

OSFI Update: Upcoming Changes to Regulatory Guidance

February 18, 2020

On February 13, 2020, the Office of the Superintendent of Financial Institutions (OSFI) hosted a Regulatory Affairs Division seminar (the Seminar) during which it presented regulatory, legislative and policy updates to industry members in the insurance and banking sectors. We have summarized certain regulatory updates and changes below.

1. Securities Administration

On November 26, 2019, OSFI announced that the Securities Administration Unit (SAU), which administers vested assets and capital adequacy deposit accounts of federally regulated foreign banks and insurance branches, would be renamed the Securities Administration and Approvals Reporting Unit (SAAR), and that OSFI's Regulatory Affairs Division would begin processing SAU requests. As part of this transition, OSFI indicated its intention to move towards a less stringent form of trust agreement. Currently, trust agreements for branches are required to follow a prescribed form of agreement that is somewhat outdated and only permits a narrow list of eligible assets to be vested in Canada without OSFI's approval. Subject to industry consultation, OSFI is proposing to issue guidance that will outline the legal criteria required for trust agreements, which may include a legal opinion. This is similar to OSFI's approach to reinsurance security agreements. The list of eligible assets will also be broadened with a view to eliminating *ad hoc* Superintendent approvals. OSFI's proposal is expected to be released in summer 2020.

2. Branch Exits and Part XIII

OSFI notified the industry at the Seminar that the Implementation Instructions regarding the Amendments to Part XIII of the ICA (the Instructions) will be removed from the OSFI website in 2020. *Advisory: Insurance in Canada of Risks* will remain on the OSFI website; however, OSFI indicated that it should be referred to "prospectively" to determine whether activities result in "insuring in Canada a risk." Although OSFI stated that a Branch's options for exiting Canada were limited to run-off, novation, assumption reinsurance and payout, OSFI also left open the possibility that a different means of exit could be considered if an insurer demonstrated that all of the aforementioned options had been exhausted. OSFI indicated that it will issue additional guidance on Branch exits in 2020. The Instructions were initially published in December 2008 to assist insurers with the changes to Part XIII of the *Insurance Companies Act* (Canada).

3. Record Retention in Canada

During the Seminar, OSFI indicated that if the Canada-US-Mexico Agreement (CUSMA) is ratified by Parliament, federally regulated financial institutions (FRFIs) may store records in the United States or Mexico and would no longer be required to store records in Canada so long as OSFI has “immediate, direct, complete and ongoing access to information processed or stored” outside Canada. Until ratification, OSFI expects FRFIs to comply with applicable legislation governing the location of records.

4. Reinsurance Framework Review

OSFI provided a brief update regarding changes to Guideline B-3: *Sound Reinsurance Practices and Procedures* (Guideline B-3) and Guideline B-2: *Investment Concentration Limits* (Guideline B-2). OSFI previously indicated that Guideline B-2, which currently addresses investment limits for property and casualty insurers, will be amended as part of OSFI’s ongoing review of Canada’s reinsurance framework, as described in OSFI’s Reinsurance Framework Discussion Paper from June 2018 (the Discussion Paper). OSFI has confirmed that the proposed “Rule to Limit P&C Policy Sizes” set out in Annex 1 of the Discussion Paper is no longer being pursued, acknowledging that quantitative impact studies have demonstrated that the impact of the proposed rule on property and casualty insurers under OSFI’s purview would be significant. The revised Guideline B-2 will include a new proposal addressing large exposures and should be issued by late March 2020 for public consultation.

The final versions of Guideline B-2 and Guideline B-3 are anticipated to be issued at the same time in October 2020.

5. Guidelines E-4A and E-4B

OSFI confirmed that Guideline E-4A: *Role of the Chief Agent & Record Keeping Requirements* and Guideline E-4B: *Role of the Principal Officer and Record Keeping Requirements* will be consolidated into a single principles-based Guideline which will set out OSFI’s expectations for foreign insurer and bank branches in Canada. The publication of Guideline E-4 will likely be delayed several months to permit the industry and OSFI to focus on other initiatives, including the reinsurance framework review.

OSFI has indicated that Guideline E-4 will be re-positioned to focus on OSFI’s expectations for business in Canada (rather than its expectations of the Chief Agent or Principal Officer). Guideline E-4 will also contain modernized record-keeping requirements, subject to the ratification of CUSMA. We expect that Guideline E-4 will contain additional guidance regarding OSFI’s expectations for “virtual” branches in Canada.

6. IFRS-17

The current capital tests for FRFIs, including the Life Insurance Capital Adequacy Test (LICAT) and Minimum Capital Test (MCT), are based on GAAP or IFRS-4. When IFRS-4 is replaced by IFRS-17, changes will be required to the capital tests. OSFI intends to distribute near-final LICAT and MCT Guidelines for industry consultation in June 2020 and to issue final guidelines and regulatory capital forms by June 2021. Although the deferred implementation of IFRS-17 has not yet been confirmed, OSFI indicated that its implementation timeline is based on a target implementation date of January 1, 2022.

Conclusion

OSFI has a number of important initiatives underway for 2020. Much of the forthcoming guidance should assist foreign insurance branches in particular by clarifying OSFI's expectations with respect to their operations in Canada. We expect that any changes to the guidance discussed above will reflect OSFI's principles-based approach and will permit FRFIs with flexibility to fulfill regulatory expectations for their businesses in Canada.

This publication is a general summary of the law. It does not replace legal advice tailored to your specific circumstances.