in respect of which there are reasonable grounds to suspect that the transaction is related to the commission or the attempted commission of a money laundering offence or a terrorist activity financing offence.²⁸

OSFI has prepared an instruction guide, *Designated Persons Listings and Sanction Laws*, that describes the compliance requirements under these laws. Compliance with the above laws requires that insurers implement the following types of control measures:

- searching in insurer’s records for Designated Persons and subject to financial sanctions;
- determining on a continuing basis whether the insurer is in possession or control of property of Designated Persons;
- preventing prohibited activity with respect to property of Designated Persons (by freezing assets) and monitoring and preventing prohibited transactions;
- disclosing information to the Royal Canadian Mounted Police (“RCMP”) and the Canadian Security Intelligence Service (“CSIS”) concerning property of Designated Persons in the insurer’s possession or control; and
- reporting to OSFI monthly on the aggregate value of property of Designated Persons in the insurer’s possession or control.

Life insurers (both Canadian Companies and Branches) are required to report to OSFI about their compliance with measures against terrorists, terrorist groups and other listed and sanctioned individuals and entities.

Information about individuals and entities that insurers collect and develop in the “know your client” process, and any other information at their disposal, must be used to determine whether an individual or entity on their records is a Designated Person since government agencies, including the RCMP and CSIS, cannot assist insurers with the determination. Insurers must file two forms by the fifteenth day of each month: a short or long *Form 525* and a short or long *Form 590*. The short forms of Forms 525 and 590 are for “nil” reports, which are to be used when there is no frozen property to be reported. The long forms are for reporting on frozen property of a Designated Person.

²⁸ Section 74 of the PCMLTFA.



APPENDICES

APPENDIX A: Board of Directors Composition Canadian Life Insurer

Board of Directors

Minimum Number of Directors ²⁹	Seven.
Minimum Number of Canadian Residents ³⁰	At least a majority of the directors (1/2 if the insurer is a Canadian Company of a foreign institution); no business may be conducted unless a majority (1/2 if the insurer is a Canadian Company of a foreign institution) of the directors present are Canadian residents. ³¹
Unaffiliated Directors ³²	At least 1/3 of the directors.
Employees ³³	No more than 15% of the directors may be employees of the Company, except that up to 4 persons who are employees of the Company may be directors if they do not constitute more than ½ of the directors.
Policyholder Directors ³⁴	At least 1/3 of the directors.

Audit Committee

Minimum Number of Directors ³⁵	Three.
Unaffiliated Directors ³⁶	At least a majority of the Committee.
Officers and Employees of the Company ³⁷	None.

Conduct Review Committee

Minimum Number of Directors ³⁸	Three.
Unaffiliated Directors ³⁹	At least a majority of the directors.
Officers and Employees of the Company ⁴⁰	None.

²⁹ Section 167(1) of the ICA.

³⁰ Section 167(2) of the ICA.

³¹ Section 192(1) of the ICA.

³² Section 171 of the ICA.

³³ Section 172 of the ICA. This provision does not restrict an employee of the upstream affiliates of the Company from being on the board of the Company. However, the "affiliated" director provision in Section 171 restricts employees to at least 1/3 of the directors of the Company.

³⁴ Section 173(4) of the ICA.

³⁵ Section 203(1) of the ICA.

³⁶ Section 203(2) of the ICA.

³⁷ Section 203(2) of the ICA.

³⁸ Section 204(1) of the ICA.

³⁹ Section 204(2) of the ICA.

⁴⁰ Section 204(2) of the ICA.

APPENDIX B: Investment Restrictions

TABLE 1
Statutory Investment and Lending Limits
Life Insurance Companies in Canada

Restrictions on Commercial Lending	Restrictions on Real Estate Investments	Restrictions on Investments in Equities	Restrictions on Aggregate Investments in Real Estate and Equities
<ul style="list-style-type: none"> • 5% of total assets, if capital is Cdn. \$25 million or less;⁴¹ • as prescribed by Superintendent, if capital is greater than Cdn. \$25 million.⁴² 	<p>The aggregate of:</p> <ul style="list-style-type: none"> • 70% of regulatory capital, less certain adjustments • 15% of liabilities in respect of non-participating policies • 25% of liabilities in respect of participating policies • 5% of liabilities in respect of annuities.⁴³ 	<p>The aggregate of:</p> <ul style="list-style-type: none"> • 70% of regulatory capital, less certain adjustments • 15% of liabilities in respect of non-participating policies • 25% of liabilities in respect of participating policies • 5% of liabilities in respect of annuities.⁴⁴ 	<p>The aggregate of:</p> <ul style="list-style-type: none"> • 100% of regulatory capital, less certain adjustments • 20% of liabilities in respect of non-participating policies • 40% of liabilities in respect of participating policies • 5% of liabilities in respect of annuities.⁴⁵

Table 2
Statutory Investment and Lending Limits
Registered Canadian Branches of Foreign Life Insurance Companies in Canada

Restrictions on Commercial Lending	Restrictions on Real Estate Investments	Restrictions on Investments in Equities	Restrictions on Aggregate Investments in Real Estate and Equities
<p>5% of total assets in Canada vested in trust with OSFI if those assets exceed the aggregate of its liabilities in Canada and the required margin of assets over liabilities in Canada (calculated in accordance with the ICA) is CAD \$25 million or less; 100% of total assets in Canada vested in trust with OSFI if those assets exceed the aggregate of its liabilities in Canada and the margin of assets over liabilities in Canada is greater than CAD \$25 million.⁴⁶</p>	<p>15% of total assets in Canada vested in trust with OSFI.⁴⁷</p>	<p>25% of assets in Canada vested in trust with OSFI.⁴⁸</p>	<p>40% of assets in Canada vested in trust with OSFI.⁴⁹</p>

⁴¹ Section 503 of the ICA.

⁴² Section 504 of the ICA.

⁴³ Section 5(1)(a) of Investment Limits (Insurance Companies) Regulations of the ICA.

⁴⁴ Section 5(2)(a) of Investments Limits (Insurance Companies) Regulations of the ICA.

⁴⁵ Section 5(3)(a) of Investments Limits (Insurance Companies) Regulations of the ICA.

⁴⁶ Section 11.1 of Commercial Loan (Insurance Companies, Societies, Insurance Holding Companies and Foreign Companies) Regulations of the ICA.

⁴⁷ Section 3(a) of Investment Limits (Foreign Companies) Regulations of the ICA.

⁴⁸ Section 4 of Investment Limits (Foreign Companies) Regulations of the ICA.

⁴⁹ Section 620(a) of the ICA.

APPENDIX C: Self-Dealing Restrictions

Self-Dealing Restrictions

Part IX of the ICA regulates transactions between insurers and “related parties”.

General Prohibition

Part XI provides that an insurer must not, directly or indirectly, enter into any transaction with a related party of the insurer.⁵⁰ The only exemptions are for specifically listed permitted transactions. Generally speaking, permitted transactions must be approved on the basis that they are on terms and conditions that are at least as favourable to the insurer as market terms and conditions.⁵¹

Related Parties

For the purposes of the ICA⁵², a person is a related party of an insurer where the person:

- (a) has a significant interest (more than 10%) in a class of shares of the insurer;
- (b) is a director or a senior officer of the insurer or of a body corporate that controls the insurer or is acting in a similar capacity in respect of an unincorporated entity that controls the insurer (more than 50%);
- (c) is the spouse or common-law partner, or a child who is less than eighteen years of age, of a person described in paragraph (a) or (b);
- (d) is an entity that is controlled by a person described in paragraph (a), (b) or (c);
- (e) is an entity in which a person who controls the insurer has a substantial investment;
- (f) is an entity in which the spouse or common-law partner, or a child who is less than eighteen years of age, of a person who controls the insurer and has a substantial investment (more than 10%); or
- (g) is a person, or a member of a class of persons, designated under ICA subsections 518 (4) or (5) as, or deemed under subsection (6) to be, a related party of the insurer.

⁵⁰ Section 521(1) of the ICA.

⁵¹ Section 534 of the ICA.

⁵² Section 518(1) of the ICA.

Permitted Transactions

An insurer is permitted to enter into the following transactions with a related party:

- (a) nominal or immaterial transactions measured by criteria established by the Conduct Review Committee and approved in writing by the Superintendent;⁵³
- (b) subject to certain restrictions, reinsurance by a related party of the insurer against any risk undertaken by the insurer;⁵⁴
- (c) subject to certain restrictions, reinsurance by the insurer of risks undertaken by a related party of the insurer;⁵⁵
- (d) a loan to, or a guarantee on behalf of, a related party if:
 - (i) the loan or guarantee is fully secured by securities of or guaranteed by Canada or a province, or
 - (ii) the loan is to a related party who is a natural person and is secured by a mortgage (that otherwise meets the requirements of the ICA) on the principal residence of the related party;⁵⁶
- (e) borrowing money from or issuing debt obligations or segregated fund policies to, a related party;⁵⁷
- (f) subject to certain restrictions, buying, selling and leasing assets from and to related parties;⁵⁸
- (g) subject to certain restrictions, buying and providing services from and to related parties;⁵⁹
- (h) subject to certain restrictions, any transaction with a related party if the related party is:
 - (i) a natural person who is a related party of the insurer only because the person is:
 - (A) a director or senior officer of the insurer or of an entity that controls the insurer, or
 - (B) the spouse or common-law partner, or minor child, of a director or senior officer of the insurer or of an entity that controls the insurer; or
 - (ii) an entity that is a related party of the insurer only because the entity is controlled by:
 - (A) a director or senior officer of the insurer or of an entity that controls the insurer, or
 - (B) the spouse or common-law partner, or minor child, of a director or senior officer of the insurer or of an entity that controls the insurer;⁶⁰ and
- (i) a loan to a full-time senior officer of the insurer if the aggregate principal amount of all outstanding loans to that officer by the insurer and its subsidiaries (including the proposed loan but excluding (pursuant to section 529(3)) loans made on the security of a mortgage on the principal residence of the officer and margin loans) does not exceed the greater of:
 - (i) 2 times the annual salary of the officer, and
 - (ii) \$100,000.⁶¹

⁵⁴ Section 523 of the ICA.

⁵⁵ Section 524 of the ICA.

⁵⁶ Section 525 of the ICA.

⁵⁷ Section 526 of the ICA.

⁵⁸ Section 527 of the ICA.

⁵⁹ Section 528 of the ICA.

⁶⁰ Section 529(1) of the ICA.

⁶¹ Section 529(2) of the ICA.

Meaning of “Transaction”

A related party “transaction” includes, but is not limited to:

- (a) making a guarantee on behalf of a related party;
- (b) making an investment in securities of the related party;
- (c) acquiring a loan made by a third party to a related party; and
- (d) taking a security interest in securities of the related party.⁶²

⁶² Section 520(1) of the ICA.



APPENDIX D - OSFI SECURITY INFORMATION FORM

PROTECTED B

OFFICE USE ONLY

File Number

The information on this form is required for the purpose of conducting an assessment of the character and integrity of individuals affiliated with a financial institution. Individuals are hereby advised that the Office of the Superintendent of Financial Institutions Canada (OSFI) will disclose this information to law enforcement and intelligence agencies, including the Royal Canadian Mounted Police and the Canadian Security Intelligence Service, in the course of conducting the assessment.

Please typewrite. With the original signed and dated form, you must also provide an electronic version (Excel format on a CD or by e-mail) with the OSFI.

PART A - GENERAL INFORMATION						
1. Name of Financial Institution/Organization			2. Relationship with Financial Institution (Tick where appropriate)			
			<input type="checkbox"/> Director <input type="checkbox"/> Officer <input type="checkbox"/> Other (specify) <input type="text"/>			
PART B - BIOGRAPHICAL INFORMATION						
1. Surname (Last name)			2. Full given names (no initials) underline the usual name used			
3. Family name at birth / Maiden name			4. All other names used (include name changes and nicknames)			
5. Sex		6. Date of birth (YYYY-MM-DD)				
<input type="checkbox"/> Male <input type="checkbox"/> Female						
7. Place of birth (City)		Province/State		Country		
8. Residency (Tick where appropriate)				9. Citizenship		
<input type="checkbox"/> Canadian Permanent Resident <input type="checkbox"/> Canadian Temporary Resident <input type="checkbox"/> Non-Resident						
10. Proof of Citizenship (Tick where appropriate)						
<input type="checkbox"/> Passport <input type="checkbox"/> National Identity Card <input type="checkbox"/> Other (specify) <input type="text"/>						
11. Passport / Identification Number				12. Date of Issue (YYYY-MM-DD)		
13. Do you maintain dual or multiple citizenship? If so, please indicate countries of citizenship, certificate type, and number.						
14. Height		15. Weight		16. Colour - Hair		
				17. Colour - Eyes		
PART C - RESIDENCE (List addresses where you have lived during the last 10 years, starting with the most current. All spaces must be completed; there should be no gaps)						
1	Apt. #	Street #	Street Name		From (YYYY-MM)	To present
	City		Province or State	Country	Telephone number	
	Apt. #	Street #	Street Name		From (YYYY-MM)	To (YYYY-MM)

2	<i>City</i>		<i>Province or State</i>	<i>Country</i>	<i>Telephone number</i>	
	<i>Apt. #</i>	<i>Street #</i>	<i>Street Name</i>		<i>From (YYYY-MM)</i>	<i>To (YYYY-MM)</i>
3	<i>City</i>		<i>Province or State</i>	<i>Country</i>	<i>Telephone number</i>	
	<i>Apt. #</i>	<i>Street #</i>	<i>Street Name</i>		<i>From (YYYY-MM)</i>	<i>To (YYYY-MM)</i>
4	<i>City</i>		<i>Province or State</i>	<i>Country</i>	<i>Telephone number</i>	
	<i>Apt. #</i>	<i>Street #</i>	<i>Street Name</i>		<i>From (YYYY-MM)</i>	<i>To (YYYY-MM)</i>
5	<i>City</i>		<i>Province or State</i>	<i>Country</i>	<i>Telephone number</i>	
	<i>Apt. #</i>	<i>Street #</i>	<i>Street Name</i>		<i>From (YYYY-MM)</i>	<i>To (YYYY-MM)</i>

PART D - CRIMINAL CONVICTIONS IN AND OUTSIDE OF CANADA

Have you ever been charged and/or convicted of a criminal offence under the law of any Province, State, or Country?
 Yes No

If yes, give details (charge(s), name of police force, city, province/state, country, and date of conviction) by completing the following sections

Charge(s)

Name of Police Force / Law Enforcement Agency *City* *Province / State*

Country **12. Date of Conviction (YYYY-MM-DD)**

PART E - CERTIFICATION

I hereby certify that the information set out by me in this document is true and correct to the best of my knowledge and belief. I also hereby consent to the release of any of my personal information under the control of a Canada law enforcement agency, including the Royal Canadian Mounted Police and the Canadian Security Intelligence Service, to the OSFI, for the purpose of conducting an assessment of the character and integrity of an individual affiliated with a financial institution.

_____ _____
 Signature Date

PART F - REVIEW (To be completed by the OSFI Official responsible for ensuring the completion of sections A, B, C, D and E)

Name and Title *Telephone Number*

Signature *Date*

WALKER SORENSEN

Lawyers

SUITE 202, 1451 ROYAL YORK ROAD
TORONTO, ON M9P 3B2

PHONE: (416) 249-3929
FAX: (416) 249-4060

WSLAW.CA