Canadian Bank Regulators Clarify Promotion Of Comprehensive Credit Insurance In Bank Branches

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The OSFI Ruling

The Canadian Office of the Superintendent of Financial Institutions ("OSFI") recently ruled that a bank cannot promote comprehensive credit insurance (“CCI”) within its Canadian branches under the *Insurance Business (Banks and Bank Holdings Companies) Regulations* (the "Regulations").

The Regulations restrict the insurance business activities of deposit-taking financial institutions. In order for a bank to promote insurance, it must be an “authorized type of insurance” as defined in the Regulations. In coming to its conclusion as to whether a bank can promote CCI, OSFI considered whether CCI could fall under the category of export credit insurance ("ECI") — the only authorized type of insurance relevant in the circumstances.

In its analysis, OSFI, using well-accepted principles of statutory interpretation endorsed by the Supreme Court of Canada, noted that the intention behind the Regulations is to "ensure that, on the whole, insurance continues to be sold by qualified, licensed insurance brokers and agents working independently of any deposit-taking institution." This, along with the tenet of statutory interpretation that exceptions to general prohibitions are to be strictly construed, suggested that CCI must clearly constitute ECI for a bank to be permitted to engage in this activity.

With this view, OSFI determined that ECI is strictly confined to the coverage of losses incurred by exporters due to a non-payment for exported goods or services. Given that CCI would not be confined to such losses, OSFI ruled that CCI does not constitute ECI and therefore, a bank may not promote a CCI policy within its Canadian branches.

Revisiting the Regulations

It should be noted that the Regulations do not preclude a Canadian bank from carrying on any aspect of the business of insurance, other than the underwriting of insurance,

outside of Canada. Consequently, if the CCI policy were to be offered in branches of the Canadian bank in a foreign jurisdiction, such offering would be permitted provided the laws of the jurisdiction in which the branch was located did not preclude the activity. In addition, the problem appears to be that the CCI policy was not restricted to the export of goods and services. Presumably, the same policy could be offered in Canadian branches if the policy was revised to insure only non-payment by a purchaser located outside of Canada.

While this ruling seems uncontroversial, it may raise the question of whether the Regulations should be revisited and in particular, whether the "authorized type of insurance" categories need to be updated.

Stakeholder groups have long disagreed about bank involvement in the insurance business and whether existing restrictions on bank retailing of insurance products should be removed. Areas of disagreement include whether the removal of current restrictions would increase or decrease competition among suppliers of insurance products and what effect this would have on consumers, for instance, their access to insurance products along with the quality of service they would receive. Much has changed in the world of financial services since the time the Regulations were enacted and there are some who believe that distribution limitations that were considered necessary in the 1990s are not as relevant as we move toward the third decade of the 21st century.

The Canadian Department of Finance's Review

Stakeholders have the opportunity to make submissions on the Regulations as the Canadian Department of Finance (the "Department") begins the process of updating federal financial institution legislation, including the *Bank Act*. The Department's consultation document sets out three policy objectives to guide the review: stability, efficiency and utility. While the subject of bank involvement in the retailing of insurance products is not specifically addressed in the review, stakeholders may share their positions in their submissions to the Department by November 15, 2016.

We are working with a number of clients in reviewing the consultation document and making submissions. We would be pleased to assist you in making a submission. Please do not hesitate to call or write any of the authors in this connection.

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