

Bank Act -- CHAPTER B-1.01 (1991, c. 46)
Updated to : August 31, 1999*
An Act respecting banks and banking
[Assented to 13th December, 1991]

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

SHORT TITLE

Short title

1. This Act may be cited as the Bank Act.

PART I
INTERPRETATION AND APPLICATION

Definitions

2. In this Act,

"affairs" « affaires internes »

"affairs", with respect to a bank or an authorized foreign bank, means the relationships among the bank or authorized foreign bank and its affiliates and the shareholders, directors and officers of the bank or authorized foreign bank and its affiliates, but does not include the business of the bank or authorized foreign bank or any of its affiliates;

"affiliate" « groupe »

"affiliate" means an entity that is affiliated with another entity within the meaning of section 6;

"annual return" « état annuel »

"annual return" means a return prepared in accordance with section 601;

"annual statement" « rapport annuel »

* Note: This consolidation is not an official version of the law. Also, because this file is text-only, it does not contain formatting or graphics. See <http://www.canada.justice.gc.ca/FTP/EN/Laws/Chap/B/B-1.01.txt> visited 10 May 2000.

"annual statement" means the annual financial statement of a bank within the meaning of paragraph 308(1)(a);

"authorized foreign bank" « banque étrangère autorisée »

"authorized foreign bank" means a foreign bank in respect of which an order under subsection 524(1) has been made;

"bank" « banque »

"bank" means a bank listed in Schedule I or II;

"bearer" « porteur »

"bearer", in relation to a security, means the person in possession of a security payable to bearer or endorsed in blank;

"bearer form" « titre au porteur »

"bearer form", in respect of a security, means a security in bearer form as determined in accordance with subsection 83(2);

"beneficial ownership" « véritable propriétaire » et « propriété effective »

"beneficial ownership" includes ownership through one or more trustees, legal representatives, agents or other intermediaries;

"body corporate" « personne morale »

"body corporate" means an incorporated body wherever or however incorporated;

"branch" « succursale »

"branch"

(a) in respect of a bank, means an agency, the head office or any other office of the bank, and

(b) in respect of an authorized foreign bank, means an agency, the principal office or any other office of the authorized foreign bank in Canada at which is carried on the business in Canada of the authorized foreign bank;

"Canadian entity" « entité canadienne »

"Canadian entity" means an entity that is incorporated or formed by or under an Act of Parliament or of the legislature of a province and that carries on business, directly or indirectly, in Canada;

"Canadian financial institution" « institution financière canadienne »

"Canadian financial institution" means a financial institution that is incorporated or formed by or under an Act of Parliament or of the legislature of a province;

"central cooperative credit society" « société coopérative de crédit centrale »

"central cooperative credit society" means a body corporate organized on cooperative principles by or under an Act of the legislature of a province, one of whose principal purposes is to receive deposits from and provide liquidity support to local cooperative credit societies, and

(a) whose membership consists solely or primarily of local cooperative credit societies, or

(b) whose directors are wholly or primarily persons elected or appointed by local cooperative credit societies;

"central securities register" or "securities register" « registre central des valeurs mobilières » ou « registre des valeurs mobilières »

"central securities register" or "securities register" means the register referred to in section 248;

"complainant" « plaignant »

"complainant", in relation to a bank or any matter concerning a bank, means

(a) a registered holder or beneficial owner, and a former registered holder or beneficial owner, of a security of a bank or any of its affiliates,

(b) a director or an officer, or a former director or officer, of a bank or any of its affiliates, or

(c) any other person who, in the discretion of a court, is a proper person to make an application under section 334, 338 or 678;

"court" « tribunal »

"court" means

(a) in the Province of Ontario, the Superior Court of Justice,

(b) in the Province of Quebec, the Superior Court of the Province,

(c) in the Provinces of Nova Scotia and British Columbia, the Supreme Court of the Province,

(d) in the Provinces of New Brunswick, Manitoba, Saskatchewan and Alberta, the Court of Queen's Bench for the Province,

(e) in the Provinces of Prince Edward Island and Newfoundland, the trial division of the Supreme Court of the Province, and

(f) in the Yukon Territory and the Northwest Territories, the Supreme Court of the territory, and in Nunavut, the Nunavut Court of Justice;

"court of appeal" « cour d'appel »

"court of appeal" means the court to which an appeal lies from a decision or order of a court;

"debt obligation" « titre de créance »

"debt obligation" means a bond, debenture, note or other evidence of indebtedness of an entity, whether secured or unsecured;

"director", "board of directors" or "directors" « administrateur », « conseil d'administration » ou « conseil »

"director" means a natural person occupying the position of director, by whatever name called, of a body corporate, and "board of directors" or "directors" refers to the directors of a body corporate as a body;

"entity" « entité »

"entity" means a body corporate, trust, partnership, fund, an unincorporated association or organization, Her Majesty in right of Canada or of a province, an agency of Her Majesty in either of such rights and the government of a foreign country or any political subdivision thereof and any agency thereof;

"federation of cooperative credit societies" « fédération de sociétéscoopératives de crédit »

"federation of cooperative credit societies" means an association under the Cooperative Credit Associations Act or a federation, league or corporation incorporated or organized by or under an Act of the legislature of a province, the membership or the shareholders of which include two or more central cooperative credit societies;

"fiduciary" « représentant »

"fiduciary" means any person acting in a fiduciary capacity and includes a personal representative of a deceased person;

"financial institution" « institution financière »

"financial institution" means

- (a) a bank or an authorized foreign bank,
- (b) a body corporate to which the Trust and Loan Companies Act applies,
- (c) an association to which the Cooperative Credit Associations Act applies,
- (d) an insurance company or a fraternal benefit society to which the Insurance Companies Act applies,
- (e) a trust, loan or insurance corporation incorporated by or under an Act of the legislature of a province,
- (f) a cooperative credit society incorporated and regulated by or under an Act of the legislature of a province,
- (g) an entity that is incorporated or formed by or under an Act of Parliament or of the legislature of a province and that is primarily engaged in dealing in securities, including portfolio management and investment counseling, and
- (h) a foreign institution;

"foreign bank" « banque étrangère »

"foreign bank", subject to section 12, means an entity incorporated or formed by or under the laws of a country other than Canada that

- (a) is a bank according to the laws of any foreign country where it carries on business,
- (b) carries on a business in any foreign country that, if carried on in Canada, would be, wholly or to a significant extent, the business of banking,
- (c) engages, directly or indirectly, in the business of providing financial services and employs, to identify or describe its business, a name that includes the word "bank", "banque", "banking" or "bancaire", either alone or in combination with other words, or any word or words in any language other than English or French corresponding generally thereto,
- (d) engages in the business of lending money and accepting deposit liabilities transferable by cheque or other instrument,

(e) engages, directly or indirectly, in the business of providing financial services and is affiliated with another foreign bank,

(f) controls another foreign bank, or

(g) is a foreign institution, other than a foreign bank within the meaning of any of paragraphs (a) to (f), that controls a bank named in Schedule II, but does not include a subsidiary of a bank named in Schedule I;

"foreign bank subsidiary" « filiale de banque étrangère »

"foreign bank subsidiary" means a bank named in Schedule II that is the subsidiary of a foreign bank;

"foreign institution" « institution étrangère »

"foreign institution" means an entity that is

(a) engaged in the trust, loan or insurance business, the business of a cooperative credit society or the business of dealing in securities or is otherwise engaged primarily in the business of providing financial services, and

(b) incorporated or formed otherwise than by or under an Act of Parliament or of the legislature of a province;

"form of proxy" « formulaire de procuration »

"form of proxy" means a written or printed form that, when completed and executed by or on behalf of a shareholder, constitutes a proxy;

"guarantee" « garantie »

"guarantee" includes a letter of credit;

"head office" « siège »

"head office" means the office required to be maintained by a bank pursuant to section 237;

"holder" « détenteur »

"holder" means

(a) in respect of a security certificate, the person in possession of the certificate issued or endorsed to that person or to bearer or in blank, and

(b) in respect of the ownership of a share, the shareholder of the share within the meaning of section 7;

"holding body corporate" « société mère »

"holding body corporate" means a holding body corporate within the meaning of section 4;

"incorporated" « constitué en personne morale »

"incorporated", when used with reference to a body corporate that is incorporated by or under an Act of Parliament or of the legislature of a province, also refers to a body corporate that is continued by or under any such Act;

"incorporating instrument" « acte constitutif »

"incorporating instrument" means the special Act, letters patent, instrument of continuance or other constating instrument by which a body corporate was incorporated or continued and includes any amendment to or restatement of the constating instrument;

"incorporator" « fondateur »

"incorporator", in relation to a bank, means a person who applied for letters patent to incorporate the bank;

"issuer" « émetteur »

"issuer", in respect of a security, means the entity that issues or issued the security;

"letters patent" « lettres patentes »

"letters patent", in respect of an instrument authorized to be issued under this Act, means letters patent in a form approved by the Superintendent;

"local cooperative credit society" « société coopérative de crédit locale »

"local cooperative credit society" means a body corporate organized on cooperative principles incorporated by or under an Act of the legislature of a province

(a) whose members or shareholders consist substantially of natural persons, and

(b) whose principal purpose is to receive deposits from and make loans to its members and shareholders;

"Minister" « ministre »

"Minister" means the Minister of Finance;

"NAFTA country resident" [Repealed, 1999, c. 28, s. 1]

"non-WTO Member foreign bank" « banque étrangère d'un non-membre de l'OMC »

"non-WTO Member foreign bank" means a foreign bank that is not controlled by a WTO Member resident;

"officer" « dirigeant »

"officer" means

(a) in relation to a body corporate, a chief executive officer, president, vice-president, secretary, controller, treasurer and any other natural person designated as an officer of the body corporate by by-law or by resolution of the directors of the body corporate, and

(b) in relation to any other entity, any natural person designated as an officer of the entity by by-law, by resolution of the members thereof or otherwise;

"order form" « titre à ordre »

"order form", in respect of a security, means a security in order form as determined in accordance with subsection 83(3);

"ordinary resolution" « résolution ordinaire »

"ordinary resolution" means a resolution passed by a majority of the votes cast by or on behalf of the shareholders who voted in respect of that resolution;

"person" « personne »

"person" means a natural person, an entity or a personal representative;

"personal representative" « représentant personnel »

"personal representative" means a person who stands in place of and represents another person and, without limiting the generality of the foregoing, includes, as the circumstances require, a trustee, an executor, an administrator, a committee, a guardian, a tutor, a curator, an assignee, a receiver, an agent or an attorney of any person;

"prescribed" Version anglaise seulement

"prescribed" means prescribed by regulation;

"principal office" « bureau principal »

"principal office" means, in relation to an authorized foreign bank, the office required to be maintained under section 535;

"principal officer" « dirigeant principal »

"principal officer" in relation to an authorized foreign bank means the person appointed under section 536;

"proxy" « procuration »

"proxy" means a completed and executed form of proxy by means of which a shareholder appoints a proxy holder to attend and act on the shareholder's behalf at a meeting of shareholders;

"proxyholder" « fondé de pouvoir »

"proxyholder" means the person appointed by proxy to attend and act on behalf of a shareholder at a meeting of shareholders;

"real property" « biens immeubles »

"real property" includes a leasehold interest in real property;

"recorded address" « adresse enregistrée »

"recorded address" means

(a) in relation to a person who is a shareholder of a bank, the latest postal address of the person according to the central securities register of the bank, and

(b) in relation to a person in any other respect, the latest postal address of the person according to the records of the branch concerned;

"registered form" « titre nominatif »

"registered form", in respect of a security, means a security in registered form as determined in accordance with subsection 83(4);

"regulatory capital" « capital réglementaire »

"regulatory capital", in respect of a bank, has the meaning given that expression by the regulations;

"resident Canadian" « résident canadien »

"resident Canadian" means a natural person who is

(a) a Canadian citizen ordinarily resident in Canada,

(b) a Canadian citizen not ordinarily resident in Canada who is a member of a prescribed class of persons, or

(c) a permanent resident within the meaning of the Immigration Act and ordinarily resident in Canada, except a permanent resident who has been ordinarily resident in Canada for more than one year after the time at which the individual first became eligible to apply for Canadian citizenship;

"residential property" « immeuble résidentiel »

"residential property" means real property consisting of buildings that are used, or are to be used, to the extent of at least one half of the floor space thereof, as one or more private dwellings;

"securities underwriter" « souscripteur à forfait »

"securities underwriter" means a person who, as principal, agrees to purchase securities with a view to the distribution of the securities or who, as agent for a body corporate or other person, offers for sale or sells securities in connection with a distribution of the securities, and includes a person who participates, directly or indirectly, in a distribution of securities, other than a person whose interest in the distribution of securities is limited to receiving a distributor's or seller's commission payable by a securities underwriter;

"security" « titre » ou « valeur mobilière »

"security" means

(a) in relation to a body corporate, a share of any class of shares of the body corporate or a debt obligation of the body corporate, and includes a warrant of the body corporate, but does not include a deposit with a financial institution or any instrument evidencing such a deposit, and

(b) in relation to any other entity, any ownership interest in or debt obligation of the entity;

"security interest" « sûreté »

"security interest" means an interest in or charge on property by way of mortgage, lien, pledge or otherwise taken by a creditor or guarantor to secure the payment or performance of an obligation;

"send" « envoyer »

"send" includes deliver;

"series" « série »

"series", in respect of shares, means a division of a class of shares;

"significant interest" « intérêt substantiel »

"significant interest" means a significant interest determined in accordance with section 8;

"special resolution" « résolution extraordinaire »

"special resolution" means a resolution passed by a majority of not less than two thirds of the votes cast by or on behalf of the shareholders who voted in respect of that resolution or signed by all the shareholders entitled to vote on that resolution;

"subordinated indebtedness" « titre secondaire »

"subordinated indebtedness" means an instrument evidencing an indebtedness of a bank that by its terms provides that the indebtedness will, in the event of the insolvency or winding-up of the bank, be subordinate in right of payment to all deposit liabilities of the bank and all other liabilities of the bank except those that, by their terms, rank equally with or are subordinate to such indebtedness;

"subsidiary" « filiale »

"subsidiary" means a body corporate that is a subsidiary of another body corporate within the meaning of section 5;

"substantial investment" « intérêt de groupe financier »

"substantial investment" means a substantial investment determined in accordance with section 10;

"Superintendent" « surintendant »

"Superintendent" means the Superintendent of Financial Institutions appointed pursuant to the Office of the Superintendent of Financial Institutions Act;

"trade" « opération »

"trade", in respect of securities, means any sale or disposition of securities for valuable consideration;

"transfer" « transfert »

"transfer", in respect of securities, includes a transmission by operation of law;

"voting share" « action avec droit de vote »

"voting share" means a share of any class of shares of a body corporate carrying voting rights under all circumstances or by reason of an event that has occurred and is continuing or by reason of a condition that has been fulfilled;

"WTO Member resident" « résident d'un membre de l'OMC »

"WTO Member resident" means a WTO Member resident within the meaning of section 11.1.1991, c. 46, ss. 2, 572, c. 47, s. 756, c. 48, s. 494; 1992, c. 51, s. 29; 1993, c. 34, s. 5(F), c. 44, s. 22; 1998, c. 30, ss. 13(F), 15(E); 1999, c. 3, s. 14, c. 28, s. 1.

Interpretation

References to "authorized foreign bank"

2.1 References in this Act to the carrying on of business in Canada by an authorized foreign bank and to the business in Canada of an authorized foreign bank are deemed, respectively, to be references to the carrying on of business in Canada, or to business in Canada, under Part XII.1.

1999, c. 28, s. 2.

Control

3. (1) For the purposes of this Act,

(a) a person controls a body corporate if securities of the body corporate to which are attached more than 50 per cent of the votes that may be cast to elect directors of the body corporate are beneficially owned by the person and the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of the body corporate;

(b) a person controls an unincorporated entity, other than a limited partnership, if more than 50 per cent of the ownership interests, however designated, into which the entity is divided are beneficially owned by that person and the person is able to direct the business and affairs of the entity;

(c) the general partner of a limited partnership controls the limited partnership; and

(d) a person controls an entity if the person has any direct or indirect influence that, if exercised, would result in control in fact of the entity.

Deemed control

(2) A person who controls an entity is deemed to control any entity that is controlled, or deemed to be controlled, by the entity.

Idem

(3) A person is deemed to control an entity where the aggregate of

(a) any securities of the entity that are beneficially owned by that person, and

(b) any securities of the entity that are beneficially owned by any entity controlled by that person is such that, if that person and all of the entities referred to in paragraph (b) that beneficially own securities of the entity were one person, that person would control the entity.

Holding body corporate

4. A body corporate is the holding body corporate of any body corporate that is its subsidiary.

Subsidiary

5. A body corporate is a subsidiary of another body corporate if it is controlled, determined without regard to paragraph 3(1)(d), by the other body corporate.

Affiliated entities

6. (1) One entity is affiliated with another entity if one of them is controlled by the other or both are controlled by the same person.

Idem

(2) Notwithstanding subsection (1), for the purposes of section 41 and subsections 265(1) and 283(1), one entity is affiliated with another entity if one of them is controlled, determined without regard to paragraph 3(1)(d), by the other or both are controlled, determined without regard to paragraph 3(1)(d), by the same person.

Shareholder

7. (1) For the purposes of this Act, a person is a shareholder of a body corporate when, according to the securities register of the body corporate, the person is the owner of one or more shares of the body corporate or is entitled to be entered in the securities register or like record of the body corporate as the owner of the share or shares.

Holder of a share

(2) A reference in this Act to the holding of a share by or in the name of any person is a reference to the fact that the person is registered or is entitled to be registered in the securities register or like record of the body corporate as the holder of that share.

Significant interest

8. (1) A person has a significant interest in a class of shares of a bank where the aggregate of

(a) any shares of that class beneficially owned by the person, and

(b) any shares of that class beneficially owned by entities controlled by the person exceeds 10 per cent of all of the outstanding shares of that class of shares of the bank.

Increasing significant interest

(2) A person who has a significant interest in a class of shares of a bank increases that significant interest in the class of shares where the person or any entity controlled by the person

(a) acquires beneficial ownership of additional shares of that class, or

(b) acquires control of any entity that beneficially owns shares of that class, in such number as to increase the percentage of shares of that class that are beneficially owned by the person and by any entities controlled by the person.

Acting in concert

9. (1) For the purposes of Part VII and subsection 486(3), where two or more persons have agreed, pursuant to any agreement, commitment or understanding, whether formal or informal, verbal or written, to act jointly or in concert in respect of

(a) shares of a bank that they beneficially own,

(b) shares or ownership interests that they beneficially own of any entity that beneficially owns shares of a bank, or

(c) shares or ownership interests that they beneficially own of any entity that controls any entity that beneficially owns shares of a bank, those persons shall be deemed to be a single person who is acquiring beneficial ownership of the aggregate number of shares of the bank or shares or ownership interests of the entity that are beneficially owned by them.

Idem

(2) Without limiting the generality of subsection (1), any agreement, commitment or understanding by or between two or more persons who beneficially own shares of a bank or shares or ownership interests of any entity referred to in paragraph (1)(b) or (c),

(a) whereby any of them or their nominees may veto any proposal put before the board of directors of the bank, or

(b) pursuant to which no proposal put before the board of directors of the bank may be approved except with the consent of any of them or their nominees, shall be deemed to be an agreement, commitment or understanding referred to in subsection (1).

Exceptions

(3) For the purposes of this section, persons shall be presumed not to have agreed to act jointly or in concert solely by reason of the fact that

(a) one is the proxy holder of one or more of the others in respect of shares or ownership interests referred to in subsection (1); or

(b) they vote the voting rights attached to shares or ownership interests referred to in subsection (1) in the same manner.

Designation

(4) Where in the opinion of the Superintendent it is reasonable to conclude that an agreement, commitment or understanding referred to in subsections (1) and (2) exists by or among two or more persons, the Superintendent may designate those persons as persons who have agreed to act jointly or in concert.

Substantial investment in body corporate

10. (1) A person has a substantial investment in a body corporate where

(a) the voting rights attached to the aggregate of any voting shares of the body corporate beneficially owned by the person and by any entities controlled by the person exceed 10 per cent of the voting rights attached to all of the outstanding voting shares of the body corporate; or

(b) the aggregate of any shares of the body corporate beneficially owned by the person and by any entities controlled by the person represents ownership of greater than 25 per cent of the shareholders' equity of the body corporate.

Increasing substantial investment in body corporate

(2) A person who has a substantial investment in a body corporate pursuant to paragraph (1)(a) increases that substantial investment when the person or any entity controlled by the person

(a) acquires beneficial ownership of additional voting shares of the body corporate in such number as to increase the percentage of voting rights attached to the aggregate of the voting shares of the body corporate beneficially owned by the person and by any entities controlled by the person; or

(b) acquires control of any entity that beneficially owns any voting shares of the body corporate in such number as to increase the percentage of voting rights attached to the aggregate of the voting shares of the body corporate beneficially owned by the person and by any entities controlled by the person.

Idem

(3) A person who has a substantial investment in a body corporate pursuant to paragraph (1)(b) increases that substantial investment when the person or any entity controlled by the person

(a) acquires beneficial ownership of additional shares of the body corporate in such number as to increase the percentage of the shareholders' equity of the body corporate represented by the aggregate of the shares of the body corporate beneficially owned by the person and by any entities controlled by the person ;or

(b) acquires control of any entity that beneficially owns any shares of the body corporate in such number as to increase the percentage of the shareholders' equity of the body corporate represented by the aggregate of the shares of the body corporate beneficially owned by the person and by any entities controlled by the person.

New substantial investment

(4) For greater certainty,

(a) where a person has a substantial investment in a body corporate pursuant to paragraph (1)(a) and the person, or any entity controlled by the person,

(i) purchases or otherwise acquires beneficial ownership of shares of the body corporate, or

(ii) acquires control of any entity that beneficially owns shares of the body corporate, in such number as to cause the shareholders' equity of the body corporate represented by the aggregate of the shares of the body corporate beneficially owned by the person and by any entities controlled by the person to exceed 25per cent of the shareholders' equity of the body corporate, or

(b) where a person has a substantial investment in a body corporate pursuant to paragraph (1)(b) and the person or any entity controlled by the person

(i) purchases or otherwise acquires beneficial ownership of voting shares of the body corporate, or

(ii) acquires control of any entity that beneficially owns voting shares of the body corporate, in such number as to cause the voting rights attached to the aggregate of the voting shares beneficially owned by the person and by any entities controlled by the person to exceed 10 per cent of the voting rights attached to all of the outstanding voting shares of the body corporate, the acquisition is deemed to cause the person to increase a substantial investment in the body corporate.

Substantial investment in unincorporated entity

(5) A person has a substantial investment in an unincorporated entity where the aggregate of any ownership interests, however designated, into which the entity is divided, beneficially owned by the person and by any entities controlled by the person exceeds 25 per cent of all of the ownership interests into which the entity is divided.

Increasing substantial investment in unincorporated entities

(6) A person who has a substantial investment in an unincorporated entity increases that substantial investment when the person or any entity controlled by the person

(a) acquires beneficial ownership of additional ownership interests in the unincorporated entity in such number as to increase the percentage of ownership interests in the unincorporated entity beneficially owned by the person and by any entities controlled by the person; or

(b) acquires control of any entity that beneficially owns ownership interests in the unincorporated entity in such number as to increase the percentage of ownership interests beneficially owned by the person and by any entities controlled by the person.

Distribution to the public

11. (1) Subject to subsection (2), for the purposes of this Act, a security of a body corporate or an unincorporated entity

(a) is part of a distribution to the public where, in respect of the security, there has been a filing of a prospectus, statement of material facts, registration statement, securities exchange take-over bid circular or similar document under the laws of Canada, a province or a jurisdiction outside Canada; or

(b) is deemed to be part of a distribution to the public where the security has been issued and a filing referred to in paragraph (a) would be required if the security were being issued currently.

Exemption

(2) On application therefor by a bank, the Superintendent may determine that a security of the bank is not or was not part of a distribution to the public if the Superintendent is satisfied that the determination would not prejudice any security holder of the bank.

Securities deemed part of distribution

(3) For the purposes of this Act, securities of a bank

(a) issued on the conversion of other securities, or

(b) issued in exchange for other securities are deemed to be securities that are part of a distribution to the public if those other securities were part of a distribution to the public. 1991, c. 46, s. 11; 1997, c. 15, s. 1.

WTO Member resident

11.1 (1) For the purposes of this Act, a WTO Member resident is

(a) a natural person who is ordinarily resident in a country or territory that is a WTO Member, as defined in subsection 2(1) of the World Trade Organization Agreement Implementation Act, other than Canada;

(b) a body corporate, association, partnership or other organization that is incorporated, formed or otherwise organized in a country or territory that is a WTO Member, as defined in subsection 2(1) of the World Trade Organization Agreement Implementation Act, other than Canada, and that is controlled

(i) directly or indirectly, by one or more persons referred to in paragraph (a), or

(ii) by a government of a WTO Member, whether federal, state or local, or an agency of one of those governments;

(c) a trust established by one or more persons referred to in paragraph (a) or (b) or a trust in which one or more of those persons have more than 50 per cent of the beneficial interest; or

(d) a body corporate, association, partnership or other organization that is controlled, directly or indirectly, by a trust referred to in paragraph (c).

Interpretation

(2) For the purposes of subsection (1),

(a) a body corporate is controlled by one or more persons if

(i) securities of the body corporate to which are attached more than 50 per cent of the votes that may be cast to elect directors of the body corporate are beneficially owned by the person or persons, and

(ii) the votes attached to those securities are sufficient to elect a majority of the directors of the body corporate;

(b) an association, partnership or other organization is controlled by one or more persons if

(i) more than 50 per cent of the ownership interests, however designated, into which the association, partnership or other organization is divided are beneficially owned by the person or persons, and

(ii) the person or persons are able to direct the business and affairs of the association, partnership or other organization;

(c) a body corporate, association, partnership or other organization is controlled by one or more persons if the person or persons have, directly or indirectly, control in fact of the body corporate, association, partnership or other organization; and

(d) a body corporate, association, partnership or other organization that controls another body corporate, association, partnership or other organization is deemed to control any body corporate, association, partnership or other organization that is controlled or deemed to be controlled by the other body corporate, association, partnership or other organization.

1993, c. 44, s. 23; 1999, c. 28, s. 3.

Exemption from foreign bank status

12. (1) The Minister may, by order, and subject to such terms and conditions as the Minister deems appropriate, exempt from being a foreign bank any entity that, but for that order, would be a foreign bank.

Revocation of order

(2) The Minister may, by further order, revoke or vary any order made under subsection (1), and any such revocation or variation shall come into force three months after the date the further order is made, unless the Minister and the entity to which the order relates agree that the revocation or variation should come into force at some other time agreed by them.

Notice

(3) Before filing an application for an order referred to in subsection (1), an applicant shall publish a notice of intention to make the application in the Canada Gazette.

Application

Application of Act

13. (1) This Act is the charter of and applies to each bank named in Schedule I or II, and, except as otherwise provided, does not apply to any other bank.

(2) [Repealed, 1999, c. 28, s. 4]

1991, c. 46, s. 13; 1999, c. 28, s. 4.

Schedule I and Schedule II banks

14. (1) Subject to this Act,

(a) there shall be set out in Schedule I

(i) the name of every bank that, immediately prior to the coming into force of this section, was a bank named in Schedule I to the Bank Act, being chapter B-1 of the Revised Statutes of Canada, 1985, and the name of any bank referred to in subsection (3),

(ii) the place in Canada where the head office of the bank is situated,

(iii) the classes of shares of the bank, and

(iv) the number, where applicable, of shares of each class; and

(b) there shall be set out in Schedule II

(i) the name of any other bank,

(ii) the place in Canada where the head office of the bank is situated,

(iii) the classes of shares of the bank, and

(iv) the number, where applicable, of shares of each class.

Amending the schedules

(2) Where

(a) a bank is incorporated,

- (b) a body corporate is continued as a bank,
- (c) one or more bodies corporate are amalgamated as a bank,
- (d) the name of a bank is changed,
- (e) the head office of a bank is changed,
- (f) there is any change in the classes of shares of a bank or in the number of shares of any class of shares of a bank, or
- (g) a bank is dissolved,

Schedules I and II shall be amended accordingly.

Where no significant interest in Schedule II bank

(3) Where no person has a significant interest in any class of shares of a bank named in Schedule II, the bank shall continue as a bank named in Schedule I and Schedules I and II shall be amended accordingly.

Bank remains in Schedule I

(4) For greater certainty, a bank named in Schedule I shall continue to be a bank named in Schedule I notwithstanding that a person has a significant interest in any class of shares thereof contrary to the provisions of this Act.

Notice of amendments

(5) Where in any year either Schedule I or II is amended, the Superintendent shall, within sixty days after the end of the year, cause a notice to be published in the Canada Gazette showing Schedule I or II in its complete amended form as at the end of the year.

Schedule III authorized foreign banks

14.1 (1) There shall be set out in Schedule III

- (a) the name of every authorized foreign bank and, where applicable, any other name under which it is permitted to carry on business in Canada;
- (b) the place in Canada where the principal office of the authorized foreign bank is situated; and
- (c) whether the authorized foreign bank is subject to the restrictions and requirements referred to in subsection 524(2).

Amending Schedule III

(2) Schedule III shall be amended accordingly where

(a) an order made under subsection 524(1) is revoked;

(b) any of the information referred to in paragraph (1)(a) or (b) changes; or

(c) the restrictions and requirements referred to in subsection 524(2) to which an authorized foreign bank is subject are added or removed.

Notice of amendments

(3) Where in any year Schedule III is amended, the Superintendent shall, within sixty days after the end of the year, cause a notice to be published in the Canada Gazette showing Schedule III in its complete amended form as at the end of the year.

1999, c. 28, s. 5.

PART II STATUS AND POWERS

Corporate powers

15. (1) A bank has the capacity of a natural person and, subject to this Act, the rights, powers and privileges of a natural person.

Powers restricted

(2) A bank shall not carry on any business or exercise any power that it is restricted by this Act from carrying on or exercising, or exercise any of its powers in a manner contrary to this Act.

Business in Canada

(3) A bank may carry on business throughout Canada.

Powers outside Canada

(4) Subject to this Act, a bank has the capacity to carry on its business, conduct its affairs and exercise its powers in any jurisdiction outside Canada to the extent and in the manner that the laws of that jurisdiction permit.

No invalidity

16. No act of a bank or authorized foreign bank, including any transfer of property to or by a bank or authorized foreign bank, is invalid by reason only that the act or transfer is contrary to

(a) in the case of a bank, the bank's incorporating instrument or this Act; or (b) in the case of an authorized foreign bank, this Act.

1991, c. 46, s. 16; 1999, c. 28, s. 6.

By-law not necessary

17. It is not necessary for a bank to pass a by-law in order to confer any particular power on the bank or its directors.

No personal liability

18. The shareholders of a bank are not, as shareholders, liable for any liability, act or default of the bank except as otherwise provided by this Act.

No constructive notice

19. No person is affected by or is deemed to have notice or knowledge of the contents of a document concerning a bank or authorized foreign bank by reason only that the document has been filed with the Superintendent or the Minister or is available for inspection at a branch of the bank or authorized foreign bank.

1991, c. 46, s. 19; 1993, c. 34, s. 6(F); 1999, c. 28, s. 7.

Authority of directors and officers

20. A bank or a guarantor of an obligation of a bank may not assert against a person dealing with the bank or with any person who has acquired rights from the bank that

(a) the bank's incorporating instrument or any by-laws of the bank have not been complied with,

(b) the persons named as directors of the bank in the most recent return sent to the Superintendent under section 632 are not the directors of the bank,

(c) the place named in the incorporating instrument or the by-laws of the bank is not the head office of the bank,

(d) a person held out by the bank as a director, an officer or a representative of the bank has not been duly appointed or has no authority to exercise the powers and perform the duties that are customary in the business of the bank or usual for such director, officer or representative, or

(e) a document issued by any director, officer or representative of the bank with actual or usual authority to issue the document is not valid or not genuine, except where the person has or ought to have by virtue of the person's position with or relationship to the bank knowledge to that effect.

1991, c. 46, s. 20; 1999, c. 28, s. 8.

Sunset provision

21. Banks shall not carry on business and authorized foreign banks shall not carry on business in Canada after March 31, 2002, except that, if Parliament dissolves after December 31, 2001 and before April 1, 2002, banks may continue to carry on business, and authorized foreign banks may continue to carry on business in Canada, respectively, until the day that is one hundred and eighty days after the first day of the first session of the next Parliament.

1991, c. 46, s. 21; 1997, c. 15, s. 2; 1999, c. 28, s. 9.

PART III INCORPORATION AND CONTINUANCE

Formalities of Incorporation

Incorporation of bank

22. On the application of one or more persons made in accordance with this Act, the Minister may, subject to this Part, issue letters patent incorporating a bank. Restrictions on incorporation

23. Letters patent incorporating a bank may not be issued if the application therefor is made by or on behalf of

(a) Her Majesty in right of Canada or in right of a province, an agency of Her Majesty in either of those rights, or an entity controlled by Her Majesty in either of those rights;

(b) the government of a foreign country or any political subdivision thereof;

(c) an agency of the government of a foreign country or any political subdivision thereof; or

(d) an entity, other than a foreign institution or any subsidiary of a foreign institution, that is controlled by the government of a foreign country or any political subdivision thereof.

Subsidiary of foreign bank

24. Where a proposed bank would be a subsidiary of a foreign bank, within the meaning of paragraphs (a) to (f) of the definition "foreign bank" in section 2, letters patent to incorporate the bank may not be issued unless the Minister is satisfied that

(a) the bank will be capable of making a contribution to the financial system in Canada; and

(b) if the application for letters patent is made by a non-WTO Member foreign bank, treatment as favourable for banks to which this Act applies exists or will be provided in the jurisdiction in which the foreign bank principally carries on business, either directly or through a subsidiary.

1991, c. 46, s. 24; 1999, c. 28, s. 10.

Application for incorporation

25. (1) An application for letters patent to incorporate a bank setting out the names of the first directors of the bank shall be filed with the Superintendent, together with such other information, material and evidence as the Superintendent may require.

Publishing notice of intent

(2) Before filing an application referred to in subsection (1), the applicant or one of the applicants, as the case may be, shall, at least once a week for a period of four consecutive weeks, publish, in a form satisfactory to the Superintendent, a notice of intention to make the application in the Canada Gazette and in a newspaper in general circulation at or near the place where the head office of the bank is to be situated.

Objections to incorporation

26. (1) Any person who objects to the proposed incorporation of a bank may, within thirty days after the date of the last publication under subsection 25(2) in respect of the proposed bank, submit the objection in writing to the Superintendent.

Minister to be informed

(2) On receipt of an objection under subsection (1), the Superintendent shall inform the Minister of the objection.

Inquiry into objection and report

(3) On receipt of an objection under subsection (1), and if the application for the issuance of the letters patent to which the objection relates has been received, the Superintendent shall, if satisfied that it is necessary and in the public interest to do so, hold or cause to be held a public inquiry into the objection as it relates to the application and, on completion of the inquiry, the Superintendent shall report the findings of the inquiry to the Minister.

Report to be made available

(4) Within thirty days after receiving a report under subsection (3), the Minister shall make the report available to the public.

Rules governing proceedings

(5) Subject to the approval of the Governor in Council, the Superintendent may make rules governing the proceedings at public inquiries held under this section. Factors to be considered by Minister

27. Before issuing letters patent to incorporate a bank, 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 particular regard to

(a) the nature and sufficiency of the financial resources of the applicant or applicants as a source of continuing financial support for the bank;

(b) the soundness and feasibility of plans of the applicant or applicants for the future conduct and development of the business of the bank;

(c) the business record and experience of the applicant or applicants;

(d) whether the bank will be operated responsibly by persons who are fit as to the character, competence and experience suitable for involvement in the operation of a financial institution; and

(e) the best interests of the financial system in Canada.

Contents of letters patent

28. (1) There shall be set out in the letters patent incorporating a bank

(a) the name of the bank;

(b) the place in Canada where the head office of the bank is to be situated; and

(c) the date that the bank came, or is to come, into existence.

Provisions in letters patent

(2) The Minister may set out in the letters patent incorporating a bank any provision not contrary to this Act that the Minister considers advisable in order to take into account the particular circumstances of the proposed bank.

Terms and conditions

(3) The Minister may impose such terms and conditions in respect of the issuance of letters patent incorporating a bank as the Minister considers necessary or appropriate.

Letters patent of incorporation on application of certain companies

29. (1) Where, pursuant to section 22, the Minister issues letters patent incorporating a bank on the application of a company to which the Trust and Loan Companies Act or the Insurance Companies Act applies, and the paid-in capital of the bank immediately following its incorporation will be not less than ten million dollars or such greater amount as the Minister may specify pursuant to subsection 46(1), there may, on the request of the company and with the approval of the Minister, be included in the letters patent a provision deeming shares of the bank to be issued, on a share for share basis, to all shareholders of the company in exchange for all the issued and outstanding shares of the company.

Effect of provision

(2) Shares of a bank deemed to be issued pursuant to subsection (1) are subject to the same designation, rights, privileges and restrictions or conditions and, subject to any agreement to the contrary, to the same charges, encumbrances and other restrictions as the shares of the company for which they are exchanged and the shares of the company, on the issuance of the letters patent, become the property of the bank free and clear of any charge, encumbrance or other restriction.

Idem

(3) An exchange of shares of a company referred to in subsection (1) pursuant to a provision included in the letters patent incorporating a bank does not deprive a person who was a holder of shares of the company immediately prior to the exchange of any right or privilege with respect to the shares or relieve the person of any liability in respect thereof, but any such right or privilege shall be exercised in accordance with this Act.

Transfer and voting of bank shares

(4) Notwithstanding subsection (3), no share of a bank that is deemed to be issued pursuant to a provision included in the letters patent incorporating a bank may subsequently be transferred or voted contrary to this Act, but any shareholder of a bank who acquired shares of the bank by means of an exchange of shares of a company referred to in subsection (1) pursuant to that provision may, for a period of ten years from the date of issuance of the letters patent, exercise the voting rights attached to the shares without regard to any provisions of this Act, other than subsection (7), that would otherwise prohibit the shareholder from voting the shares.

Shareholder approval

(5) No provision described in subsection (1) may be included in letters patent issued pursuant to section 22 unless the application therefor is accompanied by evidence that the request for such a provision was approved by a vote of at least two thirds of those shareholders of the applicant company entitled to vote thereon, present or represented by proxy and voting at a shareholders' meeting called to consider the application.

Exchange of share certificates

(6) Where, pursuant to a provision included in the letters patent incorporating a bank, a share exchange is deemed to have taken place, the bank shall, within ninety days after the issuance of the letters patent, make provision for the issue of share certificates representing shares of the bank and for the exchange of those certificates for share certificates representing the shares of the company that were outstanding on the day the letters patent were issued.

Shares of bank may continue to be held

(7) Notwithstanding any other provision of this Act, where letters patent incorporating a bank include a provision described in subsection (1) and, on the date of issuance of the letters patent, another bank and any entities controlled by that other bank held, in the aggregate, more than ten per cent of any class of shares of the applicant company, that other bank may have a significant interest in any class of shares of the bank deemed to be issued pursuant to subsection (1) in exchange for the shares of the company for a period of two years from the date of issuance of the letters patent.

Extension of period

(8) On application of a bank authorized by subsection (7) to hold, directly or through a subsidiary, shares of another bank, the Minister may, by order, extend the period referred to in subsection (7), but the aggregate of such extensions from time to time granted to a bank and of the period referred to in subsection(7) may not, in any case, exceed ten years.

No significant interest

(9) Notwithstanding anything in this section, on or after the day that is ten years after the day a bank referred to in this section came into existence, no person shall have a significant interest in any class of shares of the bank, other than an eligible Canadian financial institution, within the meaning of subsection 370(1), that controls the bank in accordance with subsection 374(1).

1991, c. 46, ss. 29, 573, c. 47, s. 756.

Notice of issue of letters patent

30. The Superintendent shall cause to be published in the Canada Gazette a notice of the issuance of letters patent incorporating a bank.

First directors

31. The first directors of a bank are the directors named in the application for letters patent to incorporate the bank.

Effect of letters patent

32. A bank comes into existence on the date provided therefor in its letters patent.

Continuance Federal corporations

33. (1) A body corporate incorporated under the Canada Business Corporations Act or any other Act of Parliament may apply to the Minister for letters patent continuing the body corporate as a bank under this Act.

Other corporations

(2) A body corporate incorporated otherwise than by or under an Act of Parliament may, if so authorized by the laws of the jurisdiction where it is incorporated, apply to the Minister for letters patent continuing the body corporate as a bank under this Act.

1991, c. 46, s. 33; 1994, c. 24, s.34(F).

Application for continuance

34. (1) Where a body corporate applies for letters patent under subsection 33(1) or (2), sections 23 to 27 apply in respect of the application, with such modifications as the circumstances require.

Special resolution approval

(2) Where a body corporate applies for letters patent under subsection 33(1) or (2), the application must be duly authorized by a special resolution.

Copy of special resolution

(3) A copy of the special resolution referred to in subsection (2) shall be filed with the application.

Power to issue letters patent

35. (1) On the application of a body corporate under subsection 33(1) or (2), the Minister may, subject to this Part, issue letters patent continuing the body corporate as a bank under this Act.

Issue of letters patent

(2) Where letters patent are issued to a body corporate under subsection (1), section 28 applies in respect of the issue of letters patent, with such modifications as the circumstances require.

Effect of letters patent

36. On the day set out in the letters patent continuing a body corporate as a bank under subsection 35(1),

- (a) the body corporate becomes a bank as if it had been incorporated under this Act; and
- (b) the letters patent are deemed to be the incorporating instrument of the continued bank.

Copy of letters patent

37. (1) Where a body corporate is continued as a bank under this Part, the Superintendent shall forthwith send a copy of the letters patent to the appropriate official or public body in the jurisdiction in which the body corporate was authorized to apply to be continued under this Act.

Notice of issuance of letters patent

(2) The Superintendent shall cause to be published in the Canada Gazette a notice of the issuance of letters patent continuing a body corporate as a bank under this Act.

Effects of continuance

38. Where a body corporate is continued as a bank under this Part,

- (a) the property of the body corporate continues to be the property of the bank;
- (b) the bank continues to be liable for the obligations of the body corporate;
- (c) an existing cause of action or claim by or against the body corporate or any liability of the body corporate to prosecution is unaffected;
- (d) a civil, criminal or administrative action or proceeding pending by or against the body corporate may continue to be prosecuted by or against the bank;

(e) a conviction against, or any ruling, order or judgment in favour of or against the body corporate may be enforced by or against the bank;

(f) a person who, on the day the body corporate becomes a bank, was the holder of a security issued by the body corporate is not deprived of any right or privilege available to the person at that time in respect of the security or relieved of any liability in respect thereof, but any such right or privilege may be exercised only in accordance with this Act; and

(g) the by-laws of the body corporate, except those that are in conflict with this Act, continue as the by-laws of the bank.

Transitional

39. (1) Notwithstanding any other provision of this Act or the regulations, the Minister may, on the recommendation of the Superintendent, by order, grant to a bank in respect of which letters patent were issued under subsection 35(1) permission to

(a) engage in a business activity specified in the order that a bank is not otherwise permitted by this Act to engage in and that the body corporate continued as the bank was engaging in at the time the application for the letters patent was made;

(b) continue to have issued and outstanding debt obligations the issue of which is not authorized by this Act if the debt obligations were outstanding at the time the application for the letters patent was made;

(c) [Repealed, 1994, c. 47, s. 14]

(d) hold assets that a bank is not otherwise permitted by this Act to hold if the assets were held by the body corporate continued as the bank at the time the application for the letters patent was made;

(e) acquire and hold assets that a bank is not otherwise permitted by this Act to acquire or hold if the body corporate continued as the bank was obliged, at the time the application for the letters patent was made, to acquire those assets; and

(f) maintain outside Canada any records or registers required by this Act to be maintained in Canada and maintain and process outside Canada information and data relating to the preparation and maintenance of such records or registers.

Duration

(2) The permission granted under subsection (1) shall be expressed to be granted for a period specified in the order not exceeding

(a) with respect to any activity described in paragraph (1)(a), thirty days after the date of issue of the letters patent or, where the activity is conducted pursuant to an agreement existing on the date of issue of the letters patent, the expiration of the agreement;

(b) with respect to any matter described in paragraph (1)(b), ten years; and

(c) with respect to any matter described in any of paragraphs (1)(d) to (f), two years.

Renewal

(3) Subject to subsection (4), the Minister may, on the recommendation of the Superintendent, by order, renew a permission granted by order under subsection(1) with respect to any matter described in paragraphs (1)(b) to (e) for such further period or periods as the Minister considers necessary.

Limitation

(4) The Minister shall not grant to a bank any permission

(a) with respect to matters described in paragraph (1)(b), that purports to be effective more than ten years after the date of the approval for the bank to commence and carry on business, unless the Minister is satisfied on the basis of evidence on oath provided by an officer of the bank that the bank will not be able at law to redeem at the end of the ten years the outstanding debt obligations to which the permission relates; and

(b) with respect to matters described in paragraphs (1)(d) and (e), that purports to be effective more than ten years after the date of the approval for the bank to commence and carry on business.

1991, c. 46, s. 39; 1994, c. 47, s. 14; 1997, c. 15, s. 3.

Discontinuance

This Act ceases to apply

39.1 Where subsection 39.2(1) or 376.1(1) or (2) or section 402.1 applies in respect of a bank, on the day specified in the letters patent continuing the bank as a company under subsection 33(1) or 234(1) of the Trust and Loan Companies Act, this Act ceases to apply to the bank and that Act applies to the company so continued under that Act.

1991, c. 46, s. 574; 1997, c. 15, s. 4; 1999, c. 28, s.

11.Other transfer

39.2 (1) A bank may, with the approval in writing of the Minister, apply for letters patent continuing the bank as a company under subsection 33(1) of the Trust and Loan Companies Act or amalgamating and continuing the bank as a company under section 228 and subsection 234(1) of that Act.

Conditions for approval

(2) No approval referred to in subsection (1) may be given to a bank unless the Minister is satisfied that the application of the bank has been authorized by a special resolution.

1997, c. 15, s. 4.

Corporate Name

Prohibited names

40. A bank may not be incorporated under this Act with a name

(a) that is prohibited by an Act of Parliament;

(b) that is, in the opinion of the Superintendent, deceptively misdescriptive;

(c) that is the same as or, in the opinion of the Superintendent, substantially the same as or confusingly similar to, any existing(i) trade-mark or trade name, or(ii) corporate name of a body corporate, except where the trade-mark or trade name is being changed or the body corporate is being dissolved or is changing its corporate name and consent to the use of the trade-mark, trade name or corporate name is signified to the Superintendent in such manner as the Superintendent may require;

(d) that is the same as or, in the opinion of the Superintendent, substantially the same as or confusingly similar to, the known name under or by which any entity carries on business or is identified; or

(e) that is reserved under section 43 for another bank or authorized foreign bank or proposed bank or authorized foreign bank.

1991, c. 46, s. 40; 1996, c. 6, s. 1; 1997, c. 15, s. 5; 1999, c. 28, s. 12.

Affiliated bank

41. Notwithstanding section 40, a bank that is affiliated, within the meaning of subsection 6(2), with another entity may, with the consent of that entity and the approval in writing of the Superintendent, be incorporated with, or change its name to, substantially the same name as that of the affiliated entity.

1991, c. 46, s. 41; 1996, c. 6, s. 1.

French or English form of name

42. (1) The name of a bank may be set out in its letters patent in an English form, a French form, an English form and a French form or in a combined English and French form, and the bank may use and be legally designated by any such form.

Alternate name

(2) A bank may identify itself outside Canada by its name in any language and the bank may use and be legally designated by any such form of its name outside Canada.

Other name

(3) Subject to subsection (4) and section 255, a bank may carry on business under or identify itself by a name other than its corporate name.

Directions

(4) Where a bank is carrying on business under or identifying itself by a name other than its corporate name, the Superintendent may, by order, direct the bank not to use that other name if the Superintendent is of the opinion that that other name is a name referred to in any of paragraphs 40(a) to (e).

1991, c. 46, s. 42; 1996, c. 6, s. 2.

Reserved name

43. The Superintendent may, on request, reserve for ninety days a name for a proposed bank or proposed authorized foreign bank or for a bank or authorized foreign bank that intends to change its name.

1991, c. 46, s. 43; 1999, c. 28, s. 13.

Directing change of name

44. (1) If through inadvertence or otherwise a bank

(a) comes into existence or is continued with a name, or

(b) on an application to change its name, is granted a name that is prohibited by section 40, the Superintendent may, by order, direct the bank to change its name and the bank shall comply with that direction.

Revoking name

(2) Where a bank has been directed under subsection (1) to change its name and has not, within sixty days after the service of the direction, changed its name to a name that is not prohibited by this Act, the Superintendent may revoke the name of the bank and assign to it a name and, until changed in accordance with subsection 215(1), the name of the bank is thereafter the name so assigned.

1991, c. 46, s. 44; 1996, c. 6, s. 3.

PART IV ORGANIZATION AND COMMENCEMENT

Organization Meetings First directors' meeting

45. (1) After letters patent incorporating a bank are issued, a meeting of the directors of the bank shall be held at which the directors may, subject to this Part,

- (a) make by-laws;
- (b) adopt forms of share certificates and corporate records;
- (c) authorize the issue of shares of the bank;
- (d) appoint officers;
- (e) appoint, pursuant to subsection 314(1), an auditor or auditors to hold office until the first meeting of shareholders;
- (f) make banking arrangements; and
- (g) deal with any other matters necessary to organize the bank.

Calling directors' meeting

(2) An incorporator or a director named in the application for letters patent may call the meeting referred to in subsection (1) by giving, subject to subsection 181(2), no fewer than five days notice of the purpose, time and place of the meeting to each director of the bank.

Calling shareholders' meeting 46. (1) Where at least ten million dollars, or such greater amount as the Minister may specify, has been received by a bank in respect of which letters patent were issued pursuant to section 22 from the issue of its shares, the directors of the bank shall forthwith call a meeting of the shareholders of the bank.

Meeting of shareholders

(2) The shareholders of a bank shall, by resolution at the meeting of shareholders called pursuant to subsection (1),

(a) approve, amend or reject any by-law made by the directors of the bank;

(b) subject to section 168, elect directors to hold office for a term expiring not later than the close of the third annual meeting of shareholders following the election; and

(c) appoint an auditor or auditors to hold office until the close of the first annual meeting of shareholders.

Term of first directors

47. A director named in the application for letters patent to incorporate a bank holds office until the election of directors at the meeting of shareholders called pursuant to subsection 46(1).

Commencement and Carrying on of Business Order to commence and carry on business

48. (1) A bank shall not carry on any business until the Superintendent has, by order, approved the commencement and carrying on of business by the bank.

Existing banks

(2) A licence that was issued to a bank named in Schedule II under subsection 28(5) of the Bank Act, being chapter B-1 of the Revised Statutes of Canada, 1985, and that is in effect immediately before the coming into force of this Part is deemed to be an order of the Superintendent of indeterminate duration under subsection 49(1) and the bank remains subject to any and all other restrictions and conditions in the licence.

Continued bank

(3) Except in respect of a body corporate that is continued as a bank under this Act for the purposes of forthwith amalgamating with one or more bodies corporate and continuing as a bank under this Act, where letters patent continuing a body corporate as a bank under this Act are issued, the Superintendent shall make an order approving the commencement and carrying on of business by the bank.

Amalgamated bank

(4) Where letters patent amalgamating and continuing two or more bodies corporate as a bank under this Act are issued, the Superintendent shall make an order approving the commencement and carrying on of business by the bank.

Subsection 49(2) and section 52 do not apply

(5) For greater certainty, subsection 49(2) and section 52 do not apply in respect of a bank referred to in subsections (3) and (4).

Authority to make order

49. (1) On application by a bank, the Superintendent may make an order approving the commencement and carrying on of business by the bank.

Statement of payments

(2) An application by a bank for an order under subsection (1) must contain a statement setting out the amounts paid or to be paid by the bank in connection with its incorporation and organization.

No payments before order

50. Until an order approving the commencement and carrying on of business is made for a bank, the bank shall not make any payment on account of incorporation or organization expenses out of moneys received from the issue of the shares of the bank and interest thereon, except reasonable sums

(a) for the remuneration of not more than two officers;

(b) for the payment of costs related to the issue of shares of the bank; and

(c) for the payment of clerical assistance, legal services, accounting services, office accommodation at one location, office expenses, advertising, stationery, postage and travel expenses.

Deposits and investments before order

51. Where a bank comes into existence but no order approving the commencement and carrying on of business is made for the bank, the bank may only

(a) deposit, in Canada, paid-in capital of the bank in another deposit-taking Canadian financial institution; or

(b) invest paid-in capital of the bank in unencumbered securities of the Government of Canada or the government of any province.

Conditions for order

52. (1) The Superintendent shall not make an order approving the commencement and carrying on of business by a bank until it has been shown to the satisfaction of the Superintendent that

- (a) the meeting of shareholders of the bank referred to in subsection 46(1) has been duly held;
- (b) the bank has paid-in capital of at least ten million dollars or such greater amount as is specified by the Minister under subsection 46(1);
- (c) the expenses of incorporation and organization to be borne by the bank are reasonable; and
- (d) all other relevant requirements of this Act have been complied with.

Time limit

(2) The Superintendent shall not make an order approving the commencement and carrying on of business by a bank more than one year after the day on which the bank comes into existence.

Conditions of order

53. An order approving the commencement and carrying on of business by a bank may contain such conditions or limitations that are consistent with this Act and relate to the business of the bank as the Superintendent deems expedient and necessary.

Variations

54. (1) In respect of the order approving the commencement and carrying on of business by a bank, the Superintendent may at any time, by further order,

- (a) make the order subject to such conditions or limitations that are consistent with this Act and that relate to the business of the bank as the Superintendent deems expedient and necessary, or
- (b) amend or revoke any authorization contained in the order or any condition or limitation to which the order is subject,

but before making any such further order the Superintendent shall provide the bank with an opportunity to make representations regarding that further order.

(2) to (6) [Repealed, 1996, c. 6, s. 4]

1991, c. 46, s. 54; 1996, c. 6, s. 4.

Permission to foreign bank subsidiary

55. (1) On the recommendation of the Superintendent, the Minister may, at the same time that an order is made approving the commencement and carrying on of business by a foreign bank subsidiary, by further order, grant the foreign bank subsidiary permission to

(a) hold assets that banks are not otherwise permitted by this Act to hold if such assets consist of shares of a body corporate incorporated by or under an Act of Parliament or of the legislature of a province that, at the time application for letters patent incorporating the foreign bank subsidiary was made, were held by the eligible foreign institution, within the meaning of Part VII, that is the holding body corporate of the foreign bank subsidiary or any affiliate of that eligible foreign institution, and

(b) hold assets that banks are not otherwise permitted by this Act to hold if, at the time application for letters patent incorporating the foreign bank subsidiary was made, such assets were held by an affiliate of the eligible foreign institution, within the meaning of Part VII, that is the holding body corporate of the foreign bank subsidiary,

and, notwithstanding any other provision of this Act or the regulations, the foreign bank subsidiary may act in accordance with that permission.

Extension of permission

(2) Permission granted to a bank by order of the Minister under subsection (1) is only for the period specified in the order. That period may not be more than two years, except that the Minister may extend the period by further order on application by the bank. The total of the period and any extensions of it may not, in any case, exceed ten years.

1991, c. 46, s. 55; 1997, c. 15, s. 6; 1999, c. 31, s. 9.

Public notice

56. (1) On the making of an order approving the commencement and carrying on of business by a bank, the bank shall publish a notice of the making of the order in a newspaper in general circulation at or near the place where the head office of the bank is located.

Notice in Canada Gazette

(2) The Superintendent shall cause to be published in the Canada Gazette a notice of the making of an order approving the commencement and carrying on of business by a bank.

Non-application to existing bank

(3) For greater certainty, this section does not apply to a bank referred to in subsection 48(2).

Cessation of existence

57. Except for the sole purpose of winding up the bank's affairs, a bank ceases to exist one year after the day on which its incorporating instrument became effective if it does not obtain an order approving the commencement and carrying on of business within that year.

Allowed disbursements

58. (1) Where an order approving the commencement and carrying on of business is not made for a bank, no part of the moneys of the bank shall be used for the payment of incorporation and organization expenses, other than remuneration and costs referred to in section 50, unless the payment has been approved by a special resolution.

Application to court to settle disbursements

(2) If the amount allowed by a special resolution for the payment of any incorporation and organization expenses referred to in subsection (1) is considered insufficient by the directors or if no special resolution for the payment of such expenses is passed, the directors may apply to any court having jurisdiction in the place where the head office of the bank is situated to settle and determine the amounts to be paid out of any moneys of the bank before distribution of the balance to the shareholders or, where there are no shareholders, to the incorporators.

Notice of application to court

(3) The directors shall, at least twenty-one days prior to the date fixed for the hearing of the application referred to in subsection (2), send to the shareholders or incorporators, as the case may be, a notice of the application, which notice shall contain a statement of the amounts that are proposed to be settled and determined by the court.

Ratio payable

(4) In order that the amounts paid and payable under this section may be equitably borne by the shareholders or incorporators, as the case may be, the directors shall, after the amounts of the payments have been approved by special resolution or settled and determined by a court, fix the proportionate part there of chargeable to each shareholder or incorporator as the ratio of the amount paid in by the shareholder or incorporator to the aggregate of all the amounts paid in by the shareholders or incorporators.

Return of excess

(5) After the amounts referred to in this section have been paid, the directors shall pay, with any interest earned thereon, to the shareholders or incorporators, the respective balances of the moneys paid in by them, less the amount chargeable to each shareholder or incorporator under subsection (4).

PART V CAPITAL STRUCTURE

Share Capital Power to issue shares

59. (1) Subject to this Act and the by-laws of the bank, shares of a bank may be issued at such times and to such persons and for such consideration as the directors of the bank may determine.

Shares

(2) Shares of a bank shall be in registered form and shall be without nominal or par value.

Shares of existing bank

(3) Shares with nominal or par value of a bank that was in existence immediately prior to the day this Part comes into force are deemed to be shares without nominal or par value. Shares of continued bank

(4) Where a body corporate is continued as a bank under this Act, shares with nominal or par value issued by the body corporate before it was so continued are deemed to be shares without nominal or par value.

Deemed share conditions

(5) Where any right of a holder of a share with nominal or par value of a bank referred to in subsection (3) or a body corporate continued as a bank under this Act was stated or expressed in terms of the nominal or par value of the share immediately before the coming into force of this Part or the continuance under this Act, as the case may be, that right is thereafter deemed to be the same right stated or expressed without reference to the nominal or par value of the share.

Common shares

60. (1) A bank shall have one class of shares, to be designated as "commonshares", which are non-redeemable and in which the rights of the holders there of are equal in all respects, and those rights include

(a) the right to vote at all meetings of shareholders except where only holders of a specified class of shares are entitled to vote;

(b) the right to receive dividends declared on those shares; and(c) the right to receive the remaining property of the bank on dissolution.

Designations of shares

(2) No bank shall designate more than one class of its shares as "common shares" or any variation of that term.

Existing bank

(3) A bank that is not in compliance with subsection (2) on the coming into force of this Part shall, within twelve months after the coming into force of this Part, redesignate its shares to comply with that subsection.

Continued bank

(4) A body corporate continued as a bank under this Act that is not in compliance with subsection (2) on the date letters patent continuing it as a bank are issued shall, within twelve months after that date, redesignate its shares to comply with that subsection.

Classes of shares

61. (1) The by-laws of a bank may provide for more than one class of shares and, if they so provide, shall set out

- (a) the rights, privileges, restrictions and conditions attaching to the shares of each class; and
- (b) the maximum number, if any, of shares of any class that the bank is authorized to issue.

Shareholder approval

(2) Where a by-law referred to in subsection (1) is made, the directors of the bank shall submit the by-law to the shareholders at the next meeting of shareholders.

Effective date

(3) A by-law referred to in subsection (1) is not effective until it is confirmed or confirmed with amendments by special resolution of the shareholders at the meeting referred to in subsection (2) and approved by the Superintendent in writing.

Shares in series

62. (1) The by-laws of a bank made pursuant to section 61 may authorize the issue of any class of shares in one or more series and may authorize the directors of the bank to fix the maximum number, if any, of shares in each series and to determine the designation, rights, privileges, restrictions and conditions attaching to the shares of each series, subject to the limitations set out in the by-laws.

Series participation

(2) If any cumulative dividend or amounts payable on return of capital in respect of a series of shares are not paid in full, the shares of all series of the same class participate rateably in respect of accumulated dividends and return of capital.

Voting rights

(3) Where voting rights are attached to any series of a class of shares, the shares of every other series of that class shall have the same voting rights.

Restriction on series

(4) No rights, privileges, restrictions or conditions attached to a series of shares authorized under this section confer on the series a priority in respect of dividends or return of capital over any other series of shares of the same class that are then outstanding.

Material to Superintendent

(5) Before the issue of shares of a series of shares authorized under this section, the directors shall send to the Superintendent a copy of the by-law authorizing the directors to fix the rights, privileges, restrictions and conditions of those shares and shall provide the Superintendent with particulars of the proposed series of shares.

One share, one vote

63. Where voting rights are attached to a share of a bank, the voting rights may confer only one vote in respect of that share.

Shares non-assessable

64. Shares issued by a bank after the coming into force of this section are non-assessable and the shareholders are not liable to the bank or to its creditors in respect thereof.

Consideration for share

65. (1) No share of any class of shares of a bank shall be issued until it is fully paid for in money or, with the approval of the Superintendent, in property.

Other currencies

(2) When issuing shares, a bank may provide that any aspect of the shares relating to money or involving the payment of or the liability to pay money be in a currency other than the currency of Canada.

Stated capital account

66. (1) A bank shall maintain a separate stated capital account for each class and series of shares it issues.

Addition to stated capital account

(2) A bank shall record in the appropriate stated capital account the full amount of any consideration it receives for any shares it issues.

Exception

(3) Notwithstanding subsection (2), a bank may record in the appropriate stated capital account part of the amount of any consideration it receives for shares it issues

(a) in exchange for

(i) property of a person who immediately before the exchange did not deal with the bank at arm's length within the meaning of the Income Tax Act, or

(ii) shares of a body corporate that immediately before the exchange, or because of the exchange, did not deal with the bank at arm's length within the meaning of the Income Tax Act; or

(b) under an agreement referred to in subsection 224(1) to shareholders of an amalgamating body corporate who receive the shares in addition to or instead of securities of the amalgamated bank.

Limit on addition to a stated capital account

(4) On the issuance of a share, a bank shall not add to the stated capital account in respect of the share an amount greater than the amount of the consideration it receives for the share.

Constraint on addition to a stated capital account

(5) Where a bank that has issued any outstanding shares of more than one class or series proposes to add to a stated capital account that it maintains in respect of a class or series of shares an amount that was not received by the bank as consideration for the issue of shares, the addition must be approved by special resolution unless all the issued and outstanding shares are of not more than two classes of convertible shares referred to in subsection 77(4).

1991, c. 46, s. 66; 1997, c. 15, s. 7.

Stated capital of continued bank

67. (1) Where a body corporate is continued as a bank under this Act, the bank shall record in the stated capital account maintained for each class and series of shares then outstanding an amount that is equal to the aggregate of

- (a) the aggregate amount paid up on the shares of each class and series of shares immediately before the body corporate was so continued, and
- (b) the amount of the contributed surplus of the bank that is attributable to those shares.

Contributed surplus entry

(2) The amount of any contributed surplus recorded in the stated capital account pursuant to paragraph (1)(b) shall be deducted from the contributed surplus account of the bank.

Shares issued before continuance

(3) Any amount unpaid in respect of a share issued by a body corporate before it was continued as a bank under this Act and paid after it was so continued shall be recorded in the stated capital account maintained by the bank for the shares of that class or series.

Pre-emptive right

68. (1) Where the by-laws of a bank so provide, no shares of any class shall be issued unless the shares have first been offered to the shareholders holding shares of that class, and those shareholders have a pre-emptive right to acquire the offered shares in proportion to their holdings of the shares of that class, at such price and on such terms as those shares are to be offered to others.

Exception

(2) Notwithstanding the existence of a pre-emptive right, a shareholder of a bank has no pre-emptive right in respect of shares of a class to be issued

- (a) for a consideration other than money;
- (b) as a share dividend; or
- (c) pursuant to the exercise of conversion privileges, options or rights previously granted by the bank.

Idem

(3) Notwithstanding the existence of a pre-emptive right, a shareholder of a bank has no pre-emptive right in respect of shares to be issued

(a) where the issue of shares to the shareholder is prohibited by this Act; or

(b) where, to the knowledge of the directors of the bank, the offer of shares to a shareholder whose recorded address is in a country other than Canada ought not to be made unless the appropriate authority in that country is provided within formation in addition to that submitted to the shareholders at the last annual meeting.

Conversion privileges

69. (1) A bank may issue conversion privileges, options or rights to acquire securities of the bank, and shall set out the conditions thereof

(a) in the documents that evidence the conversion privileges, options or rights; or

(b) in the securities to which the conversion privileges, options or rights are attached.

Transferable rights

(2) Conversion privileges, options and rights to acquire securities of a bank may be made transferable or non-transferable, and options and rights to acquire such securities may be made separable or inseparable from any securities to which they are attached. Reserved shares

(3) Where a bank has granted privileges to convert any securities issued by the bank into shares, or into shares of another class or series, or has issued or granted options or rights to acquire shares, if the by-laws limit the number of authorized shares, the bank shall reserve and continue to reserve sufficient authorized shares to meet the exercise of such conversion privileges, options and rights.

Holding of own shares

70. Except as provided in sections 71 to 74, or unless permitted by the regulations, a bank shall not

(a) hold shares of the bank or of any body corporate that controls the bank;

(b) hold any ownership interests of any unincorporated entity that controls the bank;

(c) permit any of its subsidiaries to hold any shares of the bank or of any body corporate that controls the bank; or

(d) permit any of its subsidiaries to hold any ownership interests of any unincorporated entity that controls the bank.

Purchase and redemption of shares

71. (1) Subject to subsection (2) and to its by-laws, a bank may, with the consent of the Superintendent, purchase, for the purpose of cancellation, any shares issued by it, or redeem any redeemable shares issued by it at prices not exceeding the redemption price thereof calculated according to a formula stated in its by-laws or the conditions attaching to the shares.

Restrictions on purchase and redemption

(2) A bank shall not make any payment to purchase or redeem any shares issued by it if there are reasonable grounds for believing that the bank is, or the payment would cause the bank to be, in contravention of any regulation referred to in subsection 485(1) or (2) or any direction made pursuant to subsection 485(3).

Donated shares

(3) A bank may accept from any shareholder a share of the bank surrendered to it as a gift, but may not extinguish or reduce a liability in respect of an amount unpaid on any such share except in accordance with section 75.

Holding as personal representative

72. (1) A bank may, and may permit its subsidiaries to, hold, in the capacity of a personal representative, shares of the bank or of any body corporate that controls the bank or ownership interests in any unincorporated entity that controls the bank, but only where the bank or the subsidiary does not have a beneficial interest in the shares or ownership interests.

Security interest

(2) A bank may, and may permit its subsidiaries to, by way of a security interest

(a) hold shares of the bank or of any body corporate that controls the bank, or

(b) hold any ownership interests of any entity that controls the bank,

where the security interest is nominal or immaterial when measured by criteria established by the bank that have been approved in writing by the Superintendent.

Saving

(3) Nothing in subsection (2) precludes a bank that was in existence immediately prior to the day this Part comes into force, or any of its subsidiaries, from holding any security interest held immediately prior to the coming into force of this Part.

Cancellation of shares

73. (1) Subject to subsection (2), where a bank purchases shares of the bank or fractions thereof or redeems or otherwise acquires shares of the bank, the bank shall cancel those shares.

Requirement to sell

(2) Where a bank or any of its subsidiaries, through the realization of security, acquires any shares of the bank or of any body corporate that controls the bank or any ownership interests in an unincorporated entity that controls the bank, the bank shall, or shall cause its subsidiaries to, as the case maybe, within six months after the day of the realization, sell or otherwise dispose of the shares or ownership interests.

Subsidiary holding shares

74. Subject to the regulations, a bank that was in existence immediately prior to the day this Part comes into force shall cause any subsidiary of the bank that holds shares of the bank, or of any body corporate that controls the bank, or any ownership interests of any unincorporated entity that controls the bank to sell or otherwise dispose of those shares or ownership interests within six months after the day this section comes into force.

Reduction of capital

75. (1) The stated capital of a bank may be reduced by special resolution.

Limitation (2) A bank shall not reduce its stated capital by special resolution if there are reasonable grounds for believing that the bank is, or the reduction would cause the bank to be, in contravention of any regulation referred to in subsection 485(1) or (2) or any direction made pursuant to subsection 485(3).

Contents of special resolution

(3) A special resolution to reduce the stated capital of a bank shall specify the stated capital account or accounts from which the reduction of stated capital effected by the special resolution will be deducted.

Approval by Superintendent

(4) A special resolution to reduce the stated capital of a bank has no effect until it is approved in writing by the Superintendent.

Conditions for approval

(5) No approval to reduce the stated capital of a bank may be given by the Superintendent unless application therefor is made within three months after the time of the passing of the special resolution and a copy of the special resolution, together with a notice of intention to apply for approval, has been published in the Canada Gazette.

Statements to be submitted

(6) In addition to evidence of the passing of a special resolution to reduce the stated capital of a bank and of the publication thereof, statements showing (a) the number of the bank's shares issued and outstanding, (b) the results of the voting by class of shares of the bank, (c) the bank's assets and liabilities, and (d) the reason why the bank seeks the reduction of capital shall be submitted to the Superintendent at the time of the application for approval of the special resolution.

Recovery by action

76. (1) Where any money or property was paid or distributed to a shareholder or other person as a consequence of a reduction of capital made contrary to section 75, a creditor of the bank may apply to a court for an order compelling the shareholder or other person to pay the money or deliver the property to the bank.

Shares held by personal representative

(2) No person holding shares in the capacity of a personal representative and registered on the records of the bank as a shareholder and therein described as the personal representative of a named person is personally liable under subsection (1), but the named person is subject to all the liabilities imposed by that subsection.

Limitation

(3) An action to enforce a liability imposed by subsection (1) may not be commenced more than two years after the date of the act complained of.

Remedy preserved

(4) This section does not affect any liability that arises under section 207.

Adjustment of stated capital account

77. (1) On a purchase, redemption or other acquisition by a bank of shares or fractions thereof issued by it, other than shares acquired pursuant to section 72 or acquired through the realization of security and sold pursuant to subsection 73(2), the bank shall deduct from the stated capital account maintained for the class or series of shares so purchased, redeemed or otherwise acquired an amount equal to the result obtained by multiplying the stated capital in respect of the shares of that class or series by the number of shares of that class or series so purchased, redeemed or otherwise acquired and dividing by the number of shares of that class or series outstanding immediately before the purchase, redemption or other acquisition.

Idem

(2) A bank shall adjust its stated capital account or accounts in accordance with any special resolution referred to in section 75. Shares converted to another class

(3) On a conversion of outstanding shares of a bank into shares of another class or series, or on a change of outstanding shares of the bank into shares of another class or series, the bank shall

(a) deduct from the stated capital account maintained for the class or series of shares converted or changed an amount equal to the result obtained by multiplying the stated capital of the shares of that class or series by the number of shares of that class or series converted or changed, and dividing by the number of outstanding shares of that class or series immediately before the conversion or change; and

(b) record the result obtained under paragraph (a) and any additional consideration received pursuant to the conversion or change in the stated capital account maintained or to be maintained for the class or series of shares into which the shares have been converted or changed.

Stated capital of convertible shares

(4) For the purposes of subsection (3) and subject to the bank's by-laws, where a bank issues two classes of shares and there is attached to each class a right to convert a share of one class into a share of the other class and a share is so converted, the amount of stated capital attributable to a share in either class is the aggregate of the stated capital of both classes divided by the number of outstanding shares of both classes immediately before the conversion.

Conversion or change of shares

(5) Shares issued by a bank and converted into shares of another class or series, or changed under subsection 217(1) into shares of another class or series, become issued shares of the class or series of shares into which the shares have been converted or changed.

Addition to stated capital account

78. On a conversion of any debt obligation of a bank into shares of a class or series of shares, the bank shall

(a) deduct from the liabilities of the bank the nominal value of the debt obligation being converted; and

(b) record the result obtained under paragraph (a) and any additional consideration received for the conversion in the stated capital account maintained or to be maintained for the class or series of shares into which the debt obligation has been converted.

Declaration of dividend

79. (1) The directors of a bank may declare and a bank may pay a dividend by issuing fully paid shares of the bank or options or rights to acquire fully paid shares of the bank and, subject to subsection (4), the directors of a bank may declare and a bank may pay a dividend in money or property, and where a dividend is to be paid in money, the dividend may be paid in a currency other than the currency of Canada.

Notice to Superintendent

(2) The directors of a bank shall notify the Superintendent of the declaration of a dividend at least ten days prior to the day fixed for its payment.

Share dividend

(3) If shares of a bank are issued in payment of a dividend, the bank shall record in the stated capital account maintained or to be maintained for the shares of the class or series issued in payment of the dividend the declared amount of the dividend stated as an amount of money.

When dividend not to be declared

(4) The directors of a bank shall not declare and a bank shall not pay a dividend if there are reasonable grounds for believing that the bank is, or the payment would cause the bank to be, in contravention of any regulation referred to in subsection 485(1) or (2) or any direction made pursuant to subsection 485(3).

Subordinated Indebtedness

Restriction on subordinated indebtedness

80. (1) A bank shall not issue subordinated indebtedness unless the subordinated indebtedness is fully paid for in money or, with the approval of the Superintendent, in property.

References to subordinated indebtedness

(2) A person shall not in any prospectus, advertisement, correspondence or literature relating to any subordinated indebtedness issued or to be issued by a bank refer to the subordinated indebtedness otherwise than as subordinated indebtedness.

Deemed not to be a deposit

(3) Subordinated indebtedness issued by a bank is deemed not to be a deposit.

Other currencies

(4) When issuing subordinated indebtedness, a bank may provide that any aspect of the subordinated indebtedness relating to money or involving the payment of or the liability to pay money in relation thereto be in a currency other than that of Canada including, without restricting the generality of the foregoing, the payment of any interest thereon .

Security Certificates and Transfers

Definitions

81. In this section and sections 82 to 135,

"adverse claim" « opposition »

"adverse claim" includes a claim that a transfer was or would be wrongful or that a particular adverse person is the owner of or has an interest in a security;

"bona fide purchaser" « acheteur de bonne foi »

"bona fide purchaser" means a purchaser for value in good faith and without notice of any adverse claim who takes delivery of a security in bearer form or order form or of a security in registered form issued to the purchaser or endorsed to the purchaser or endorsed in blank;

"clearing agency" « agence de compensation et de dépôt »

"clearing agency" means a person designated as a recognized clearing agency by the Superintendent;

"delivery" « livraison » ou « remise »

"delivery" means voluntary transfer of possession;

"fungible" « fongibles »

"fungible", in respect of securities, means securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit;

"genuine" « authentique »

"genuine" means free of forgery or counterfeit;

"good faith" « bonne foi »

"good faith" means honesty in fact in the conduct of the transaction concerned;

"over-issue" « émission excédentaire »

"over-issue" means the issue of securities in excess of any maximum number of securities that the issuer is authorized to issue;

"purchaser" « acquéreur »

"purchaser" means a person who takes an interest in a security by sale, mortgage, pledge, issue, reissue, gift or any other voluntary transaction;

"security" or "security certificate" « valeur mobilière » ou « certificat de valeur mobilière »

"security" or "security certificate" means an instrument issued by a bank that is

(a) in bearer, order or registered form,

(b) of a type commonly dealt in on securities exchanges or markets or commonly recognized in any area in which it is issued or dealt in as a medium for investment,

(c) one of a class or series or by its terms divisible into a class or series of instruments, and

(d) evidence of a share, participation or other interest in or obligation of a bank, but does not include an instrument evidencing a deposit;

"securities broker" « courtier »

"securities broker" means a person who is engaged for all or part of the person's time in the business of buying and selling securities and who, in the transaction concerned, acts for, or buys a security from, or sells a security to, a customer;

"trust indenture" « acte de fiducie »

"trust indenture" has the meaning given that expression by section 294;

"unauthorized" « non autorisé »

"unauthorized", in relation to a signature or an endorsement, means a signature or an endorsement made without actual, implied or apparent authority, and includes a forgery;

"uncertificated security" « valeur mobilière sans certificat »

"uncertificated security" means a security, not evidenced by a security certificate, the issue and any transfer of which is registered or recorded in records maintained for that purpose by or on behalf of a bank;

"valid" « valide »

"valid" means issued in accordance with the applicable law or validated under section 97.

Provisions governing transfers of securities

82. The transfer of a security is governed by sections 83 to 135.

Security a negotiable instrument

83. (1) A security is a negotiable instrument but, in the case of any inconsistency between the provisions of the Bills of Exchange Act and this Act, this Act prevails to the extent of the inconsistency.

Bearer form

(2) A security is in bearer form if it is payable to bearer according to its terms and not by reason of any endorsement.

Order form

(3) A security is in order form where the security is not a share and, by its terms, it is payable to the order or assigns of any person therein specified with reasonable certainty or to the person or the person's order.

Registered form

(4) A security is in registered form if

(a) it specifies a person entitled to the security or to the rights it evidences, and its transfer is capable of being recorded in a securities register; or

(b) it bears a statement that it is in registered form.

Status of guarantor

84. A guarantor for an issuer of a security is deemed to be an issuer to the extent of the guarantee, whether or not the guarantor's obligation is noted on the security.

Rights of holder

85. (1) Subject to Part VII, every security holder is entitled at the holder's option to a security certificate that complies with this Act or to a non-transferable written acknowledgement of the holder's right to obtain a security certificate that complies with this Act from a bank in respect of the securities of that bank held by the security holder.

Fee for security certificate

(2) A bank may charge a fee, not exceeding a prescribed amount, for a security certificate issued in respect of a transfer.

Joint holders

(3) A bank is not required to issue more than one security certificate in respect of securities held jointly by several persons, and delivery of a security certificate to one of several joint holders is sufficient delivery to all joint holders of the security.

1991, c. 46, s. 85; 1999, c. 31, s. 10.

Signatures on security certificate

86. (1) A security certificate shall be signed manually

(a) by at least one director or officer of the bank,

(b) by or on behalf of a registrar, transfer agent or branch transfer agent of the bank, or

(c) by a trustee who certifies it in accordance with a trust indenture, and any additional signatures required on a security certificate may be printed or otherwise mechanically produced there on.

No manual signature required

(2) Notwithstanding subsection (1), a manual signature is not required on a security certificate representing a fractional share, on an option or a right to acquire a security or on a scrip certificate.

Continuation of signature

(3) Where a security certificate contains a printed or mechanically reproduced signature of a person, the bank may issue the security certificate, notwithstanding that the person has ceased to be a director or an officer of the bank, and the security certificate is as valid as if the person were a director or an officer at the date of its issue.

Contents of share certificate

87. There shall be stated on the face of each share certificate issued by a bank after the coming into force of this section

- (a) the name of the bank;
- (b) a statement that the bank is subject to the Bank Act;
- (c) the name of the person to whom the share certificate is issued; and
- (d) the number and class of shares and the designation of any series that the certificate represents.

Restrictions and constraints

88. (1) If a security certificate issued by a bank is or becomes subject to

- (a) a restriction on its transfer other than a constraint under Part VII, or
- (b) a lien in favour of the bank, the restriction or lien is ineffective against a transferee of the security who has no actual knowledge of it, unless the restriction or lien or a reference to it is noted conspicuously on the security certificate.

Limit on restriction

(2) Where any of the issued shares of a bank are or were part of a distribution to the public and remain outstanding and are held by more than one person, the bank shall not have a restriction on the issue, transfer or ownership of its shares of any class or series except by way of a constraint under Part VII.

Transitional

(3) If a body corporate that is continued as a bank under this Act has outstanding security certificates and the words "private company" or "private corporation" appear on the certificates, those words are deemed to be a notice of a restriction or lien for the purposes of subsection (1).

Particulars of class

89. (1) There shall be stated legibly on a share certificate issued after the coming into force of this section by a bank that is authorized to issue shares of more than one class or series

(a) the rights, privileges, restrictions and conditions attached to the shares of each class and series existing when the share certificate is issued; or

(b) that the class or series of shares that the certificate represents has rights, privileges, restrictions or conditions attached thereto and that the bank will furnish a shareholder, on demand and without charge, with a full copy of

(i) the text of the rights, privileges, restrictions and conditions attached to each class authorized to be issued and to each series in so far as those rights, privileges, restrictions and conditions have been fixed by the directors, and

(ii) the text of the authority of the directors, if the directors are so authorized, to fix the rights, privileges, restrictions and conditions of subsequent series of shares.

Duty

(2) Where a share certificate issued by a bank contains the statement mentioned in paragraph (1)(b), the bank shall provide a shareholder, on demand and without charge, with a full copy of the texts referred to in subparagraphs (1)(b)(i) and(ii).

Fractional share

90. A bank may issue a certificate for a fractional share or may issue in place thereof a scrip certificate in bearer form that entitles the holder to receive a certificate for a full share by exchanging scrip certificates aggregating a full share.

Scrip certificates

91. The directors of a bank may attach conditions to any scrip certificate issued by the bank, including conditions that

(a) the scrip certificate becomes void if not exchanged for a share certificate representing a full share before a specified date; and

(b) any shares for which the scrip certificate is exchangeable may, notwithstanding any preemptive right, be issued by the bank to any person and the proceeds thereof may be distributed rateably to the holders of all the scrip certificates.

Holders of fractional shares

92. (1) A holder of a fractional share issued by a bank is not entitled to exercise voting rights or to receive a dividend in respect of the fractional share. Holders of scrip certificates

(2) A holder of a scrip certificate is not entitled to exercise voting rights or to receive a dividend in respect of the scrip certificate.

Dealings with registered holder

93. (1) A bank or a trustee within the meaning of section 294 may, subject to subsections 137(2) to (5) and sections 138 to 141 and 145, treat the registered owner of a security as the person exclusively entitled to vote, to receive notices, to receive any interest, dividend or other payment in respect of the security and to exercise all of the rights and powers of an owner of the security.

Constructive registered holder

(2) Notwithstanding subsection (1), a bank may treat a person as a registered security holder entitled to exercise all of the rights of the security holder that the person represents, if that person provides the bank with evidence as described in subsection 127(4) that the person is

(a) the heir or personal representative of a deceased security holder or the personal representative of the heirs of the deceased security holder;

(b) the personal representative of a registered security holder who is an infant, an incompetent person or a missing person; or

(c) a liquidator of, or a trustee in bankruptcy for, a registered security holder.

Permissible registered holder

(3) If a person on whom the ownership of a security of a bank devolves by operation of law, other than a person described in subsection (2), provides proof of that person's authority to exercise rights or privileges in respect of a security of the bank that is not registered in the person's name, the bank shall, subject to this Act, treat that person as entitled to exercise those rights or privileges. Immunity of bank

(4) A bank is not required to inquire into the existence of, or see to the performance or observance of, any duty owed to a third person by a registered holder of any of its securities or by anyone whom it treats, as permitted or required by this Part, as the owner or registered holder thereof.

Infant owner

94. If an infant exercises any rights of ownership in the securities of a bank, no subsequent repudiation or avoidance is effective against the bank.

Joint shareholders

95. A bank may treat as owners of a security the survivors of persons to whom the security was issued as joint holders, if the bank receives proof satisfactory to it of the death of any of the joint holders.

Transmission of securities

96. (1) Subject to the provisions of Part VII and any applicable law relating to the collection of taxes, a person referred to in paragraph 93(2)(a) is entitled to become registered as the owner of a security, or to designate another person to be registered as the owner of a security, if the person referred to in paragraph 93(2)(a) delivers to the bank or its transfer agent

(a) the original grant of probate or of letters of administration, or a copy thereof certified to be a true copy by

(i) the court that granted the probate or letters of administration,

(ii) a trust company incorporated under the Trust and Loan Companies Act or under the laws of a province, or

(iii) a lawyer or notary acting on behalf of the person referred to in paragraph 93(2)(a), or

(b) in the case of transmission by notarial will in the Province of Quebec, a copy thereof authenticated pursuant to the laws of that Province, together with

(c) an affidavit or declaration of transmission made by the person referred to in paragraph 93(2)(a) that states the particulars of the transmission, and

(d) the security certificate that was owned by the deceased holder

(i) in the case of a transfer to the person referred to in paragraph 93(2)(a), with or without the endorsement of that person, and

(ii) in the case of a transfer to any other person, endorsed in accordance with section 111,

and accompanied by any assurance the bank may require under section 127.

Excepted transmissions

(2) Notwithstanding subsection (1), if the laws of the jurisdiction governing the transmission of a security of a deceased holder do not require a grant of probate or of letters of administration in respect of the transmission, a personal representative of the deceased holder is entitled, subject to Part VII and any applicable law relating to the collection of taxes, to become registered as the owner or to designate a person to be registered as the owner, if the personal representative delivers to the bank or its transfer agent the following documents, namely,

(a) the security certificate that was owned by the deceased holder; and

(b) reasonable proof of the governing laws, of the deceased holder's interest in the security and of the right of the personal representative or the designated person to become the registered shareholder.

Right of bank to treat as owner

(3) Subject to Part VII, delivery of the documents referred to in this section empowers a bank or its transfer agent to record in a securities register the transmission of a security from the deceased holder to a person referred to in paragraph 93(2)(a) or to such person as the person referred to in that paragraph may designate and, thereafter, to treat the person who becomes so registered as the owner of that security.

1991, c. 46, ss. 96, 575.

Over-issue

97. (1) The provisions of this Part that validate a security or compel its issue or reissue do not apply to the extent that a validation, issue or reissue would result in over-issue, but

(a) if a valid security similar in all respects to the security involved in the over-issue is reasonably available for purchase, the person entitled to the validation or issue may compel the issuer to purchase and deliver such a security to that person against surrender of the security that the person holds ;or

(b) if a valid security similar in all respects to the security involved in the over-issue is not reasonably available for purchase, the person entitled to the validation or issue may recover from the issuer an amount equal to the price the last purchaser for value paid for the invalid security.

Retroactive validation(2)

Where an issuer is subsequently authorized to issue securities of a number equal to or exceeding the number of securities previously authorized plus the amount of the securities over-issued, the securities so over-issued are valid from the date of their issue.

Payment not a purchase or redemption

(3) A purchase or payment by an issuer under subsection (1) is not a purchase or payment in respect of which section 71 or 77 applies.

Burden of proof

98. In any action on a security,

(a) unless specifically denied in the pleadings, each signature on the security or in a necessary endorsement is admitted;

(b) a signature on the security is presumed to be genuine and authorized but, if the effectiveness of the signature is put in issue, the burden of establishing that it is genuine and authorized is on the party claiming under the signature;

(c) if a signature is admitted or established, production of the instrument entitles a holder to recover on it unless the defendant establishes a defence or a defect going to the validity of the security; and

(d) if the defendant establishes that a defence or defect exists, the plaintiff has the burden of establishing that the defence or defect is ineffective against the plaintiff or any person under whom the plaintiff claims.

Securities fungible

99. Unless otherwise agreed, and subject to any applicable law, regulation or stock exchange rule, a person required to deliver securities may deliver any security of the specified issue in bearer form or registered in the name of the transferee or endorsed to the transferee or in blank.

Notice of defect

100. (1) Even against a purchaser for value and without notice of a defect going to the validity of a security, the terms of the security include those stated on the security and those incorporated therein by reference to another instrument, statute, rule, regulation or order to the extent that the terms so referred to do not conflict with the stated terms, but such a reference is not of it self notice to a purchaser for value of a defect going to the validity of the security, notwithstanding that the security expressly states that a person accepting it admits the notice.

Purchaser for value

(2) A security is valid in the hands of a purchaser for value without notice of any defect going to its validity.

Lack of genuineness

(3) Except as provided in section 101, the fact that a security is not genuine is a complete defence even against a purchaser for value and without notice.

Ineffective defences

(4) All defences of an issuer, including non-delivery and conditional delivery of a security but not including lack of genuineness, are ineffective against a purchaser for value without notice of the particular defence.

Staleness as defect notice

(5) After an event that creates a right to immediate performance of the principal obligation evidenced by a security, or that sets a date on or after which a security is to be presented or surrendered for redemption or exchange, a purchaser is deemed to have notice of any defect in its issue or of any defence of the issuer

(a) if the event requires the payment of money or the delivery of securities, or both, on presentation or surrender of the security, and the funds or securities are available on the date set for payment or exchange, and the purchaser takes the security more than one year after that date; or

(b) if the purchaser takes the security more than two years after the date set for presentation or surrender or the date on which the performance became due.

Unauthorized signature

101. An unauthorized signature on a security before or in the course of issue is ineffective, except that the signature is effective in favour of a purchaser for value and without notice of the lack of authority, if the signing has been done by

(a) an authenticating trustee, registrar, transfer agent or other person entrusted by the issuer with the signing of the security, or of similar securities, or their immediate preparation for signing; or

(b) an employee of the issuer or of a person referred to in paragraph (a) who, in the ordinary course of the employee's duties, handles the security.

Completion or alteration

102. (1) Where a security contains the signatures necessary to its issue or transfer but is incomplete in any other respect,

(a) any person may complete it by filling in the blanks in accordance with the person's authority; and

(b) notwithstanding that the blanks are incorrectly filled in, the security as completed is enforceable by a purchaser who took it for value and without notice of the incorrectness.

Enforceability

(2) A completed security that has been improperly altered, even if fraudulently altered, remains enforceable, but only according to its original terms.

Warranties of agents

103. (1) A person signing a security, as authenticating trustee, registrar, transfer agent or other person entrusted by the issuer with the signing of the security, warrants to a purchaser for value without notice that

(a) the security is genuine;

(b) the person's acts in connection with the issue of the security are within the person's authority; and

(c) the person has reasonable grounds for believing that the security is in the form and within the amount the issuer is authorized to issue.

Limitation of liability

(2) Unless otherwise agreed, a person referred to in subsection (1) does not assume any further liability for the validity of a security.

Title of purchaser

104. (1) Subject to Part VII, on delivery of a security the purchaser acquires the rights in the security that the purchaser's transferor had or had authority to convey, except that the position of a purchaser who has been a party to any fraud or illegality affecting the security or who as a prior holder had notice of an adverse claim is not improved by taking from a later bona fide purchaser.

Title of bona fide purchaser

(2) A bona fide purchaser, in addition to acquiring the rights of a purchaser, also acquires the security free from any adverse claim.

Limited interest purchaser

(3) A purchaser of a limited interest acquires rights only to the extent of the interest purchased.

Deemed notice of adverse claim

105. A purchaser of a security, or any securities broker for a seller or purchaser, is deemed to have notice of an adverse claim if

(a) the security, whether in bearer form or registered form, has been endorsed "for collection" or "for surrender" or for some other purpose not involving transfer; or

(b) the security is in bearer form and has on it a statement that it is the property of a person other than the transferor, except that the mere writing of a name on a security is not such a statement.

Notice of fiduciary duty

106. Notwithstanding that a purchaser, or any securities broker for a seller or purchaser, has notice that a security is held for a third person by, or is registered in the name of or endorsed by, a fiduciary, neither the purchaser nor the securities broker has any duty to inquire into the rightfulness of the transfer or any notice of an adverse claim, except that if the purchaser or securities broker for the seller or purchaser knows that the consideration is to be used for, or that the transaction is for, the personal benefit of the fiduciary or is otherwise in breach of the fiduciary's duty, the purchaser or securities broker is deemed to have notice of an adverse claim.

Staleness as notice

107. An event that creates a right to immediate performance of the principal obligation evidenced by a security or that sets a date on or after which the security is to be presented or surrendered for redemption or exchange is not of itself notice of an adverse claim, except in the case of a purchase

(a) made more than one year after any date set for such a presentation or surrender; or

(b) made more than six months after any date set for payment of money against such a presentation or surrender if funds are available for payment on that date.

Warranties to issuer 108. (1) A person who presents a security for registration of transfer or for payment or exchange warrants to the issuer that the person is entitled to the registration, payment or exchange, except that a purchaser for value without notice of an adverse claim who receives a new, reissued or re-registered security on registration of transfer warrants only that the purchaser has no knowledge of any unauthorized signature in a necessary endorsement.

Warranties to purchaser

(2) A person by transferring a security to a purchaser for value warrants only that

(a) the transfer is effective and rightful;

(b) the security is genuine and has not been materially altered; and

(c) the person knows of nothing that might impair the validity of the security.

Warranties of intermediary

(3) Where a security is delivered by an intermediary known by the purchaser to be entrusted with delivery of the security on behalf of another or with collection of a draft or other claim to be collected against that delivery, the intermediary by that delivery warrants only the intermediary's own good faith and authority even if the intermediary has purchased or made advances against the draft or other claim to be collected against the delivery.

Warranties of pledgee

(4) A pledgee or other holder for purposes of security who redelivers a security received, or after payment and on order of the debtor delivers that security to a third person, gives only the warranties of an intermediary under subsection(3).

Warranties of securities broker

(5) A securities broker gives to the broker's customer, to the issuer and to a purchaser, as the case may be, the warranties provided in subsections (1) to (4) and has the rights and privileges of a purchaser under those subsections, and those warranties of and in favour of the broker acting as an agent are in addition to warranties given by the broker's customer and warranties given in favour of the broker's customer.

Right to compel endorsement

109. Where a security in registered form is delivered to a purchaser without a necessary endorsement, the purchaser may become a bona fide purchaser only as of the time the endorsement is supplied, but against the transferor the transfer is complete on delivery and the purchaser has a specifically enforceable right to have any necessary endorsement supplied.

Definition of "appropriate person"

110. (1) In this section, section 111, subsections 118(1), 121(4) and 126(1) and section 130, "appropriate person" means

(a) the person specified by the security or by special endorsement to be entitled to the security;

(b) if a person described in paragraph (a) is described as a fiduciary but is no longer serving in the described capacity, either that person or that person's successor;

(c) if the security or endorsement mentioned in paragraph (a) specifies more than one person as fiduciaries and one or more of those persons are no longer serving in the described capacity, the remaining fiduciary or fiduciaries, whether or not a successor has been appointed;

(d) if a person described in paragraph (a) is a natural person and is without capacity to act by reason of death, incompetence, minority or other reason, the person's fiduciary;

(e) if the security or endorsement mentioned in paragraph (a) specifies more than one person with right of survivorship and by reason of death not all of the persons can sign, the survivor or survivors;

(f) a person having power to sign under any applicable law or a power of attorney; or

(g) to the extent that a person described in any of paragraphs (a) to (f) may act through an agent, the person's authorized agent.

Determining an "appropriate person"

(2) Whether the person signing is an appropriate person is determined as of the time of signing, and an endorsement by such a person does not become unauthorized for the purposes of this Part by reason of any subsequent change of circumstances

Endorsement

111. (1) An endorsement of a security in registered form is made when an appropriate person signs, either on the security or on a separate document, an assignment or transfer of the security or a power to assign or transfer it, or when the signature of an appropriate person is written without more on the back of the security.

Special or blank(2)

An endorsement may be special or in blank.

Blank endorsement

(3) An endorsement in blank includes an endorsement to bearer.

Special endorsement

(4) A special endorsement specifies the person to whom the security is to be transferred, or who has power to transfer it.

Right of holder (5) A holder may convert an endorsement in blank into a special endorsement.

Immunity of endorser

112. Unless otherwise agreed, the endorser by the endorsement assumes no obligation that the security will be honoured by the issuer.

Partial endorsement

113. An endorsement purporting to be an endorsement of only part of a security representing units intended by the issuer to be separately transferable is effective to the extent of the endorsement.

Effect of failure by fiduciary to comply

114. Failure of a fiduciary to comply with a controlling instrument or with the law of the jurisdiction governing the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of a transfer, does not render the fiduciary's endorsement unauthorized for the purposes of this Part.

Effect of endorsement without delivery

115. An endorsement of a security, whether special or in blank, does not constitute a transfer until delivery of the security on which it appears or, if the endorsement is on a separate document, until delivery of both the security and that document.

Endorsement in bearer form

116. An endorsement of a security in bearer form may give notice of an adverse claim under section 105 but does not otherwise affect any of the holder's rights.

Effect of unauthorized endorsement

117. (1) The owner of a security may assert the ineffectiveness of an endorsement against the issuer or any purchaser, other than a purchaser for value and without notice of an adverse claim, who has in good faith received anew, reissued or re-registered security on registration of transfer, unless the owner

(a) has ratified an unauthorized endorsement of the security; or

(b) is otherwise precluded from impugning the effectiveness of an unauthorized endorsement.

Liability of issuer

(2) An issuer who registers the transfer of a security on an unauthorized endorsement is liable for improper registration.

Warranties of guarantor of signature

118. (1) A person who guarantees the signature of an endorser of a security warrants that, at the time of signing,

- (a) the signature was genuine;
- (b) the signer was an appropriate person to endorse; and
- (c) the signer had legal capacity to sign.

Limitation of liability

(2) A person who guarantees the signature of an endorser does not otherwise warrant the rightfulness of the transfer to which the signature relates.

Warranties of guarantor of endorsement

(3) A person who guarantees the endorsement of a security warrants both the signature and the rightfulness, in all respects, of the transfer to which the signature relates, but an issuer may not require a guarantee of endorsement as a condition to registration of transfer.

Extent of warrantor's liability

(4) The warranties referred to in subsections (1) to (3) are made to any person who, relying on the guarantee, takes or deals with the security, and the guarantor is liable to such a person for any loss resulting from breach of warranty.

Constructive delivery of a security

119. Delivery to a purchaser occurs when

- (a) the purchaser or a person designated by the purchaser acquires possession of a security;
- (b) the purchaser's securities broker acquires possession of a security specially endorsed to or issued in the name of the purchaser;
- (c) the purchaser's securities broker sends the purchaser confirmation of the purchase and the broker in the broker's records identifies a specific security as belonging to the purchaser; or
- (d) in respect of an identified security to be delivered while still in the possession of a third person, that person acknowledges that it is held for the purchaser.

Constructive ownership of security

120. (1) A purchaser is the owner of a security held for the purchaser by a securities broker, but a purchaser is not a holder except in the cases referred to in paragraphs 119(b) and (c).

Ownership of part of fungible bulk

(2) If a security is part of a fungible bulk, a purchaser of the security is the owner of the proportionate interest in the fungible bulk.

Notice to securities broker of adverse claim

(3) Notice of an adverse claim received by a securities broker or by a purchaser after the broker takes delivery as a holder for value is not effective against the broker or the purchaser, except that, as between the broker and the purchaser, the purchaser may demand delivery of an equivalent security in respect of which no notice of an adverse claim has been received.

Delivery of security

121. (1) Unless otherwise agreed, if a sale of a security is made on a stock exchange or otherwise through securities brokers,

(a) the selling customer fulfils the customer's duty to deliver when the customer delivers the security to the selling securities broker or to a person designated by the selling securities broker or causes an acknowledgement to be made to the selling securities broker that it is held for the selling securities broker; and

(b) the selling securities broker, including a correspondent broker, acting for a selling customer fulfils the securities broker's duty to deliver by delivering the security or a like security to the buying securities broker or to a person designated by the buying securities broker or by effecting clearance of the sale in accordance with the rules of the exchange on which the transaction took place.

Duty to deliver

(2) Except as otherwise provided in this section and unless otherwise agreed, a transferor's duty to deliver a security under a contract of purchase is not fulfilled until the transferor delivers the security in negotiable form to the purchaser or to a person designated by the purchaser, or causes an acknowledgement to be made to the purchaser that the security is held for the purchaser.

Delivery to securities broker

(3) A sale to a securities broker purchasing for the securities broker's own account is subject to subsection (2) and not subsection (1), unless the sale is made on a stock exchange.

Transfer through clearing agency

(4) If a security shown in the records of a clearing agency is evidenced by

(a) a security certificate in the custody of the clearing agency or a custodian, or a nominee of either, subject to the instructions of the clearing agency, and is in bearer form or endorsed in

blank by an appropriate person or registered in the name of the clearing agency or a custodian, or of a nominee of either, or

(b) an uncertificated security registered or recorded in records maintained by or on behalf of the bank in the name of the clearing agency or a custodian, or of a nominee of either, subject to the instructions of the clearing agency, then, in addition to other methods, a transfer or pledge of the security or any interest therein may be effected by the making of an appropriate entry in the records of the clearing agency.

Interest in fungible bulk

(5) Under subsections (4) to (10), entries may be in respect of like securities or interests therein as part of a fungible bulk and may refer merely to a quantity of a particular security without reference to the name of the registered owner, certificate or bond number or the like and, in appropriate cases, may be on a net basis taking into account other transfers or pledges of the same security.

Constructive endorsement and delivery

(6) A transfer or pledge under subsections (4) to (10) has the effect of a delivery of a security in bearer form or duly endorsed in blank representing the amount of the obligation or the number of shares or rights transferred or pledged.

Idem

(7) If a pledge or the creation of a security interest is intended, the making of entries has the effect of a taking of delivery by the pledgee or a secured party and the pledgee or secured party shall be deemed to have taken possession for all purposes.

Holder

(8) A person depositing a security certificate or an uncertificated security with a clearing agency, or a transferee or pledgee of a security under subsections (4) to (10), is a holder of the security and shall be deemed to have possession of the security so deposited, transferred or pledged, as the case maybe, for all purposes.

Not registration

(9) A transfer or pledge under subsections (4) to (10) does not constitute a registration of transfer under sections 126 to 133.

Error in records

(10) That entries made in the records of the clearing agency as provided in subsection (4) are not appropriate does not affect the validity or effect of the entries nor the liabilities or obligations of the clearing agency to any person adversely affected thereby.

Right to reclaim possession

122. (1) A person against whom the transfer of a security is wrongful for any reason, including the person's incapacity, may, against anyone except a bonafide purchaser,

(a) reclaim possession of the security or obtain possession of any new security evidencing all or part of the same rights; or

(b) claim damages.

Recovery where unauthorized endorsement

(2) If the transfer of a security is wrongful by reason of an unauthorized endorsement, the owner may reclaim possession of the security or a new security even from a bona fide purchaser if the ineffectiveness of the purported endorsement is asserted against the purchaser under section 117.

Remedies

(3) The right to reclaim possession of a security may be specially enforced, its transfer may be restrained and the security may be impounded pending litigation.

Right to requisites for registration

123. (1) Unless otherwise agreed, a transferor shall, on demand, supply a purchaser with proof of the transferor's authority to transfer a security or with any other requisite that is necessary to obtain registration of the transfer of a security, but if the transfer is not for value, it is not necessary for a transferor to prove authority to transfer unless the purchaser pays the reasonable and necessary costs of the proof and transfer.

Rescission of transfer

(2) If a transferor fails to comply with a demand under subsection (1) within a reasonable time, the purchaser may reject or rescind the transfer.

Seizure of security

124. No seizure of a security or other interest evidenced thereby is effective until the person making the seizure obtains possession of the security.

No conversion if good faith delivery

125. An agent or bailee who in good faith, including observance of reasonable commercial standards if the agent or bailee is in the business of buying, selling or otherwise dealing with securities of a bank, has received securities and sold, pledged or delivered them according to the instructions of the agent's or bailee's principal is not liable for conversion or for participation in breach of fiduciary duty even though the principal has no right to dispose of the securities.

Duty to register transfer

126. (1) Subject to Part VII, where a security in registered form is presented for transfer, the issuer shall register the transfer if

- (a) the security is endorsed by an appropriate person;
- (b) reasonable assurance is given that the endorsement is genuine and effective;
- (c) the issuer has no duty to inquire into adverse claims or has discharged any such duty;
- (d) all applicable laws relating to the collection of taxes have been complied with;
- (e) the transfer is rightful or is to a bona fide purchaser; and (f) the fee, if any, referred to in subsection 85(2) has been paid.

Liability for delay

(2) Where an issuer has a duty to register a transfer of a security, the issuer is liable to the person presenting it for registration for any loss resulting from any unreasonable delay in registration or from the failure or refusal to register the transfer.

Assurance of endorsements

127. (1) An issuer may require an assurance that each necessary endorsement on a security is genuine and effective by requiring a guarantee of the signature of the person endorsing the security and by requiring

- (a) if the endorsement is by an agent, reasonable assurance of authority to sign;
- (b) if the endorsement is by a fiduciary, evidence of appointment or incumbency;
- (c) if there is more than one fiduciary, reasonable assurance that all who are required to sign have done so; and
- (d) in any other case, assurance that corresponds as closely as practicable to the foregoing.

Definition of "guarantee of the signature"

(2) For the purposes of subsection (1), "guarantee of the signature" means a guarantee signed by or on behalf of a person whom the issuer believes, on reasonable grounds, to be a responsible person.

Standards

(3) An issuer may adopt reasonable standards to determine responsible persons for the purposes of subsection (2).

Definition of "evidence of appointment or incumbency"

(4) For the purposes of paragraph (1)(b), "evidence of appointment or incumbency" means

(a) in the case of a fiduciary appointed by a court and referred to in subsection 96(1), a copy of the certified court order referred to in subsection 96(1) and dated not earlier than sixty days before the day a security is presented for transfer; or

(b) in the case of any other fiduciary, a copy of a document showing the appointment or other evidence believed by the issuer to be appropriate.

Standards

(5) An issuer may adopt reasonable standards with respect to evidence referred to in paragraph (4)(b).

No notice to issuer

(6) An issuer is deemed not to have notice of the contents of any document referred to in subsection (4) that is obtained by the issuer except to the extent that the contents relate directly to appointment or incumbency.

Notice from additional documentation

128. If an issuer, in relation to a transfer, demands assurance other than an assurance specified in subsection 127(1) and obtains a copy of a will, trust or partnership agreement or a by-law or similar document, the issuer is deemed to have notice of all matters contained therein affecting the transfer.

Limited duty of inquiry

129. (1) An issuer to whom a security is presented for registration has a duty to inquire into adverse claims if

(a) the issuer receives written notice of an adverse claim at a time and in a manner that provides the issuer with a reasonable opportunity to act on it before the issue of a new, reissued or re-registered security and the notice discloses the name and address of the claimant, the registered owner and the issue of which the security is a part; or

(b) the issuer is deemed to have notice of an adverse claim from a document that it obtained under section 128.

Discharge of duty

(2) An issuer may discharge a duty of inquiry by any reasonable means, including notifying an adverse claimant by registered mail sent to the address provided by the adverse claimant or, if no such address has been provided, to the adverse claimant's residence or regular place of business, that a security has been presented for registration of transfer by a named person and that the transfer will be registered unless, within thirty days after the date of mailing of the notice, either

(a) the issuer is served with a restraining order or other order of a court, or

(b) the issuer is provided with an indemnity bond sufficient in the issuer's judgment to protect the issuer and any registrar, transfer agent or other agent of the issuer from any loss that may be incurred by any of them as a result of complying with the adverse claim. Inquiry into adverse claims

130. Unless an issuer is deemed to have notice of an adverse claim from a document that it obtained under section 128 or has or has received notice of an adverse claim under subsection 129(1), if a security presented for registration is endorsed by the appropriate person, the issuer has no duty to inquire into adverse claims and, in particular,

(a) an issuer registering a security in the name of a person who is a fiduciary or who is described as a fiduciary is not bound to inquire into the existence, extent or correct description of the fiduciary relationship and thereafter the issuer may assume without inquiry that the newly registered owner continues to be the fiduciary until the issuer receives written notice that the fiduciary is no longer acting as such with respect to the particular security;

(b) an issuer registering a transfer on an endorsement by a fiduciary has no duty to inquire into whether the transfer is made in compliance with the document or with the law of the jurisdiction governing the fiduciary relationship; and

(c) an issuer is deemed not to have notice of the contents of any court record or any registered document even if the record or document is in the issuer's possession and even if the transfer is made on the endorsement of a fiduciary to the fiduciary specifically or to the fiduciary's nominee.

Duration of notice of adverse claim

131. A written notice of adverse claim received by an issuer is effective for twelve months after the day it was received unless the notice is renewed in writing.

Limitation on issuer's liability

132. (1) Except as otherwise provided in any applicable law relating to the collection of taxes, an issuer is not liable to the owner or any other person who incurs a loss as a result of the registration of a transfer of a security if

- (a) the necessary endorsements were on or with the security; and
- (b) the issuer had no duty to inquire into adverse claims or had discharged any such duty.

Duty of issuer on default

(2) If an issuer has registered a transfer of a security to a person not entitled to it, the issuer shall on demand deliver a like security to the owner unless

- (a) the issuer is not liable by virtue of subsection (1);
- (b) the owner is precluded by subsection 133(1) from asserting any claim; or
- (c) the delivery would result in over-issue in respect of which section 97 applies.

Lost or stolen security

133. (1) Where a security has been lost, apparently destroyed or wrongfully taken, and the owner fails to notify the issuer of that fact by giving the issuer written notice of the owner's adverse claim within a reasonable time after the owner knows of the loss, destruction or taking, then, if the issuer has registered a transfer of the security before receiving the notice, the owner is precluded from asserting against the issuer any claim to a new security.

Duty to issue new security

(2) Where the owner of a security claims that the security has been lost, destroyed or wrongfully taken, the issuer shall issue a new security in place of the original security if the owner

- (a) so requests before the issuer has notice that the security has been acquired by a bona fide purchaser;
- (b) provides the issuer with a sufficient indemnity bond; and
- (c) satisfies any other reasonable requirements imposed by the issuer.

Duty to register transfer

(3) If, after the issue of a new security under subsection (2), a bona fide purchaser of the original security presents the original security for registration of transfer, the issuer shall register the transfer unless registration would result in over-issue in respect of which section 97 applies.

Right of issuer to recover

(4) In addition to the rights that an issuer has by reason of an indemnity bond, the issuer may recover the new security issued under subsection (2) from the person to whom it was issued or any person taking under that person other than a bona fide purchaser.

Authenticating agent's duty

134. An authenticating trustee, registrar, transfer agent or other agent of an issuer has, in respect of the issue, registration of transfer and cancellation of a security of the issuer,

(a) a duty to the issuer to exercise good faith and reasonable diligence; and

(b) the same obligations to the holder or owner of a security and the same rights, privileges and immunities as the issuer.

Notice to agent

135. Notice to an authenticating trustee, registrar, transfer agent or other agent of an issuer is notice to the issuer in respect of the functions performed by the agent.

PART VI CORPORATE GOVERNANCE

Shareholders

Place of meetings

136. Meetings of shareholders of a bank shall be held at the place within Canada provided for in the by-laws of the bank or, in the absence of any such provision, at the place within Canada that the directors determine.

Calling meetings

137. (1) The directors of a bank

(a) shall, after the meeting called pursuant to subsection 46 (1), call the first annual meeting of shareholders of the bank, which meeting must be held not later than six months after the end of the first financial year of the bank, and subsequently call an annual meeting of shareholders, which meeting must be held not later than six months after the end of each financial year; and

(b) may at any time call a special meeting of shareholders.

Fixing record date

(2) For the purpose of determining shareholders

(a) entitled to receive payment of a dividend,

(b) entitled to participate in a liquidation distribution, or

(c) for any other purpose except the right to receive notice of, or to vote at a meeting, the directors may fix in advance a date as the record date for the determination of shareholders, but the record date so fixed shall not precede by more than fifty days the particular action to be taken.

Record date for meetings

(3) For the purpose of determining shareholders entitled to receive notice of a meeting of shareholders, the directors may fix in advance a date as the record date for the determination of shareholders, but the record date so fixed shall not precede by more than fifty days or by less than twenty-one days the date on which the meeting is to be held.

No record date fixed

(4) If no record date is fixed pursuant to subsection (2) or (3),

(a) the record date for the determination of shareholders for any purpose, other than to establish a shareholder's right to receive notice of a meeting or to vote, is the day on which the directors pass the resolution relating to the particular purpose; and

(b) the record date for the determination of shareholders entitled to receive notice of, or to vote at, a meeting of shareholders is

(i) the day immediately preceding the day on which the notice is given, or(ii) if no notice is given, the day on which the meeting is held.

When record date fixed

(5) When a record date is fixed for a bank, unless notice of the record date is waived in writing by every holder of a share of the class or series affected whose name is set out in the central

securities register at the close of business on the date the directors fix the record date, notice thereof shall, not less than seven days before the record date, be given

(a) by advertisement in a newspaper in general circulation in the place where the head office of the bank is situated and in each place in Canada where the bank has a transfer agent or where a transfer of the bank's shares may be recorded; and

(b) by written notice to each stock exchange, if any, in Canada on which the shares of the bank are listed for trading.

Notice of meeting

138. (1) Notice of the time and place of a meeting of shareholders of a bank shall be sent not less than twenty-one days or more than fifty days before the meeting

(a) to each shareholder entitled to vote at the meeting;

(b) to each director; and

(c) to the auditor or auditors of the bank.

Publication in newspaper

(2) In addition to the notice required under subsection (1), where any class of shares of a bank is publicly traded on a recognized stock exchange in Canada, notice of the time and place of a meeting of shareholders shall be published once a week for at least four consecutive weeks before the date of the meeting in a newspaper in general circulation in the place where the head office of the bank is situated and in each place in Canada where the bank has a transfer agent or where a transfer of the bank's shares may be recorded.

When notice not required

139. (1) A notice of a meeting of shareholders is not required to be sent to shareholders who were not registered on the records of the bank or its transfer agent on the record date fixed or determined under subsection 137(3) or (4).

Effect of default

(2) Failure to receive a notice of a meeting of shareholders does not deprive a shareholder of the right to vote at the meeting.

Notice of adjourned meeting

140. (1) If a meeting of shareholders is adjourned for less than thirty days, it is not necessary, unless the by-laws otherwise provide, to give notice of the adjourned meeting, other than by announcement at the earliest meeting that is adjourned.

Notice where adjournment is longer

(2) If a meeting of shareholders is adjourned by one or more adjournments for a total of thirty days or more, notice of the continuation of the meeting shall be given as for an original meeting but, unless the meeting is adjourned by one or more adjournments for a total of more than ninety days, subsection 156.04(1) does not apply.

1991, c. 46, s. 140; 1997, c. 15, s. 8.

Special business

141. (1) All matters dealt with at a special meeting of shareholders and all matters dealt with at an annual meeting of shareholders, except consideration of the financial statements, report of the auditor or auditors, election of directors, remuneration of directors and reappointment of the incumbent auditor or auditors, are deemed to be special business.

Notice of special business

(2) Notice of a meeting of shareholders at which special business is to be transacted must

(a) state the nature of the special business in sufficient detail to permit a shareholder to form a reasoned judgment thereon; and

(b) contain the text of any special resolution to be submitted to the meeting.

Waiver of notice

142. (1) A shareholder and any other person entitled to attend a meeting of shareholders may in any manner waive notice of a meeting of shareholders.

Idem

(2) Attendance at a meeting of shareholders is a waiver of notice of the meeting, except when a person attends the meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called.

Shareholder's proposal

143. (1) A shareholder entitled to vote at an annual meeting of shareholders of a bank may

(a) submit to the bank notice of any matter that the shareholder proposes to raise at the meeting; and

(b) discuss at the meeting any matter in respect of which the shareholder would have been entitled to submit a proposal.

Management proxy

(2) A bank that solicits proxies shall, in the management proxy circular required by subsection 156.05(1), set out any proposal of a shareholder submitted for consideration at a meeting of shareholders or attach the proposal to the management proxy circular.

Shareholder's statement

(3) If so requested by a shareholder who submits a proposal to a bank, the bank shall include in the management proxy circular, or attach thereto, a statement by the shareholder of not more than two hundred words in support of the proposal and the name and address of the shareholder.

Nominations for directors

(4) A proposal may include nominations for the election of directors if the proposal is signed by one or more holders of shares representing in the aggregate not less than 5 per cent of the shares or 5 per cent of the shares of a class of shares of the bank entitled to vote at the meeting to which the proposal is to be presented.

Conditions precedent for proposals

(5) A bank is not required to comply with subsections (2) and (3) if

(a) the proposal is not submitted to the bank at least ninety days before the anniversary date of the previous annual meeting of shareholders;

(b) it clearly appears that the proposal is submitted by the shareholder primarily for the purpose of enforcing a personal claim or redressing a personal grievance against the bank or its directors, officers or security holders, or primarily for the purpose of promoting general economic, political, racial, religious, social or similar causes;

(c) the bank, at the shareholder's request, included in a management proxy circular a proposal relating to a meeting of shareholders held within two years preceding the receipt of the request, and the shareholder failed to present the proposal, in person or by proxy, at the meeting;

(d) substantially the same proposal was submitted to shareholders in a management proxy circular or a dissident's proxy circular relating to a meeting of shareholders held within two years preceding the receipt of the shareholder's request and the proposal was defeated; or

(e) the rights conferred by subsections (1) to (4) are being abused to secure publicity.

Immunity for proposal and statement

(6) No bank or person acting on behalf of a bank incurs any liability by reason only of circulating a proposal or statement in compliance with subsections (2) and (3).

1991, c. 46, s. 143; 1997, c. 15, s. 9.

Refusal of proposal

144. (1) If a bank refuses to include a proposal in a management proxy circular, the bank shall, within ten days after receiving the proposal, notify the shareholder submitting the proposal of its intention to omit the proposal from the management proxy circular and send to the shareholder a statement of the reasons for the refusal.

Appeal to court

(2) On the application of a shareholder claiming to be aggrieved by a bank's refusal under subsection (1), a court may restrain the holding of the meeting at which the proposal is sought to be presented and make any further order it thinks fit.

Idem

(3) A bank or any person claiming to be aggrieved by a proposal may apply to a court for an order permitting the bank to omit the proposal from the management proxy circular, and the court, if it is satisfied that subsection 143(5) applies, may make such order as it thinks fit.

Notice to Superintendent

(4) An applicant under subsection (2) or (3) shall give the Superintendent written notice of the application and the Superintendent may appear and be heard at the hearing of the application in person or by counsel.

Shareholder list

145. (1) A bank shall prepare a list of its shareholders entitled to receive notice of a meeting under paragraph 138(1)(a), arranged in alphabetical order and showing the number of shares held by each shareholder, which list must be prepared

- (a) if a record date is fixed under subsection 137(3), not later than ten days after that date; or
- (b) if no record date is fixed,

(i) at the close of business on the day immediately preceding the day on which the notice is given, or

(ii) where no notice is given, on the day on which the meeting is held.

Effect of list

(2) Where a bank fixes a record date under subsection 137(3), a person named in the list prepared under paragraph (1)(a) is, subject to this Act, entitled to vote the shares shown opposite that person's name at the meeting to which the list relates, except to the extent that

(a) the person has transferred the ownership of any of those shares after the record date, and

(b) the transferee of those shares

(i) produces properly endorsed share certificates, or

(ii) otherwise establishes that the transferee owns the shares, and demands, not later than ten days before the meeting or such shorter period before the meeting as the by-laws of the bank provide, that the transferee's name be included in the list before the meeting, in which case the transferee may vote those transferred shares at the meeting.

Idem

(3) Where a bank does not fix a record date under subsection 137(3), a person named in the list prepared under paragraph (1)(b) is, subject to this Act, entitled to vote the shares shown opposite that person's name at the meeting to which the list relates, except to the extent that

(a) the person has transferred the ownership of any of those shares after the date on which a list was prepared under subparagraph (1)(b)(i), and

(b) the transferee of those shares

(i) produces properly endorsed share certificates, or

(ii) otherwise establishes that the transferee owns the shares, and demands, not later than ten days before the meeting or such shorter period before the meeting as the by-laws of the bank provide, that the transferee's name be included in the list before the meeting, in which case the transferee may vote those transferred shares at the meeting.

Examination of list

(4) A shareholder of a bank may examine the list of shareholders referred to in subsection (1)

(a) during usual business hours at the head office of the bank or at the place where its central securities register is maintained; and

(b) at the meeting of shareholders for which the list was prepared.

Quorum

146. (1) Unless the by-laws otherwise provide, a quorum of shareholders is present at a meeting of shareholders if the holders of a majority of the shares who are entitled to vote at the meeting are present in person or represented by proxyholders.

Idem

(2) If a quorum is present at the opening of a meeting of shareholders, the shareholders present may, unless the by-laws otherwise provide, proceed with the business of the meeting, notwithstanding that a quorum is not present throughout the meeting.

Idem

(3) If a quorum is not present at the opening of a meeting of shareholders, the shareholders present may adjourn the meeting to a fixed time and place but may not transact any other business.

One shareholder meeting

147. If a bank has only one shareholder, or only one holder of any class or series of shares, the shareholder present in person or represented by a proxyholder constitutes a meeting of shareholders or a meeting of shareholders of that class or series.

One share - one vote

148. Where a share of a bank entitles the holder thereof to vote at a meeting of shareholders, that share entitles the shareholder to one vote at the meeting.

Representative shareholder

149. (1) If an entity is a shareholder of a bank, the bank shall recognize any natural person authorized by a resolution of the directors or governing body or similar authority of the entity to represent it at meetings of shareholders of the bank.

Idem

(2) A natural person authorized under subsection (1) to represent an entity may exercise on behalf of the entity all the powers the entity could exercise if it were a natural person as well as a shareholder.

Joint shareholders

150. Unless the by-laws otherwise provide, if two or more persons hold shares jointly, one of those holders present at a meeting of shareholders may in the absence of the others vote the shares, but if two or more of those persons who are present in person or represented by proxyholder vote, they shall vote as one on the shares jointly held by them.

Voting by hands or ballot

151. (1) Unless the by-laws otherwise provide, voting at a meeting of shareholders shall take place by show of hands except when a ballot is demanded by either a shareholder or proxyholder entitled to vote at the meeting.

Ballot

(2) A shareholder or proxyholder may demand a ballot either before or after any vote by show of hands.

Resolution in lieu of meeting

152. (1) Except where a written statement is submitted by a director under section 174 or by an auditor under subsection 321(1),

(a) a resolution in writing signed by all the shareholders entitled to vote on that resolution at a meeting of shareholders is as valid as if it had been passed at a meeting of the shareholders; and

(b) a resolution in writing dealing with all matters required by this Act to be dealt with at a meeting of shareholders, and signed by all the shareholders entitled to vote at that meeting, satisfies all the requirements of this Act relating to meetings of shareholders.

Filing resolution

(2) A copy of every resolution referred to in subsection (1) shall be kept with the minutes of the meetings of shareholders.

Requisitioned meeting

153. (1) Shareholders who together hold not less than 5 per cent of the issued and outstanding shares of a bank that carry the right to vote at a meetings ought to be held may requisition the directors to call a meeting of shareholders for the purposes stated in the requisition.

Form

(2) A requisition referred to in subsection (1)

(a) must state the business to be transacted at the meeting and must be sent to each director and to the head office of the bank; and

(b) may consist of several documents of like form, each signed by one or more shareholders.

Directors calling meeting

(3) On receipt of a requisition referred to in subsection (1), the directors shall call a meeting of shareholders to transact the business stated in the requisition, unless

(a) a record date has been fixed under subsection 137(3) and notice thereof has been given under subsection 137(5);

(b) the directors have called a meeting of shareholders and have given notice thereof under section 138; or

(c) the business of the meeting as stated in the requisition includes matters described in paragraphs 143(5)(b) to (e).

Shareholders' power

(4) If the directors do not call a meeting within twenty-one days after receiving the requisition referred to in subsection (1), any shareholder who signed the requisition may call the meeting.

Procedure

(5) A meeting called under this section shall be called as nearly as possible in the manner in which meetings are to be called pursuant to the by-laws and this Act.

Reimbursement

(6) Unless the shareholders otherwise resolve at a meeting called under subsection (4), the bank shall reimburse the shareholders for any expenses reasonably incurred by them in requisitioning, calling and holding the meeting.

Meeting called by court

154. (1) Where it is impracticable

(a) to call a meeting of shareholders of a bank in the manner in which meetings of those shareholders are to be called, or

(b) to conduct the meeting in the manner required by the by-laws and this Act, or where a court thinks fit to do so for any other reason, the court, on the application of a director or a shareholder entitled to vote at the meeting, may order a meeting to be called, held and conducted in such manner as the court directs.

Varying quorum

(2) Without restricting the generality of subsection (1), a court may order that the quorum required by the by-laws or this Act be varied or dispensed with at a meeting called, held and conducted pursuant to this section.

Valid meeting

(3) A meeting called, held and conducted pursuant to this section is for all purposes a meeting of shareholders of the bank duly called, held and conducted.

Court review of election

155. (1) A bank or a shareholder or director of a bank may apply to a court to resolve any dispute in respect of the election or appointment of a director or an auditor of the bank.

Powers of court

(2) On an application under subsection (1), a court may make any order it thinks fit including, without limiting the generality of the foregoing,

(a) an order restraining a director or auditor whose election or appointment is challenged from acting pending determination of the dispute;

(b) an order declaring the result of the disputed election or appointment;

(c) an order requiring a new election or appointment, and including in the order directions for the management of the business and affairs of the bank until a new election is held or the new appointment is made; and

(d) an order determining the voting rights of shareholders and of persons claiming to own shares.

Notice to Superintendent

156. (1) A person who makes an application under subsection 154(1) or 155(1) shall give notice of the application to the Superintendent before the hearing and shall deliver a copy of the order of the court, if any, to the Superintendent.

Superintendent representation

(2) The Superintendent may appear and be heard in person or by counsel at the hearing of an application referred to in subsection (1).

Proxies

Definitions

156.01 The definitions in this section apply in this section and sections 156.02 to 156.08.

"registrant" « courtier agréé »

"registrant" means a securities broker or dealer required to be registered to trade or deal in securities under the laws of any jurisdiction.

"solicit" or "solicitation" « sollicitation »

"solicit" or "solicitation" includes

(a) a request for a proxy, whether or not accompanied by or included in a form of proxy,

(b) a request to execute or not to execute a form of proxy or to revoke a proxy,

(c) the sending of a form of proxy or other communication to a shareholder under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy, and

(d) the sending of a form of proxy to a shareholder under section 156.04, but does not include

(e) the sending of a form of proxy in response to an unsolicited request made by or on behalf of a shareholder,

(f) the performance of administrative acts or professional services on behalf of a person soliciting a proxy,

(g) the sending by a registrant of the documents referred to in section 156.07, or

(h) a solicitation by a person in respect of shares of which that person is the beneficial owner.

"solicitation by or on behalf of the management of a bank" « sollicitation effectuée par la direction d'une banque ou pour son compte »

"solicitation by or on behalf of the management of a bank" means a solicitation by any person pursuant to a resolution or instruction of, or with the acquiescence of, the directors or a committee of the directors of the bank.

1997, c. 15, s. 10.

Appointing proxyholder

156.02 (1) A shareholder who is entitled to vote at a meeting of shareholders may, by executing a form of proxy, appoint a proxyholder or one or more alternate proxyholders, who are not required to be shareholders, to attend and act at the meeting in the manner and to the extent authorized by the proxy and with the authority conferred by the proxy.

Execution of proxy

(2) A form of proxy shall be executed by a shareholder or by a shareholder's attorney authorized in writing to do so.

Limit on authority

(3) No appointment of a proxyholder provides authority for the proxyholder to act in respect of the appointment of an auditor or the election of a director unless a nominee proposed in good faith for the appointment or election is named in the form of proxy, a management proxy circular, a dissident's proxy circular or a proposal under subsection 143(1).

Required information

(4) A form of proxy must indicate, in bold-face type, that the shareholder by whom or on whose behalf it is executed may appoint a proxyholder, other than a person designated in the form of proxy, to attend and act on the shareholder's behalf at a meeting to which the proxy relates, and must contain instructions as to the manner in which the shareholder may do so.

Validity of proxy

(5) A proxy is valid only at the meeting in respect of which it is given or at a continuation of the meeting after an adjournment.

Revocation of proxy

(6) A shareholder may revoke a proxy

(a) by depositing an instrument in writing executed by the shareholder or by the shareholder's attorney authorized in writing to do so

(i) at the head office of the bank at any time up to and including the last business day before the day of a meeting, or a continuation of the meeting after an adjournment, at which the proxy is to be used, or

(ii) with the chairperson of the meeting on the day of the meeting or a continuation of the meeting after an adjournment; or

(b) in any other manner permitted by law.

1997, c. 15, s. 10.

Deposit of proxies

156.03 The directors may specify, in a notice calling a meeting of shareholders or a continuation of a meeting of shareholders after an adjournment, a time before which executed forms of proxy to be used at the meeting or the continued meeting must be deposited with the bank or its transfer agent. The time specified may not be more than forty-eight hours, excluding Saturdays and holidays, before the meeting or the continued meeting.

1997, c. 15, s. 10.

Mandatory solicitation

156.04 (1) Subject to subsection 140(2) and subsection (2), the management of a bank shall, concurrently with giving notice of a meeting of shareholders, send a form of proxy in prescribed form to each shareholder entitled to receive notice of the meeting.

Exception

(2) If a bank has fewer than fifteen shareholders, the management of the bank is not required to send a form of proxy to the shareholders under subsection (1). For the purpose of this subsection, two or more joint shareholders are counted as one shareholder.

1997, c. 15, s. 10.

Soliciting proxies 156.05

(1) A person shall not solicit proxies unless

(a) in the case of solicitation by or on behalf of the management of a bank, a management proxy circular in prescribed form, either as an appendix to, or as a separate document accompanying, the notice of the meeting, is sent to the auditor or auditors of the bank and to each shareholder whose proxy is solicited; and

(b) in the case of any other solicitation, a dissident's proxy circular in prescribed form stating the purposes of the solicitation is sent to the auditor or auditors of the bank, to each shareholder whose proxy is solicited and to the bank.

Copy to Superintendent

(2) A person who sends a management proxy circular or dissident's proxy circular shall at the same time file with the Superintendent

(a) in the case of a management proxy circular, a copy of it together with a copy of the notice of meeting, form of proxy and any other documents for use in connection with the meeting; and

(b) in the case of a dissident's proxy circular, a copy of it together with a copy of the form of proxy and any other documents for use in connection with the meeting.

Exemption by Superintendent

(3) On the application of an interested person, the Superintendent may, on any terms that the Superintendent thinks fit, exempt the person from any of the requirements of subsection (1) and section 156.04, and the exemption may be given retroactive effect.

Reporting exemptions

(4) The Superintendent shall set out in a periodical available to the public the particulars of each exemption granted under subsection (3) together with the reasons for the exemption.

1997, c. 15, s. 10.

Attendance at meeting

156.06 (1) A person who solicits a proxy and is appointed proxyholder shall attend in person or cause an alternate proxyholder to attend the meeting in respect of which the proxy is valid, and the proxyholder or alternate proxyholder shall comply with the directions of the shareholder who executed the form of proxy.

Rights of proxyholder

(2) A proxyholder or an alternate proxyholder has the same rights as the appointing shareholder to speak at a meeting of shareholders in respect of any matter, to vote by way of ballot at the meeting and, except where a proxyholder or an alternate proxyholder has conflicting instructions from more than one shareholder, to vote at the meeting in respect of any matter by way of a show of hands.

Vote by show of hands

(3) Where the chairperson of a meeting of shareholders declares to the meeting that, if a ballot were conducted, the total number of votes attached to shares represented at the meeting by proxy required to be voted against what, to the knowledge of the chairperson, would be the decision of the meeting in relation to any matter or group of matters is less than five per cent of all the votes that might be cast at the meeting on the ballot, unless a shareholder or proxy holder demands a ballot,

(a) the chairperson may conduct the vote in respect of that matter or group of matters by way of a show of hands; and

(b) a proxyholder or alternate proxyholder may vote in respect of that matter or group of matters by way of a show of hands.

1997, c. 15, s. 10.

Duty of registrant

156.07 (1) Shares of a bank that are registered in the name of a registrant or registrant's nominee and that are not beneficially owned by the registrant shall not be voted unless the registrant sends to the beneficial owner

(a) a copy of the notice of the meeting, annual statement, management proxy circular, dissident's proxy circular and any other documents, other than the form of proxy, that were sent to shareholders by or on behalf of any person for use in connection with the meeting; and

(b) a written request for voting instructions, except where the registrant has already received written voting instructions from the beneficial owner.

When documents to be sent

(2) The documents to be sent to the beneficial owner under subsection (1) shall be sent by the registrant without delay after the registrant receives the documents referred to in paragraph (1)(a).

Where registrant not to vote shares

(3) A registrant shall not vote or appoint a proxyholder to vote shares of a bank registered in the registrant's name or in the name of the registrant's nominee that the registrant does not beneficially own unless the registrant receives voting instructions from the beneficial owner.

Copies

(4) A person by or on behalf of whom a solicitation is made shall, at the request of a registrant, without delay provide the registrant, at the person's expense, with the necessary number of copies of the documents referred to in paragraph (1)(a).

Instructions to registrant

(5) A registrant shall vote or appoint a proxyholder to vote any shares referred to in subsection (1) in accordance with any written voting instructions received from the beneficial owner.

Beneficial owner as proxyholder

(6) If requested by a beneficial owner, a registrant shall appoint the beneficial owner or a nominee of the beneficial owner as proxyholder.

Default of registrant: effect

(7) The failure of a registrant to comply with any of subsections (1) to (6) does not render void any meeting of shareholders or any action taken at the meeting.

Right of registrant limited

(8) Nothing in this Part gives a registrant the right to vote shares that the registrant is otherwise prohibited from voting.

1997, c. 15, s. 10.

Restraining order

156.08 (1) If a form of proxy, management proxy circular or dissident's proxy circular contains an untrue statement of a material fact or omits to state a material fact that is required to be contained in it or that is necessary to make a statement contained in it not misleading in light of the circumstances in which the statement is made, an interested person or the Superintendent may apply to a court and the court may make any order it thinks fit, including

- (a) an order restraining the solicitation or the holding of the meeting, or restraining any person from implementing or acting on a resolution passed at the meeting, to which the form of proxy, management proxy circular or dissident's proxy circular relates;
 - (b) an order requiring correction of any form of proxy or proxy circular and a further solicitation;
- and

(c) an order adjourning the meeting.

Notice of application

(2) Where a person other than the Superintendent is an applicant under subsection (1), the applicant shall give notice of the application to the Superintendent and the Superintendent is entitled to appear and to be heard in person or by counsel.

1997, c. 15, s. 10.

Directors and Officers Duties

Duty to manage

157. (1) Subject to this Act, the directors of a bank shall manage or supervise the management of the business and affairs of the bank.

Specific duties

(2) Without limiting the generality of subsection (1), the directors of a bank shall

(a) establish an audit committee to perform the duties referred to in subsections 194(3) and (4);

(b) establish a conduct review committee to perform the duties referred to in subsection 195(3);

(c) establish procedures to resolve conflicts of interest, including techniques for the identification of potential conflict situations and for restricting the use of confidential information;

(d) designate a committee of the board of directors to monitor the procedures referred to in paragraph (c);

(e) establish procedures to provide disclosure of information to customers of the bank that is required to be disclosed by this Act and for dealing with complaints as required by subsection 455(1);

(f) designate a committee of the board of directors to monitor the procedures referred to in paragraph (e) and satisfy itself that they are being adhered to by the bank; and (g) establish investment and lending policies, standards and procedures in accordance with section 465.

Exception

(3) Paragraphs (2)(a) and (b) do not apply to the directors of a bank if (a) all the voting shares of the bank are beneficially owned by a Canadian financial institution described in any of paragraphs (a) to (d) of the definition "financial institution" in section 2; and

(b) the audit committee or conduct review committee of the financial institution performs for and on behalf of the bank all the functions that would otherwise be required to be performed by the audit committee or conduct review committee of the bank under this Act.

1991, c. 46, s. 157; 1997, c. 15, s. 11.

Duty of care

158. (1) Every director and officer of a bank in exercising any of the powers of a director or an officer and discharging any of the duties of a director or an officer shall

(a) act honestly and in good faith with a view to the best interests of the bank; and

(b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

Duty to comply

(2) Every director, officer and employee of a bank shall comply with this Act, the regulations, the bank's incorporating instrument and the by-laws of the bank.

No exculpation

(3) No provision in any contract, in any resolution or in the by-laws of a bank relieves any director, officer or employee of the bank from the duty to act in accordance with this Act and the regulations or relieves a director, officer or employee from liability for a breach thereof.

Qualification and Number – Directors

Minimum number of directors

159. (1) A bank shall have at least seven directors.

Residency requirement

(2) At least one half of the directors of a bank that is a foreign bank subsidiary and at least three quarters of the directors of any other bank must be, at the time of each director's election or appointment, resident Canadians.

Disqualified persons

160. The following persons are disqualified from being directors of a bank:

- (a) a person who is less than eighteen years of age;
- (b) a person who is of unsound mind and has been so found by a court in Canada or elsewhere;
- (c) a person who has the status of a bankrupt;
- (d) a person who is not a natural person;
- (e) a person who is prohibited by section 388 or 400 from exercising voting rights attached to shares of the bank;
- (f) a person who is an officer, director or full time employee of an entity that is prohibited by section 388 or 400 from exercising voting rights attached to shares of the bank;
- (g) a person who is an agent or employee of Her Majesty in right of Canada or in right of a province;
- (h) a minister of Her Majesty in right of Canada or in right of a province; and
- (i) a person who is an agent or employee of the government of a foreign country or any political subdivision thereof.

1991, c. 46, s. 160; 1994, c. 47, s. 15; 1997, c. 15, s. 12.

No shareholder requirement

161. A director of a bank is not required to hold shares of the bank.

Affiliated person

162. The Governor in Council may make regulations specifying the circumstances under which a natural person is affiliated with a bank for the purposes of this Act.

Affiliated director determination

162.1 (1) Notwithstanding section 162, the Superintendent may determine that a particular director is affiliated with a bank for the purposes of this Act if, in the opinion of the Superintendent, the director has a significant or sufficient commercial, business or financial relationship with the bank or with an affiliate of the bank to the extent that the relationship can be construed as being material to the director and can reasonably be expected to affect the exercise of the director's best judgment.

Notification by Superintendent

(2) A determination by the Superintendent under subsection (1)

(a) becomes effective on the day of the next annual meeting of the shareholders unless a notice in writing by the Superintendent revoking the determination is received by the bank prior to that day; and

(b) ceases to be in effect on the day of the next annual meeting of the shareholders after a notice in writing by the Superintendent revoking the determination is received by the bank.

1996, c. 6, s. 5.

Unaffiliated directors

163. (1) At the election of directors at each annual meeting of a bank and at all times until the day of the next annual meeting, no more than two thirds of the directors may be persons affiliated with the bank.

Exception

(2) Subsection (1) does not apply where all the voting shares of a bank, other than directors' qualifying shares, if any, are beneficially owned by a Canadian financial institution incorporated by or under an Act of Parliament.

Determination of affiliation

(3) For the purposes of subsection (1), whether or not a person is affiliated with a bank shall be determined as at the day the notice of the annual meeting is sent to shareholders pursuant to section 138 and that determination becomes effective on the day of that meeting, and a person shall be deemed to continue to be affiliated or unaffiliated, as the case may be, until the next annual meeting of the shareholders.

Transitional

(4) Subsection (1) does not apply in respect of a bank that was in existence immediately prior to the day that subsection comes into force until the day that is three years after the day that subsection comes into force.

Limit on directors

164. No more than 15 per cent of the directors of a bank may, at each director's election or appointment, be employees of the bank or a subsidiary of the bank, except that up to four persons who are employees of the bank or a subsidiary of the bank may be directors of the bank if those directors constitute not more than one half of the directors of the bank.

Election and Tenure – Directors

Number of directors

165. (1) Subject to subsection 159(1) and sections 168 and 217, the directors of a bank shall, by by-law, determine the number of directors or the minimum and maximum number of directors, but no by-law that decreases the number of directors shortens the term of an incumbent director.

Election at annual meeting

(2) A by-law made pursuant to subsection (1) that provides for a minimum and maximum number of directors may provide that the number of directors to be elected at any annual meeting of the shareholders be such number as is fixed by the directors prior to the annual meeting.

Term of directors

166. (1) Except where this Act or the by-laws of a bank provide for cumulative voting, a bank may, by by-law, provide that the directors be elected for terms of one, two or three years.

Term of one, two or three years

(2) A director elected for a term of one, two or three years holds office until the close of the first, second or third annual meeting of shareholders, as the case may be, following the election of the director.

No stated term

(3) A director who is not elected for an expressly stated term of office ceases to hold office at the close of the next annual meeting of shareholders following the election of the director.

Tenure of office

(4) It is not necessary that all directors elected at a meeting of shareholders hold office for the same term.

Idem

(5) If a by-law of a bank provides that the directors be elected for a term of two or three years, it may also provide that the term of office of each director be for the whole of that term, or that, as nearly as may be, one half of the directors retire each year if the term is two years, and that one third of the directors retire each year if the term is three years.

Composition requirements

(6) Subject to subsection 163(4), where a director of a bank is elected or appointed for a term of more than one year, the bank shall comply with subsections 159(2) and 163(1) and section 164 at each annual meeting of shareholders during the director's term of office as if that director were elected or appointed on that date.

Determining election of directors

167. (1) Except where this Act or the by-laws of a bank provide for cumulative voting, the persons, to the number authorized to be elected, who receive the greatest number of votes at an election of directors of a bank shall be the directors thereof.

Idem

(2) If, at any election of directors referred to in subsection (1), two or more persons receive an equal number of votes and there are not sufficient vacancies remaining to enable all the persons receiving an equal number of votes to be elected, the directors who receive a greater number of votes or the majority of them shall, in order to complete the full number of directors, determine which of the persons so receiving an equal number of votes are to be elected.

Cumulative voting

168. (1) Where this Act or the by-laws provide for cumulative voting,

(a) there shall be a stated number of directors fixed by by-law and not a minimum and maximum number of directors;

(b) each shareholder entitled to vote at an election of directors has the right to cast a number of votes equal to the number of votes attached to the shares held by the shareholder multiplied by the number of directors to be elected, and the shareholder may cast all such votes in favour of one candidate or distribute them among the candidates in any manner;

(c) a separate vote of shareholders shall be taken with respect to each candidate nominated for director unless a resolution is passed unanimously permitting two or more persons to be elected by a single vote;

(d) if a shareholder has voted for more than one candidate without specifying the distribution of the votes among the candidates, the shareholder is deemed to have distributed the votes equally among the candidates for whom the shareholder voted;

(e) if the number of candidates nominated for director exceeds the number of positions to be filled, the candidates who receive the least number of votes shall be eliminated until the number of candidates remaining equals the number of positions to be filled;

(f) each director ceases to hold office at the close of the next annual meeting of shareholders following the director's election;

(g) a director may not be removed from office if the votes cast against the removal would be sufficient to elect the director and those votes could be voted cumulatively at an election at which the same total number of votes were cast and the same number of directors required by the by-laws were then being elected; and

(h) the number of directors required by the by-laws may not be decreased if the votes cast against the motion to decrease would be sufficient to elect a director and those votes could be voted cumulatively at an election at which the same total number of votes were cast and the same number of directors required by the by-laws were then being elected.

Mandatory cumulative voting

(2) Where the aggregate of the voting shares beneficially owned by a person and any entities controlled by the person carries more than 10 per cent of the voting rights attached to all the outstanding voting shares of a bank, the directors shall be elected by cumulative voting.

Exception

(3) Subsection (2) does not apply

(a) where all the voting shares of the bank that are outstanding are beneficially owned by

(i) one person,

(ii) one person and one or more entities controlled by that person, or

(iii) one or more entities controlled by the same person;

(b) in respect of a bank that was in existence immediately prior to the day that subsection comes into force whose shareholders are confined to entities incorporated or formed by or under an Act of Parliament or of the legislature of a province that are, in the opinion of the directors, operating as credit unions or cooperative associations.

Transitional election

(4) Where this Act or the by-laws of a bank provide for cumulative voting, the shareholders of the bank shall,

(a) at the first annual meeting of shareholders held not earlier than ninety days following the date that cumulative voting is required under subsection (2) or provided for in the by-laws, and

(b) at each succeeding annual meeting, elect the stated number of directors to hold office until the close of the next annual meeting of shareholders following their election.

Exception

(5) Nothing in this Act precludes the holders of any class or series of shares of a bank from having an exclusive right to elect one or more directors.

1991, c. 46, s. 168; 1997, c. 15, s. 14.

Re-election of directors

169. A director who has completed a term of office is, if otherwise qualified, eligible for re-election.

Incomplete Elections and Director Vacancies Void election or appointment

170. (1) If, immediately after the time of any purported election or appointment of directors, the board of directors would fail to comply with subsection 159(2) or 163(1) or section 164, the purported election or appointment of all persons purported to be elected or appointed at that time is void unless the directors, within forty-five days after the discovery of the non-compliance, develop a plan, approved by the Superintendent, to rectify the non-compliance.

Failure to elect minimum

(2) Where, at the close of a meeting of shareholders of a bank, the shareholders have failed to elect the number or minimum number of directors required by this Act or the by-laws of a bank, the purported election of directors at the meeting

(a) is valid if the directors purported to be elected and those incumbent directors, if any, whose terms did not expire at the close of the meeting, together constitute a quorum; or

(b) is void if the directors purported to be elected and those incumbent directors, if any, whose terms did not expire at the close of the meeting, together do not constitute a quorum.

(3) and (4) [Repealed, 1997, c. 15, s. 15]

1991, c. 46, s. 170; 1997, c. 15, s. 15.

Directors where elections incomplete or void

171. (1) Notwithstanding subsections 166(2) and (3) and paragraphs 168(1)(f) and 172(1)(a), where subsection 170(1) or (2) applies at the close of any meeting of shareholders of a bank, the board of directors shall, until their successors are reelected or appointed, consist solely of

(a) where paragraph 170(2)(a) applies, the directors referred to in that paragraph; or

(b) where subsection 170(1) or paragraph 170(2)(b) applies, the persons who were the incumbent directors immediately before the meeting.

Where there is no approved rectification plan

(2) Notwithstanding subsections 166(2) and (3) and paragraphs 168(1)(f) and 172(1)(a), where a plan to rectify the non-compliance referred to in subsection 170(1) has not been approved by the Superintendent by the end of the forty-five day period referred to in that subsection, the board of directors shall, until their successors are elected or appointed, consist solely of the persons who were the incumbent directors immediately before the meeting at which the purported election or appointment referred to in that subsection occurred.

Directors to call meeting

(3) Where subsection (1) or (2) applies, the board of directors referred to in that subsection shall without delay call a special meeting of shareholders to fill the vacancies, where paragraph 170(2)(a) applies, or elect a new board of directors, where subsection 170(1) or paragraph 170(2)(b) applies.

Shareholder may call meeting

(4) Where the directors fail to call a special meeting required by subsection (3), the meeting may be called by any shareholder.

1991, c. 46, s. 171; 1997, c. 15, s. 16.

Ceasing to hold office

172. (1) A director ceases to hold office

(a) at the close of the annual meeting at which the director's term of office expires;

(b) when the director dies or resigns;

(c) when the director becomes disqualified under section 160 or ineligible to hold office pursuant to subsection 203(2); or

(d) when the director is removed under section 173.

Date of resignation

(2) The resignation of a director of a bank becomes effective at the time a written resignation is sent to the bank by the director or at the time specified in the resignation, whichever is later.

Removal of director

173. (1) Subject to paragraph 168(1)(g), the shareholders of a bank may by resolution at a special meeting remove any director or all the directors from office.

Exception

(2) Where the holders of any class or series of shares of a bank have the exclusive right to elect one or more directors, a director so elected may be removed only by a resolution at a meeting of the shareholders of that class or series.

Vacancy by removal

(3) Subject to paragraphs 168(1)(b) to (e), a vacancy created by the removal of a director may be filled at the meeting of the shareholders at which the director is removed or, if not so filled, may be filled under section 177 or 178.

Statement of director

174. (1) A director who

(a) resigns,

(b) receives a notice or otherwise learns of a meeting of shareholders called for the purpose of removing the director from office, or

(c) receives a notice or otherwise learns of a meeting of directors or shareholders at which another person is to be appointed or elected to fill the office of director, whether because of the director's resignation or removal or because the director's term of office has expired or is about to expire, is entitled to submit to the bank a written statement giving the reasons for the resignation or the reasons why the director opposes any proposed action or resolution.

Statement re disagreement

(2) Where a director resigns as a result of a disagreement with the other directors or the officers of a bank, the director shall submit to the bank and the Superintendent a written statement setting out the nature of the disagreement.

Circulation of statement

175. (1) A bank shall without delay on receipt of a director's statement referred to in subsection 174(1) relating to a matter referred to in paragraph 174(1)(b) or (c), or a director's statement referred to in subsection 174(2), send a copy of it to each shareholder entitled to receive a notice of meetings and to the Superintendent, unless the statement is included in or attached to a management proxy circular required by subsection 156.05(1).

Immunity for statement

(2) No bank or person acting on its behalf incurs any liability by reason only of circulating a director's statement in compliance with subsection (1).

1991, c. 46, s. 175; 1997, c. 15, s. 17.

Shareholders filling vacancy

176. The by-laws of a bank may provide that a vacancy among the directors is to be filled only

(a) by a vote of the shareholders; or

(b) by a vote of the holders of any class or series of shares having an exclusive right to elect one or more directors if the vacancy occurs among the directors elected by the holders of that class or series.

Directors filling vacancy

177. (1) Notwithstanding section 183 but subject to subsection (2) and sections 176 and 178, a quorum of directors may fill a vacancy among the directors except a vacancy among the directors resulting from a change in the by-laws by which the number or minimum number of directors is increased or from a failure to elect the number or minimum number of directors required by the by-laws.

Where composition fails

(2) Notwithstanding sections 176 and 183, where by reason of a vacancy the number of directors or the composition of the board of directors fails to meet any of the requirements of section 159, subsection 163(1) and section 164, the directors who, in the absence of any by-law, would be empowered to fill that vacancy shall do so forthwith.

Class vacancy

178. Notwithstanding section 183, where the holders of any class or series of shares of a bank have an exclusive right to elect one or more directors and a vacancy occurs among those directors, then, subject to section 176,

(a) the remaining directors elected by the holders of that class or series may fill the vacancy except a vacancy resulting from an increase in the number or minimum number of directors for that class or series or from a failure to elect the number or minimum number of directors for that class or series;

(b) if there are no such remaining directors and, by reason of the vacancy, the number of directors or the composition of the board of directors fails to meet any of the requirements of section 159, subsection 163(1) and section 164, the other directors may fill that vacancy; and

(c) if there are no such remaining directors and paragraph (b) does not apply, any holder of shares of that class or series may call a meeting of the holders thereof for the purpose of filling the vacancy.

Unexpired term

179. (1) Unless the by-laws otherwise provide, a director elected or appointed to fill a vacancy holds office for the unexpired term of the director's predecessor in office.

Affiliation

(2) Notwithstanding subsection 163(3), the affiliation of a person to be elected or appointed to fill a vacancy shall be determined as at the date of the person's election or appointment and that person shall be deemed to continue to be affiliated or unaffiliated, as the case may be, until the next annual meeting of the shareholders.

Additional directors

179.1 (1) The directors of a bank may appoint one or more additional directors where the by-laws of the bank allow them to do so and the by-laws determine the minimum and maximum numbers of directors.

Term of office

(2) A director appointed under subsection (1) holds office for a term expiring not later than the close of the next annual meeting of shareholders of the bank.

Limit on number appointed

(3) The total number of directors appointed under subsection (1) may not exceed one third of the number of directors elected at the previous annual meeting of shareholders of the bank.

1997, c. 15, s. 18.

Meetings of the Board Meetings required

180. (1) The directors shall meet at least four times during each financial year.

Place for meetings

(2) The directors may meet at any place unless the by-laws provide otherwise.

Notice for meetings

(3) The notice for the meetings must be given as required by the by-laws.

1991, c. 46, s. 180; 1997, c. 15, s. 19.

Notice of meeting

181. (1) A notice of a meeting of directors shall specify each matter referred to in section 198 that is to be dealt with at the meeting but, unless the by-laws otherwise provide, need not otherwise specify the purpose of or the business to be transacted at the meeting.

Waiver of notice

(2) A director may in any manner waive notice of a meeting of directors and the attendance of a director at a meeting of directors is a waiver of notice of that meeting except where the director attends the meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called.

Adjourned meeting

(3) Notice of an adjourned meeting of directors is not required to be given if the time and place of the adjourned meeting was announced at the original meeting.

Quorum

182. (1) Subject to section 183, the number of directors referred to in subsection (2) constitutes a quorum at any meeting of directors or a committee of directors and, notwithstanding any vacancy among the directors, a quorum of directors may exercise all the powers of the directors.

Idem

(2) The number of directors constituting a quorum at any meeting of directors or a committee of directors shall be

(a) a majority of the minimum number of directors required by this Act for the board of directors or a committee of directors; or

(b) such greater number of directors than the number calculated pursuant to paragraph (a) as may be established by the by-laws of the bank.

Director continues to be present

(3) Any director present at a meeting of directors who is not present at any particular time during the meeting for the purposes of subsection 203(1) shall be considered as being present for the purposes of this section.

Resident Canadian majority

183. (1) The directors of a bank shall not transact business at a meeting of directors or of a committee of directors unless

(a) in the case of a bank that is a foreign bank subsidiary, at least one half of the directors present are resident Canadians; or

(b) in any other case, a majority of the directors present are resident Canadians.

Exception

(2) Notwithstanding subsection (1), the directors of a bank may transact business at a meeting of directors or of a committee of directors without the required proportion of directors present who are resident Canadians if

(a) a director who is a resident Canadian unable to be present approves, in writing or by telephonic, electronic or other communications facilities, the business transacted at the meeting; and

(b) there would have been present the required proportion of directors who are resident Canadians had that director been present at the meeting.

Electronic meeting

184. (1) Subject to the by-laws of a bank, a meeting of directors or of a committee of directors may be held by means of such telephonic, electronic or other communications facilities as permit all persons participating in the meeting to communicate adequately with each other during the meeting.

Deemed present

(2) A director participating in a meeting by any means referred to in subsection (1) is deemed for the purposes of this Act to be present at that meeting.

Resolution outside board meeting

184.1 (1) A resolution in writing signed by all the directors entitled to vote on that resolution at a meeting of directors is as valid as if it had been passed at a meeting of directors.

Filing directors' resolution

(2) A copy of the resolution referred to in subsection (1) shall be kept with the minutes of the proceedings of the directors.

Resolution outside committee meeting

(3) A resolution in writing signed by all the directors entitled to vote on that resolution at a meeting of a committee of directors, other than a resolution of the audit committee in carrying out its duties under subsection 194(3) or a resolution of the conduct review committee in carrying out its duties under subsection 195(3), is as valid as if it had been passed at a meeting of that committee.

Filing committee resolution

(4) A copy of the resolution referred to in subsection (3) shall be kept with the minutes of the proceedings of that committee.

1997, c. 15, s. 20.

Dissent of director

185. (1) A director of a bank who is present at a meeting of directors or a committee of directors is deemed to have consented to any resolution passed or action taken at that meeting unless

(a) the director requests that the director's dissent be entered or the director's dissent is entered in the minutes of the meeting;

(b) the director sends a written dissent to the secretary of the meeting before the meeting is adjourned; or

(c) the director sends the director's dissent by registered mail or delivers it to the head office of the bank immediately after the meeting is adjourned.

Loss of right to dissent

(2) A director of a bank who votes for or consents to a resolution is not entitled to dissent under subsection (1).

Dissent of absent director

(3) A director of a bank who is not present at a meeting at which a resolution is passed or action taken is deemed to have consented thereto unless, within seven days after the director becomes aware of the resolution, the director

(a) causes the director's dissent to be placed with the minutes of the meeting; or

(b) sends the director's dissent by registered mail or delivers it to the head office of the bank.

Record of attendance

186. (1) A bank shall keep a record of the attendance at each meeting of directors and each committee meeting of directors.

Statement to shareholders

(2) A bank shall attach to the notice of each annual meeting it sends to its shareholders a statement showing, in respect of the financial year immediately preceding the meeting, the total number of directors' meetings and directors' committee meetings held during the financial year and the number of those meetings attended by each director.

1991, c. 46, s. 186; 1997, c. 15, s. 21.

Meeting required by Superintendent

187. (1) Where in the opinion of the Superintendent it is necessary, the Superintendent may, by notice in writing, require a bank to hold a meeting of directors of the bank to consider the matters set out in the notice.

Attendance of Superintendent

(2) The Superintendent may attend and be heard at a meeting referred to in subsection (1).

By-laws

By-laws

188. (1) Unless this Act otherwise provides, the directors of a bank may by resolution make, amend or repeal any by-law that regulates the business or affairs of the bank.

Shareholder approval

(2) The directors shall submit a by-law, or an amendment to or a repeal of a by-law, that is made under subsection (1) to the shareholders at the next meeting of shareholders, and the shareholders may, by resolution, confirm or amend the by-law, amendment or repeal.

Effective date of by-law

(3) Unless this Act otherwise provides, a by-law, or an amendment to or a repeal of a by-law, is effective from the date of the resolution of the directors under subsection (1) until it is confirmed, confirmed as amended or rejected by the shareholders under subsection (2) or until it ceases to be effective under subsection (4) and, where the by-law is confirmed, or confirmed as amended, it continues in effect in the form in which it was so confirmed.

Effect where no shareholder approval

(4) If a by-law, or an amendment to or a repeal of a by-law, is rejected by the shareholders, or is not submitted to the shareholders by the directors as required under subsection (2), the by-law, amendment or repeal ceases to be effective from the date of its rejection or the date of the next meeting of shareholders, as the case may be, and no subsequent resolution of the directors to make, amend or repeal a by-law having substantially the same purpose or effect is effective until it is confirmed, or confirmed as amended, by the shareholders.

Shareholder proposal of by-law

189. A shareholder entitled to vote at an annual meeting of shareholders may, in accordance with sections 143 and 144, make a proposal to make, amend or repeal a by-law.

By-laws of existing bank

190. Subject to section 191, where a by-law of a bank that was in existence immediately prior to the day this section comes into force was in effect immediately prior to that day, the by-law continues in effect until amended or repealed, unless it is contrary to a provision of this Act.

By-laws re remuneration

191. (1) A by-law of a bank respecting the remuneration of the directors of the bank, as directors, that is in effect on the coming into force of this section ceases to have effect on the day on which the first annual meeting is held following the coming into force of this section.

Existing by-laws

(2) A by-law made by the directors of a bank under section 45 of the Bank Act, being chapter B-1 of the Revised Statutes of Canada, 1985, as that section read immediately prior to the day this section comes into force, and not confirmed by the shareholders of the bank in accordance with that section on or before the day this section comes into force, continues to have effect, unless it is contrary to the provisions of this Act, until the first meeting of the shareholders following the day this section comes into force.

Shareholder approval

(3) A by-law referred to in subsection (2) shall be submitted to the shareholders at the first meeting of shareholders following the coming into force of this section.

Application of ss. 188(3) and (4) and 189

(4) Subsections 188(3) and (4) and section 189 apply in respect of a by-law referred to in this section as if it were a by-law made under section 188.

Deemed by-laws

192. (1) Any matter that,

(a) immediately prior to the day this section comes into force, was provided for in the incorporating instrument of a bank that was in existence immediately prior to that day, or

(b) immediately prior to the day a body corporate is continued as a bank under this Act, was provided for in the incorporating instrument of the body corporate, and that, under this Act, would be provided for in the by-laws of a bank, is deemed to be provided for in the by-laws of the bank.

By-law prevails

(2) Where a by-law of the bank made in accordance with sections 188 and 189 amends or repeals any matter referred to in subsection (1), the by-law prevails.

Committees of the Board

Committees

193. The directors of a bank may appoint from their number, in addition to the committees referred to in subsection 157(2), such other committees as they deem necessary and, subject to

section 198, delegate to those committees such powers of the directors, and assign to those committees such duties, as the directors consider appropriate.

Audit committee 194. (1) The audit committee of a bank shall consist of at least three directors.

Membership

(2) A majority of the members of the audit committee must consist of directors who are not persons affiliated with the bank and none of the members of the audit committee may be officers or employees of the bank or a subsidiary of the bank.

Duties of audit committee

(3) The audit committee of a bank shall

(a) review the annual statement of the bank before the annual statement is approved by the directors;

(b) review such returns of the bank as the Superintendent may specify;

(c) require the management of the bank to implement and maintain appropriate internal control procedures;

(c.1) review, evaluate and approve those procedures;

(d) review such investments and transactions that could adversely affect the well-being of the bank as the auditor or auditors or any officer of the bank may bring to the attention of the committee;

(e) meet with the auditor or auditors to discuss the annual statement and the returns and transactions referred to in this subsection; and

(f) meet with the chief internal auditor of the bank, or the officer or employee of the bank acting in a similar capacity, and with management of the bank, to discuss the effectiveness of the internal control procedures established for the bank.

Report

(4) In the case of the annual statement and returns of a bank that under this Act must be approved by the directors of the bank, the audit committee of the bank shall report thereon to the directors before the approval is given.

Required meeting of directors

(5) The audit committee of a bank may call a meeting of the directors of the bank to consider any matter of concern to the committee.

Transitional

(6) Subsection (2), in so far as it relates to the affiliation of directors with the bank, does not apply in respect of a bank that was in existence immediately prior to the day that subsection comes into force until the day that is three years after the day that subsection comes into force.

1991, c. 46, s. 194; 1997, c. 15, s. 22.

Conduct review committee

195. (1) The conduct review committee of a bank shall consist of at least three directors.

Membership

(2) A majority of the members of the conduct review committee of a bank must consist of directors who are not persons affiliated with the bank and none of the members of the conduct review committee may be officers or employees of the bank or a subsidiary of the bank.

Duties of conduct review committee

(3) The conduct review committee of a bank shall

(a) require the management of the bank to establish procedures for complying with Part XI;

(b) review those procedures; and

(c) review the practices of the bank to ensure that any transactions with related parties of the bank that may have a material effect on the stability or solvency of the bank are identified.

Bank report to Superintendent

(4) A bank shall report to the Superintendent on the mandate and responsibilities of the conduct review committee and the procedures referred to in paragraph (3)(a).

Committee report to directors

(5) After each meeting of the conduct review committee of the bank, the committee shall report to the directors of the bank on matters reviewed by the committee.

Directors' report to Superintendent

(6) Within ninety days after the end of each financial year, the directors of a bank shall report to the Superintendent on what the conduct review committee did during the year in carrying out its responsibilities under subsection (3).

(7) [Repealed, 1997, c. 15, s. 23]

1991, c. 46, s. 195; 1997, c. 15, s. 23.

Directors and Officers - Authority

Chief executive officer

196. (1) The directors of a bank shall appoint from their number a chief executive officer who must be ordinarily resident in Canada and, subject to section 198, may delegate to that officer any of the powers of the directors.

(2) [Repealed, 1997, c. 15, s. 24]

1991, c. 46, s. 196; 1997, c. 15, s. 24.

Appointment of officers

197. (1) The directors of a bank may, subject to the by-laws, designate the offices of the bank, appoint officers thereto, specify the duties of those officers and delegate to them powers, subject to section 198, to manage the business and affairs of the bank.

Directors as officers

(2) Subject to section 164, a director of a bank may be appointed to any office of the bank.

Two or more offices

(3) Two or more offices of a bank may be held by the same person.

Limits on power to delegate

198. The directors of a bank may not delegate any of the following powers, namely, the power to

(a) submit to the shareholders a question or matter requiring the approval of the shareholders;

- (b) fill a vacancy among the directors or a committee of directors or in the office of auditor;
- (c) issue or cause to be issued securities except in the manner and on terms authorized by the directors;
- (d) declare a dividend;
- (e) authorize the redemption or other acquisition by the bank pursuant to section 71 of shares issued by the bank;
- (f) authorize the payment of a commission on a share issue;
- (g) approve a management proxy circular;
- (h) except as provided in this Act, approve the annual statement of the bank and any other financial statements issued by the bank; or
- (i) adopt, amend or repeal by-laws.

1991, c. 46, s. 198; 1997, c. 15, s. 25.

Remuneration of directors, officers and employees

199. (1) Subject to this section and the by-laws, the directors of a bank may fix the remuneration of the directors, officers and employees of the bank.

By-law required

(2) No remuneration shall be paid to a director as director until a by-law fixing the aggregate of all amounts that may be paid to all directors in respect of directors' remuneration during a fixed period of time has been confirmed by special resolution.

1991, c. 46, s. 199; 1994, c. 26, s. 4.

Validity of acts

200. (1) An act of a director or an officer of a bank is valid notwithstanding a defect in the director's qualification or an irregularity in the director's election or in the appointment of the director or officer.

Idem

(2) An act of the board of directors of a bank is valid notwithstanding a defect in the composition of the board or an irregularity in the election of the board or in the appointment of a member of the board.

Right to attend meetings

201. A director of a bank is entitled to attend and to be heard at every meeting of shareholders.

Conflicts of Interest

Disclosure of interest

202. (1) A director or an officer of a bank who

(a) is a party to a material contract or proposed material contract with the bank,

(b) is a director or an officer of any entity that is a party to a material contract or proposed material contract with the bank, or

(c) has a material interest in any person who is a party to a material contract or proposed material contract with the bank shall disclose in writing to the bank or request to have entered in the minutes of the meetings of directors the nature and extent of that interest.

Time of disclosure for director

(2) The disclosure required by subsection (1) shall be made, in the case of a director,

(a) at the meeting of directors at which a proposed contract is first considered;

(b) if the director was not then interested in a proposed contract, at the first meeting after the director becomes so interested;

(c) if the director becomes interested after a contract is made, at the first meeting after the director becomes so interested; or

(d) if a person who is interested in a contract later becomes a director, at the first meeting after that person becomes a director.

Time of disclosure for officer

(3) The disclosure required by subsection (1) shall be made, in the case of an officer who is not a director,

- (a) forthwith after the officer becomes aware that a proposed contract is to be considered or a contract has been considered at a meeting of directors;
- (b) if the officer becomes interested after a contract is made, forthwith after the officer becomes so interested; or
- (c) if a person who is interested in a contract later becomes an officer, forthwith after the person becomes an officer.

Time of disclosure for director or officer

(4) If a material contract or proposed material contract is one that, in the ordinary course of business of the bank, would not require approval by the directors or shareholders, a director or an officer referred to in subsection (1) shall disclose in writing to the bank or request to have entered in the minutes of meetings of directors the nature and extent of the director's or officer's interest forthwith after the director or officer becomes aware of the contract or proposed contract.

Where director must abstain

203. (1) Where subsection 202(1) applies to a director in respect of a contract, the director shall not be present at any meeting of directors while the contract is being considered at the meeting or vote on any resolution to approve the contract unless the contract is

- (a) an arrangement by way of security for money lent to or obligations undertaken by the director for the benefit of the bank or a subsidiary of the bank;
- (b) a contract relating primarily to the director's remuneration as a director or an officer, employee or agent of the bank or a subsidiary of the bank or an entity controlled by the bank or an entity in which the bank has a substantial investment;
- (c) a contract for indemnity under section 212 or for insurance under section 213; or
- (d) a contract with an affiliate of the bank.

Ineligibility

(2) Any director who knowingly contravenes subsection (1) ceases to hold office as director and is not eligible, for a period of five years after the date on which the contravention occurred, for election or appointment as a director of any financial institution that is incorporated or formed by or under an Act of Parliament.

Validity of acts

(3) An act of the board of directors of a bank, or of a committee of the board of directors, is not invalid because a person acting as a director had ceased under subsection (2) to hold office as a director.

1991, c. 46, s. 203; 1997, c. 15, s. 26.

Continuing disclosure

204. For the purposes of subsection 202(1), a general notice to the directors by a director or an officer declaring that the director or officer is a director or officer of an entity, or has a material interest in a person, and is to be regarded as interested in any contract made with that entity or person, is a sufficient declaration of interest in relation to any contract so made.

Avoidance standards

205. A material contract between a bank and one or more of its directors or officers, or between a bank and another entity of which a director or an officer of the bank is a director or an officer or between a bank and a person in which the director or officer has a material interest, is neither void nor voidable

(a) by reason only of that relationship, or

(b) by reason only that a director with an interest in the contract is present at or is counted to determine the presence of a quorum at the meeting of directors or the committee of directors that authorized the contract, if the director or officer disclosed the interest in accordance with subsection 202(2), (3) or (4) or section 204 and the contract was approved by the directors or the shareholders and it was reasonable and fair to the bank at the time it was approved.

Application to court

206. Where a director or an officer of a bank fails to disclose an interest in a material contract in accordance with sections 202 and 204, a court may, on the application of the bank or a shareholder of the bank, set aside the contract on such terms as the court thinks fit.

Liability, Exculpation and Indemnification

Directors' liability

207. (1) The directors of a bank who vote for or consent to a resolution of the directors authorizing the issue of a share contrary to subsection 65(1) or the issue of subordinated indebtedness contrary to section 80 for a consideration other than money are jointly and severally liable to the bank to make good any amount by which the consideration received is less than the fair equivalent of the money that the bank would have received if the share or subordinated indebtedness had been issued for money on the date of the resolution.

Further liabilities

(2) The directors of a bank who vote for or consent to a resolution of the directors authorizing

(a) a redemption or purchase of shares contrary to section 71,

(b) a reduction of capital contrary to section 75,

(c) a payment of a dividend contrary to section 79,

(d) a payment of an indemnity contrary to section 212, or

(e) any transaction contrary to Part XI are jointly and severally liable to restore to the bank any amounts so distributed or paid and not otherwise recovered by the bank and any amounts in relation to any loss suffered by the bank.

Contribution

208. (1) A director who has satisfied a judgment in relation to the director's liability under section 207 is entitled to contribution from the other directors who voted for or consented to the unlawful act on which the judgment was founded.

Recovery

(2) A director who is liable under section 207 is entitled to apply to a court for an order compelling a shareholder or other person to pay or deliver to the director

(a) any money or property that was paid or distributed to the shareholder or other person contrary to section 71, 75, 79 or 212; or

(b) an amount equal to the value of the loss suffered by the bank as a result of any transaction contrary to Part XI.

Court order

(3) Where an application is made to a court under subsection (2), the court may, where it is satisfied that it is equitable to do so,

(a) order a shareholder or other person to pay or deliver to a director any money or property that was paid or distributed to the shareholder or other person contrary to section 71, 75, 79 or 212 or any amount referred to in paragraph (2)(b);

(b) order a bank to return or issue shares to a person from whom the bank has purchased, redeemed or otherwise acquired shares; or

(c) make any further order it thinks fit.

Limitation

209. An action to enforce a liability imposed by section 207 may not be commenced after two years from the date of the resolution authorizing the action complained of.

Liability for wages 210.

(1) Subject to subsections (2) and (3), the directors of a bank are jointly and severally liable to each employee of the bank for all debts not exceeding six months wages payable to the employee for services performed for the bank while they are directors.

Conditions precedent

(2) A director is not liable under subsection (1) unless

(a) the bank has been sued for the debt within six months after it has become due and execution has been returned unsatisfied in whole or in part;

(b) the bank has commenced liquidation and dissolution proceedings or has been dissolved and a claim for the debt has been proven within six months after the earlier of the date of commencement of the liquidation and dissolution proceedings and the date of dissolution; or

(c) a winding-up order has been issued in respect of the bank under the Winding-up and Restructuring Act and a claim for the debt has been allowed or proven within six months after the issue of the winding-up order.

Limitations

(3) A director is not liable under subsection (1) unless the director is sued for a debt referred to in that subsection while a director or within two years after the director has ceased to be a director.

Amount due after execution

(4) Where execution referred to in paragraph (2)(a) has issued, the amount recoverable from a director is the amount remaining unsatisfied after execution.

Subrogation of director

(5) Where a director of a bank pays a debt referred to in subsection (1) that is proven in liquidation and dissolution or winding-up proceedings, the director is entitled to any preference that the employee would have been entitled to and, where a judgment has been obtained, the director is entitled to an assignment of the judgment.

Contribution entitlement

(6) A director of a bank who has satisfied a claim under this section is entitled to a contribution from the other directors of the bank who are liable for the claim.

1991, c. 46, s. 210; 1996, c. 6, s. 167.

Reliance on statement

211. A director, an officer or an employee of a bank is not liable under subsection 158(1) or (2) or section 207 or 210 if the director, officer or employee relies in good faith on

(a) financial statements of the bank represented to the director, officer or employee by an officer of the bank or in a written report of the auditor or auditors of the bank fairly to reflect the financial condition of the bank; or

(b) a report of an accountant, lawyer, notary or other professional person whose profession lends credibility to a statement made by the professional person.

Indemnification of directors and officers

212. (1) Except in respect of an action by or on behalf of the bank to procure a judgment in its favour, a bank may indemnify

(a) a director or an officer of the bank,

(b) a former director or officer of the bank, or

(c) any person who acts or acted at the bank's request as a director or an officer of an entity of which the bank is or was a shareholder or creditor against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment reasonably incurred by the person in respect of any civil, criminal or administrative action or proceeding to which the person is made a party by reason of being or having been a person referred to in any of paragraphs (a) to (c), if

(d) the director, officer or person acted honestly and in good faith with a view to the best interests of the bank, and

(e) in the case of a criminal or administrative action or proceeding enforced by a monetary penalty, the director, officer or person had reasonable grounds for believing that the impugned conduct was lawful.

Indemnification in derivative action

(2) A bank may, with the approval of a court, indemnify a person referred to in subsection (1), in respect of an action by or on behalf of the bank or entity to procure a judgment in its favour to which the person is made a party by reason of being or having been a director or an officer of the

bank or entity, against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment, reasonably incurred by the person in connection with that action if the person fulfils the conditions set out in paragraphs (1)(d) and (e).

Right to indemnity

(3) Notwithstanding anything in this section, a person referred to in subsection (1) is entitled to indemnity from the bank in respect of all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment, reasonably incurred by the person in connection with the defence of any civil, criminal or administrative action or proceeding to which the person is made a party by reason of being or having been a director or an officer of the bank or an entity, if the person seeking indemnity

(a) was substantially successful on the merits in the defence of the action or proceedings; and

(b) fulfils the conditions set out in paragraphs (1)(d) and (e).

Heirs

(4) A bank may, to the extent referred to in subsections (1) to (3) in respect of the person, indemnify the heirs or personal representatives of any person the bank may indemnify pursuant to subsections (1) to (3).

Directors' and officers' insurance

213. A bank may purchase and maintain insurance for the benefit of any person referred to in section 212 against any liability incurred by the person

(a) in the capacity of a director or an officer of the bank, except where the liability relates to a failure to act honestly and in good faith with a view to the best interests of the bank; or

(b) in the capacity of a director or an officer of another entity where the person acts or acted in that capacity at the bank's request, except where the liability relates to a failure to act honestly and in good faith with a view to the best interests of the entity.

Application to court for indemnification

214. (1) A bank or a person referred to in section 212 may apply to a court for an order approving an indemnity under that section and the court may so order and make any further order it thinks fit.

Notice to Superintendent

(2) An applicant under subsection (1) shall give the Superintendent written notice of the application and the Superintendent is entitled to appear and to be heard at the hearing of the application in person or by counsel.

Other notice

(3) On an application under subsection (1), the court may order notice to be given to any interested person and that person is entitled to appear and to be heard in person or by counsel at the hearing of the application.

Fundamental Changes

Amendments

Incorporating instrument

215. (1) On the application of a bank duly authorized by special resolution, the Minister may approve a proposal to

(a) change the name of the bank; or

(b) add, change or remove any provision that is permitted by this Act to be set out in the bank's incorporating instrument.

Notice of intention

(2) Before an application is made to the Minister pursuant to subsection (1) to change the name of a bank, a notice of intention to make the application must be published by the applicant at least once a week for a period of four consecutive weeks in the Canada Gazette and in a newspaper in general circulation at or near the place where the head office of the bank is situated.

Letters patent to amend

216. (1) On receipt of an application referred to in subsection 215(1), the Minister may issue letters patent to effect the proposal.

Effect of letters patent

(2) Letters patent issued pursuant to subsection (1) become effective on the day stated in the letters patent.

By-laws

217. (1) The directors of a bank may make, amend or repeal any by-laws, in the manner set out in subsections (2) and (3) and sections 218 to 222, to

(a) change the maximum number, if any, of shares of any class that the bank is authorized to issue;

(b) create new classes of shares;

(c) change the designation of any or all of the bank's shares, and add, change or remove any rights, privileges, restrictions and conditions, including rights to accrued dividends, in respect of any or all of the bank's shares, whether issued or unissued;

(d) change the shares of any class or series, whether issued or unissued, into a different number of shares of the same class or series or into the same or a different number of shares of other classes or series;

(e) divide a class of shares, whether issued or unissued, into series and fix the maximum number of shares, if any, in each series and the rights, privileges, restrictions and conditions attached thereto;

(f) authorize the directors to divide any class of unissued shares into series and fix the maximum number of shares, if any, in each series and the rights, privileges, restrictions and conditions attached thereto;

(g) authorize the directors to change the rights, privileges, restrictions and conditions attached to unissued shares of any series;

(h) revoke, diminish or enlarge any authority conferred under paragraphs (f) and (g);

(i) increase or decrease the number of directors or the minimum or maximum number of directors, subject to subsection 159(1) and section 168; or

(j) change the place in Canada where the head office of the bank is to be situated.

Shareholder approval

(2) The directors shall submit a by-law, or an amendment to or a repeal of a by-law, that is made under subsection (1) to the shareholders, and the shareholders may, by special resolution, confirm, amend or reject the by-law, amendment or repeal.

Effective date of by-law

(3) A by-law, or an amendment to or a repeal of a by-law, made under subsection (1) is not effective until it is confirmed or confirmed as amended by the shareholders under subsection (2)

and, in the case of by-laws referred to in any of paragraphs (1)(a) to (h), approved by the Superintendent in writing.

Class vote

218. (1) The holders of shares of a class or, subject to subsection (2), of a series are, unless the by-laws otherwise provide in the case of an amendment to the by-laws referred to in paragraph (a), (b) or (e), entitled to vote separately as a class or series on a proposal to amend the by-laws to

(a) increase or decrease any maximum number of authorized shares of that class, or increase any maximum number of authorized shares of a class having rights or privileges equal or superior to the shares of that class;

(b) effect an exchange, reclassification or cancellation of all or part of the shares of that class;

(c) add, change or remove the rights, privileges, restrictions or conditions attached to the shares of that class and, without limiting the generality of the foregoing,

(i) remove or change prejudicially rights to accrued dividends or rights to cumulative dividends,

(ii) add, remove or change prejudicially redemption rights,

(iii) reduce or remove a dividend preference or a liquidation preference, or

(iv) add, remove or change prejudicially conversion privileges, options, voting, transfer or preemptive rights, or rights to acquire securities of the bank, or sinking fund provisions;

(d) increase the rights or privileges of any class of shares having rights or privileges equal or superior to the shares of that class;

(e) create a new class of shares equal or superior to the shares of that class;

(f) make any class of shares having rights or privileges inferior to the shares of that class equal or superior to the shares of that class; or

(g) effect an exchange or create a right of exchange of all or part of the shares of another class into the shares of that class.

Right limited

(2) The holders of a series of shares of a class are entitled to vote separately as a series under subsection (1) if that series is affected by an addition or amendment to the by-laws in a manner different from other shares of the same class.

Right to vote

(3) Subsections (1) and (2) apply whether or not the shares of a class otherwise carry the right to vote.

Separate resolutions

219. A proposed addition or amendment to the by-laws referred to in subsection 218(1) is adopted when the holders of the shares of each class or series entitled to vote separately thereon as a class or series have approved the addition or amendment by a special resolution.

Revoking resolution

220. Where a special resolution referred to in subsection 217(2) so states, the directors may, without further approval of the shareholders, revoke the special resolution.

Proposal to amend

221. (1) Subject to subsection (2), a director or a shareholder who is entitled to vote at an annual meeting of shareholders of a bank may, in accordance with sections 143 and 144, make a proposal to make an application referred to in subsection 215(1) or to make, amend or repeal the by-laws referred to in subsection 217(1) of the bank.

Notice of amendment

(2) Notice of a meeting of shareholders at which a proposal to amend the incorporating instrument or to make, amend or repeal the by-laws of a bank is to be considered must set out the proposal.

Rights preserved

222. No amendment to the incorporating instrument or by-laws of a bank affects an existing cause of action or claim or liability to prosecution in favour of or against the bank or its directors or officers, or any civil, criminal or administrative action or proceeding to which the bank or any of its directors or officers are a party.

Amalgamation

Application to amalgamate

223. (1) On the joint application of

(a) two or more banks,

(b) one or more banks and one or more bodies corporate that are incorporated by or under an Act of Parliament, or

(c) two or more bodies corporate incorporated by or under an Act of Parliament, the Minister may issue letters patent amalgamating and continuing the applicants as one bank.

Restriction

(2) Notwithstanding anything in subsection (1), where one of the applicants under that subsection is a bank named in Schedule I, the Minister shall not issue letters patent referred to in that subsection unless the amalgamated bank would be a bank named in Schedule I.

Amalgamation agreement

224. (1) Each applicant proposing to amalgamate shall enter into an amalgamation agreement.

Contents of agreement

(2) Every amalgamation agreement shall set out the terms and means of effecting the amalgamation and, in particular,

(a) the name of the amalgamated bank and the place in Canada where its head office is to be situated;

(b) the name and place of ordinary residence of each proposed director of the amalgamated bank;

(c) the manner in which the shares of each applicant are to be converted into shares or other securities of the amalgamated bank;

(d) if any shares of an applicant are not to be converted into shares or other securities of the amalgamated bank, the amount of money or securities that the holders of those shares are to receive in addition to or in lieu of shares or other securities of the amalgamated bank;

(e) the manner of payment of money in lieu of the issue of fractional shares of the amalgamated bank or of any other body corporate that are to be issued in the amalgamation;

(f) the proposed by-laws of the amalgamated bank;

(g) details of any other matter necessary to perfect the amalgamation and to provide for the subsequent management and operation of the amalgamated bank; and

(h) the proposed effective date of the amalgamation.

Cross ownership of shares

(3) If shares of one of the applicants are held by or on behalf of another of the applicants, other than shares held in the capacity of a personal representative or by way of security, the amalgamation agreement must provide for the cancellation of those shares when the amalgamation becomes effective without any repayment of capital in respect thereof, and no provision shall be made in the agreement for the conversion of those shares into shares of the amalgamated bank.

Approval of agreement by Minister

225. An amalgamation agreement shall be submitted to the Minister for approval and any approval of such an agreement pursuant to subsection 226(4) by the holders of any class or series of shares of an applicant is invalid unless, prior to the date of the approval, the Minister has approved the agreement in writing.

Shareholder approval

226. (1) The directors of each applicant shall submit an amalgamation agreement for approval to a meeting of the holders of shares of the applicant bank or body corporate of which they are directors and, subject to subsection (3), to the holders of each class or series of such shares.

Right to vote

(2) Each share of an applicant carries the right to vote in respect of an amalgamation whether or not it otherwise carries the right to vote.

Class vote

(3) The holders of shares of a class or series of shares of an applicant are entitled to vote separately as a class or series in respect of an amalgamation if the amalgamation agreement contains a provision that, if contained in a proposed amendment to the by-laws or incorporating instrument of the applicant, would entitle those holders to vote separately as a class or series.

Special resolution

(4) Subject to subsection (3), an amalgamation agreement is approved when the shareholders of each applicant bank or body corporate have approved the amalgamation by special resolution.

Termination

(5) An amalgamation agreement may provide that, at any time before the issue of letters patent of amalgamation, the agreement may be terminated by the directors of an applicant notwithstanding that the agreement has been approved by the shareholders of all or any of the applicant banks or bodies corporate.

Vertical short-form amalgamation

227. (1) A bank may, without complying with sections 224 to 226, amalgamate with one or more bodies corporate that are incorporated by or under an Act of Parliament if the body or bodies corporate, as the case may be, are wholly-owned subsidiaries of the bank and

(a) the amalgamation is approved by a resolution of the directors of the bank and of each amalgamating subsidiary; and

(b) the resolutions provide that

(i) the shares of each amalgamating subsidiary will be cancelled without any repayment of capital in respect thereof,

(ii) the letters patent of amalgamation and the by-laws of the amalgamated bank will be the same as the incorporating instrument and the by-laws of the amalgamating bank that is the holding body corporate, and

(iii) no securities will be issued by the amalgamated bank in connection with the amalgamation.

Horizontal short-form amalgamation

(2) Two or more bodies corporate incorporated by or under an Act of Parliament may amalgamate and continue as one bank without complying with sections 224 to 226 if

(a) at least one of the applicants is a bank;

(b) the applicants are all wholly-owned subsidiaries of the same holding body corporate;

(c) the amalgamation is approved by a resolution of the directors of each of the applicants; and

(d) the resolutions provide that

(i) the shares of all applicants, except those of one of the applicants that is a bank, will be cancelled without any repayment of capital in respect thereof,

(ii) the letters patent of amalgamation and the by-laws of the amalgamated bank will be the same as the incorporating instrument and the by-laws of the amalgamating bank whose shares are not cancelled, and

(iii) the stated capital of the amalgamating banks and bodies corporate whose shares are cancelled will be added to the stated capital of the amalgamating bank whose shares are not cancelled.

Joint application to Minister

228. (1) Subject to subsection (2), unless an amalgamation agreement is terminated in accordance with subsection 226(5), the applicants shall, within three months after the approval of the agreement in accordance with subsection 226(4) or the approval of the directors in accordance with subsection 227(1) or (2), jointly apply to the Minister for letters patent of amalgamation continuing the applicants as one bank.

Conditions precedent to application

(2) No application for the issue of letters patent under subsection (1) may be made unless (a) notice of intention to make such an application has been published at least once a week for a period of four consecutive weeks in the Canada Gazette and in a newspaper in general circulation at or near the place where the head office of each applicant is situated; and

(b) the application is supported by satisfactory evidence that the applicants have complied with the requirements of this Part relating to amalgamations.

Application of sections 23 to 27

(3) Where two or more bodies corporate, none of which is a bank, apply for letters patent under subsection (1), sections 23 to 27 apply in respect of the application with such modifications as the circumstances require.

Issue of letters patent 229.

(1) Where an application has been made to the Minister in accordance with section 228, the Minister may issue letters patent of amalgamation continuing the applicants as one bank.

Letters patent

(2) Where letters patent are issued pursuant to this section, section 28 applies with such modifications as the circumstances require in respect of the issue of the letters patent.

Publication of notice

(3) The Superintendent shall cause to be published in the Canada Gazette notice of the issuance of letters patent pursuant to subsection (1).

Effect of letters patent

230. (1) On the day provided for in the letters patent issued under section 229

(a) the amalgamation of the applicants and their continuance as one bank becomes effective;

(b) the property of each applicant continues to be the property of the amalgamated bank;

(c) the amalgamated bank continues to be liable for the obligations of each applicant;

(d) any existing cause of action, claim or liability to prosecution is unaffected;

(e) any civil, criminal or administrative action or proceeding pending by or against an applicant may be continued to be prosecuted by or against the amalgamated bank;

(f) any conviction against, or ruling, order or judgment in favour of or against, an applicant may be enforced by or against the amalgamated bank;

(g) if any director or officer of an applicant continues as a director or officer of the amalgamated bank, any disclosure by that director or officer of a material interest in any contract made to the applicant shall be deemed to be disclosure to the amalgamated bank;

(h) for the purposes of sections 373 and 376.1, where one or more of the applicants was a bank, the amalgamated bank is deemed to have been incorporated on the earliest day that an amalgamating bank was incorporated; and

(i) the letters patent of amalgamation are the incorporating instrument of the amalgamated bank.

Minutes

(2) Any deemed disclosure under paragraph (1)(g) shall be recorded in the minutes of the first meeting of directors of the amalgamated bank.

1991, c. 46, ss. 230, 576; 1997, c. 15, s. 27; 1999, c. 28, s. 14.

Transitional

231. (1) Notwithstanding any other provision of this Act or the regulations, the Minister may, by order, on the recommendation of the Superintendent, grant to a bank in respect of which letters patent were issued under subsection 229(1) permission to

(a) engage in a business activity specified in the order that a bank is not otherwise permitted by this Act to engage in and that one or more of the amalgamating bodies corporate was engaging in at the time application for the letters patent was made;

(b) continue to have issued and outstanding debt obligations the issue of which is not authorized by this Act if the debt obligations were outstanding at the time the application for the letters patent was made;

(c) [Repealed, 1994, c. 47, s. 16]

(d) hold assets that a bank is not otherwise permitted by this Act to hold if the assets were held by one or more of the amalgamating bodies corporate at the time the application for the letters patent was made;

(e) acquire and hold assets that a bank is not otherwise permitted by this Act to acquire or hold if one or more of the amalgamating bodies corporate were obliged, at the time the application for the letters patent was made, to acquire those assets; and

(f) maintain outside Canada any records or registers required by this Act to be maintained in Canada and maintain and process, outside Canada, information and data relating to the preparation and maintenance of such records or registers.

Duration of exceptions

(2) The permission granted under any of paragraphs (1)(a) to (f) shall be expressed to be granted for a period specified in the order not exceeding (a) with respect to any matter described in paragraph (1)

(a), thirty days after the date of issue of the letters patent or, where the activity is conducted pursuant to an agreement existing on the date of issue of the letters patent, the expiration of the agreement;

(b) with respect to any matter described in paragraph (1)(b), ten years; and

(c) with respect to any matter described in any of paragraphs (1)(d) to (f), two years.

Renewal

(3) Subject to subsection (4), the Minister may, by order on the recommendation of the Superintendent, renew a permission granted by order under subsection (1) with respect to any matter described in any of paragraphs (1)(b) to (e) for any further period or periods that the Minister considers necessary.

Limitation

(4) The Minister shall not grant to a bank any permission (a) with respect to matters described in paragraph (1)(b), that purports to be effective more than ten years after the date of the approval for the bank to commence and carry on business, unless the Minister is satisfied on the basis of evidence on oath provided by an officer of the bank that the bank will not be able at law to redeem at the end of the ten years the outstanding debt obligations to which the permission relates; and

(b) with respect to matters described in paragraphs (1)(d) and (e), that purports to be effective more than ten years after the date of issue of the letters patent.

1991, c. 46, s. 231; 1994, c. 47, s. 16; 1997, c. 15, s. 28.

Transfer of Business

Sale by bank

232. (1) A bank may sell all or substantially all of its assets to a financial institution incorporated by or under an Act of Parliament or to an authorized foreign bank in respect of its business in Canada if the purchasing financial institution or authorized foreign bank assumes all or substantially all of the liabilities of the bank.

Sale agreement

(2) An agreement of purchase and sale (in subsection (3), section 233, subsections 234(1) and (4) and section 236 referred to as a "sale agreement") shall set out the terms of, and means of effecting, the sale of assets referred to in subsection (1).

Consideration

(3) Notwithstanding anything in this Act, the consideration for a sale referred to in subsection (1) may be cash or fully paid securities of the purchasing financial institution or authorized foreign bank or in part cash and in part fully paid securities of the purchasing financial institution or authorized foreign bank or any other consideration that is provided for in the sale agreement.

1991, c. 46, s. 232; 1999, c. 28, s. 15.

Agreement to Minister

233. A sale agreement shall be submitted to the Minister prior to the sending of the sale agreement to shareholders of the selling bank under subsection 234(1).

Shareholder approval

234. (1) The directors of a selling bank shall submit a sale agreement for approval to a meeting of the holders of shares of the bank and, subject to subsection (3), to the holders of each class or series of shares of the bank.

Right to vote

(2) Each share of a selling bank carries the right to vote in respect of a sale referred to in subsection 232(1) whether or not the share otherwise carries the right to vote.

Class vote

(3) The holders of shares of a class or series of shares of a selling bank are entitled to vote separately as a class or series in respect of a sale referred to in subsection 232(1) only if the shares of the class or series are affected by the sale in a manner different from the shares of another class or series.

Special resolution

(4) A sale agreement is approved when the shareholders, and the holders of each class or series of shares entitled to vote separately as a class or series pursuant to subsection (3), of the selling bank have approved the sale by special resolution.

Abandoning sale

235. Where a special resolution approving a sale under subsection 234(4) so states, the directors of a selling bank may, subject to the rights of third parties, abandon the sale without further approval of the shareholders.

Application to Minister

236. (1) Subject to subsection (2), unless a sale agreement is abandoned in accordance with section 235, the selling bank shall, within three months after the approval of the sale agreement in accordance with subsection 234(4), apply to the Minister for approval of the sale agreement.

Conditions precedent to application

(2) No application for approval under subsection (1) may be made unless

(a) notice of intention to make such an application has been published at least once a week for a period of four consecutive weeks in the Canada Gazette and in a newspaper in general circulation at or near the place where the head office of the selling bank is situated; and

(b) the application is supported by satisfactory evidence that the selling bank has complied with the requirements of sections 232 to 235 and this section.

Approval by Minister

(3) A sale agreement has no force or effect until it has been approved by the Minister.

Idem

(4) Where an application has been made to the Minister in accordance with subsections (1) and (2), the Minister may approve the sale agreement to which the application relates.

Corporate Records

Head Office and Corporate Records

Head office

237. (1) A bank shall at all times have a head office in the place within Canada specified in its incorporating instrument or by-laws.

Change of head office

(2) The directors of a bank may change the address of the head office within the place specified in the incorporating instrument or by-laws.

Notice of change of address

(3) A bank shall send to the Superintendent, within fifteen days after any change of address of its head office, a notice of the change of address.

Bank records

238. (1) A bank shall prepare and maintain records containing

(a) its incorporating instrument and the by-laws of the bank and all amendments thereto;

(b) minutes of meetings and resolutions of shareholders;

(c) the information referred to in paragraphs 632(1)(a), (c) and (e) to (h) contained in all returns provided to the Superintendent pursuant to section 632;

(d) particulars of any authorizations, conditions and limitations established by the Superintendent pursuant to section 53 or subsection 54(1) that are from time to time applicable to the bank;

(e) particulars of exceptions granted under section 39, 55 or 231 that are from time to time applicable to the bank; and

(f) particulars from Schedule I or II that are applicable to the bank as they are from time to time amended and published in the Canada Gazette. Additional records

(2) In addition to the records described in subsection (1), a bank shall prepare and maintain adequate

(a) corporate accounting records;

(b) records containing minutes of meetings and resolutions of the directors and any committee thereof; and

(c) records showing, for each customer of the bank, on a daily basis, particulars of the transactions between the bank and that customer and the balance owing to or by the bank in respect of that customer.

Continued banks

(3) For the purposes of paragraph (1)(b) and subsection (2),

(a) in the case of a body corporate continued as a bank under this Act, "records" includes similar records required by law to be maintained by the body corporate before it was so continued; and

(b) in the case of a body corporate amalgamated and continued as a bank under this Act, "records" includes similar records required by law to be maintained by the body corporate before it was so amalgamated.

1991, c. 46, s. 238; 1997, c. 15, s. 29(E); 1999, c. 28, s. 16.

Place of records

239. (1) The records described in section 238 shall be kept at the head office of the bank or at such other place in Canada as the directors think fit.

Notice of place of records

(2) Where any of the records described in section 238 are not kept at the head office of a bank, the bank shall notify the Superintendent of the place where the records are kept.

Exception (3) Subsection (1) does not apply in respect of records of a branch of the bank outside Canada or in respect of customers of such a branch.

Inspection

(4) The records described in section 238, other than those described in paragraph 238(2)(c), shall at all reasonable times be open to inspection by the directors.

Access to bank records

(5) Shareholders and creditors of a bank and their personal representatives may examine the records referred to in subsection 238(1) during the usual business hours of the bank, and may take extracts therefrom, free of charge, or have copies made thereof on payment of a reasonable fee and, where the bank is a distributing bank within the meaning of subsection 265(1), any other person may, on payment of a reasonable fee, examine such records and take extracts therefrom or copies thereof.

Copies of by-laws

(6) Every shareholder of a bank is entitled, on request made not more frequently than once in each calendar year, to receive, free of charge, one copy of the by-laws of the bank.

Shareholder lists

240. (1) A person who is entitled to a basic list of shareholders of a bank (in this section referred to as the "applicant") may request the bank to furnish the applicant with a basic list within ten days after receipt by the bank of the affidavit referred to in subsection (2) and, on payment of a reasonable fee by the applicant, the bank shall comply with the request.

Affidavit and contents

(2) A request under subsection (1) must be accompanied by an affidavit containing

(a) the name and address of the applicant,

(b) the name and address for service of the entity, if the applicant is an entity, and

(c) an undertaking that the basic list and any supplemental lists obtained pursuant to subsections (5) and (6) will not be used except as permitted under section 242,

and, if the applicant is an entity, the affidavit shall be made by a director or an officer of the entity, or any person acting in a similar capacity.

Entitlement

(3) Every shareholder or creditor of a bank or the personal representative of a shareholder or creditor of a bank is entitled to a basic list of shareholders of the bank, but, if the bank is a

distributing bank within the meaning of subsection 265(1), any person is entitled to a basic list of shareholders of the bank on request therefor.

Basic list

(4) A basic list of shareholders of a bank consists of a list of shareholders that is made up to a date not more than ten days before the receipt of the affidavit referred to in subsection (2) and that sets out

- (a) the names of the shareholders of the bank;
- (b) the number of shares owned by each shareholder; and
- (c) the address of each shareholder as shown in the records of the bank.

Supplemental lists

(5) A person requiring a bank to supply a basic list of shareholders may, if the person states in the accompanying affidavit that supplemental lists are required, request the bank or its agent, on payment of a reasonable fee, to provide supplemental lists of shareholders setting out any changes from the basic list in the names and addresses of the shareholders and the number of shares owned by each shareholder for each business day following the date to which the basic list is made up.

When supplemental lists to be furnished

(6) A bank or its agent shall provide a supplemental list of shareholders required under subsection (5)

- (a) within ten days following the date the basic list is provided, where the information relates to changes that took place prior to that date; and
- (b) within ten days following the day to which the supplemental list relates, where the information relates to changes that took place on or after the date the basic list was provided.

Option holders

241. A person requiring a bank to supply a basic list or a supplemental list of shareholders may also require the bank to include in that list the name and address of any known holder of an option or right to acquire shares of the bank.

Use of shareholder list

242. A list of shareholders obtained under section 240 shall not be used by any person except in connection with

- (a) an effort to influence the voting of shareholders of the bank;
- (b) an offer to acquire shares of the bank; or
- (c) any other matter relating to the affairs of the bank.

Form of records

243. (1) A register or other record required or authorized by this Act to be prepared and maintained by a bank

- (a) may be in a bound or loose-leaf form or in a photographic film form; or
- (b) may be entered or recorded by any system of mechanical or electronic data processing or any other information storage device that is capable of reproducing any required information in intelligible written form within a reasonable time.

Conversion of records (2) Registers and records maintained in one form may be converted to any other form.

Destruction of converted records (3) Notwithstanding section 246, a bank may destroy any register or other record referred to in subsection (1) at any time after the register or other record has been converted to another form.

Protection of records

244. A bank and its agents shall take reasonable precautions to

- (a) prevent loss or destruction of,
- (b) prevent falsification of entries in,
- (c) facilitate detection and correction of inaccuracies in, and
- (d) ensure that unauthorized persons do not have access to or use of information in the registers and records required or authorized by this Act to be prepared and maintained.

Location and processing of information

245. (1) Subject to subsection (3), a bank shall maintain and process in Canada any information or data relating to the preparation and maintenance of the records referred to in section 238 unless the Superintendent has, by order, and subject to such terms and conditions as the Superintendent considers appropriate, exempted the bank from the application of this section.

Copies

(2) Subject to subsections (4) and (5), a bank may maintain copies of the records referred to in subsection (1) outside Canada and may further process outside Canada any information or data relating to those copies.

Foreign records

(3) Subsection (1) does not apply in respect of a branch of the bank outside Canada or in respect of customers of such a branch.

Information for Superintendent

(4) Where a bank, in accordance with subsection (2), maintains outside Canada copies of any records referred to in subsection (1) or further processes information or data relating to those copies outside Canada, the bank shall so inform the Superintendent and provide the Superintendent with a list of those copies maintained outside Canada and a description of the further processing of information or data relating to those copies outside Canada and such other information as the Superintendent may require from time to time.

Processing information in Canada

(5) If the Superintendent is at any time of the opinion that the maintenance outside Canada of any copies referred to in subsection (4), or the further processing of information or data relating to any such copies outside Canada, is incompatible with the fulfilment of the Superintendent's responsibilities under this Act or the Superintendent is advised by the Minister that, in the opinion of the Minister, such maintenance or further processing is not in the national interest, the Superintendent shall direct the bank to maintain those copies, or to further process information or data relating to those copies, in Canada.

Bank to comply

(6) A bank shall forthwith comply with any direction issued under subsection (5).

Guidelines (7) The Superintendent shall issue guidelines respecting the circumstances under which an exemption referred to in subsection (1) may be available.

Retention of records

246. (1) A bank shall retain

- (a) the records of the bank referred to in subsection 238(1);
- (b) any record of the bank referred to in paragraph 238(2)(a) or (b); and

(c) the central securities register referred to in subsection 248(1).

Idem

(2) A bank shall retain all signature cards and signing authorities or copies thereof relating to any deposit or instrument in respect of which the bank has paid an amount to the Bank of Canada pursuant to section 438 until the Bank of Canada notifies the bank that they need no longer be retained.

Evidence (3) Copies of the signature cards and signing authorities referred to in subsection (2) may be kept in any manner or form referred to in paragraphs 243(1)(a) and (b) and any such copies, or prints therefrom, are admissible in evidence in the same manner and to the same extent as the original signature cards and signing authorities.

Relief

(4) Nothing in this section affects the operation of any statute of limitation or prescription or relieves the bank from any obligation to the Bank of Canada in respect of any deposit or instrument in respect of which section 438 applies.

Regulations

247. The Governor in Council may make regulations respecting the records, papers and documents to be retained by a bank and the length of time those records, papers and documents are to be retained.

Securities Registers

Central securities register

248. (1) A bank shall maintain a central securities register in which it shall record the securities, within the meaning of section 81, issued by it in registered form, showing in respect of each class or series of securities

(a) the names, alphabetically arranged, and latest known addresses of the persons who are security holders, and the names and latest known addresses of the persons who have been security holders;

(b) the number of securities held by each security holder; and

(c) the date and particulars of the issue and transfer of each security.

Existing and continued banks

(2) For the purposes of subsection (1), "central securities register" includes similar registers required by law to be maintained by a bank that was in existence immediately prior to the day that subsection comes into force or by a body corporate continued, or amalgamated and continued, as a bank under this Act before the continuance, amalgamation or coming into force of that subsection, as the case may be.

Application of certain provisions

(3) Subsection 239(5) and sections 243 to 245 apply, with such modifications as the circumstances require, in respect of a central securities register.

Branch registers

249. A bank may establish as many branch securities registers as it considers necessary.

Agents

250. A bank may appoint an agent to maintain its central securities register and each of its branch securities registers.

Location of central securities register

251. (1) The central securities register of a bank shall be maintained by the bank at its head office or at any other place in Canada designated by the directors of the bank.

Location of branch securities register

(2) A branch securities register of a bank may be kept at any place in or outside Canada designated by the directors of the bank.

Effect of registration

252. Registration of the issue or transfer of a security in the central securities register or in a branch securities register is complete and valid registration for all purposes. Particulars in branch register

253. (1) A branch securities register shall only contain particulars of the securities issued or transferred at the branch for which that register is established.

Particulars in central register

(2) Particulars of each issue or transfer of a security registered in a branch securities register of a bank shall also be kept in the central securities register of the bank.

Destruction of certificates

254. A bank, its agent or a trustee within the meaning of section 294 is not required to produce

(a) a cancelled security certificate in registered form or an instrument referred to in subsection 69(1) that is cancelled or a like cancelled instrument in registered form after six years from the date of its cancellation;

(b) a cancelled security certificate in bearer form or an instrument referred to in subsection 69(1) that is cancelled or a like cancelled instrument in bearer form after the date of its cancellation; or

(c) an instrument referred to in subsection 69(1) or a like instrument, irrespective of its form, after the date of its expiration.

Corporate Name and Seal

Publication of name

255. A bank shall set out its name in legible characters in all contracts, invoices, negotiable instruments and other documents evidencing rights or obligations with respect to other parties that are issued or made by or on behalf of the bank.

Corporate seal

256. An instrument or agreement executed on behalf of a bank by a director, an officer or an agent of the bank is not invalid merely because a corporate seal is not affixed thereto.

257. to 264. [Repealed, 1997, c. 15, s. 30]

Insiders

Definitions

265. (1) In this section and sections 266 to 272,

"affiliate" « groupe »

"affiliate" means a body corporate that is affiliated with another body corporate within the meaning of subsection 6(2);

"business combination" « regroupement d'entreprises »

"business combination" means an acquisition of all or substantially all the assets of one body corporate by another body corporate or an amalgamation of two or more bodies corporate;

"call" « option d'achat »

"call" means an option, transferable by delivery, to demand delivery of a specified number or amount of shares at a fixed price within a specified time but does not include an option or right to acquire shares of the body corporate that granted the option or right to acquire;

"distributing bank" « banque ayant fait appel au public »

"distributing bank" means a bank, any of the issued securities of which are or were part of a distribution to the public and remain outstanding and are held by more than one person;

"insider" « initié »

"insider" means, except in subsections 271(2) and 272(1),

(a) a director or an officer of a distributing bank,

(b) a distributing bank that purchases or otherwise acquires, except by means of a donation or redemption, shares issued by it or by any of its affiliates, or

(c) a person who beneficially owns more than 10 per cent of the shares of a distributing bank or who exercises control or direction over more than 10 per cent of the votes attached to shares of a distributing bank, excluding shares owned by a securities underwriter under an underwriting agreement while those shares are in the course of a distribution to the public;

"officer" « dirigeant d'une banque »

"officer", in relation to a bank, means

(a) an officer as defined in paragraph (a) of the definition "officer" in section 2, or

(b) any natural person who performs functions for the bank similar to those performed by a person referred to in paragraph (a) of the definition "officer" in section 2;

"put" « option de vente »

"put" means an option, transferable by delivery, to deliver a specified number or amount of shares at a fixed price within a specified time;

"share" « action »

"share" means a voting share and includes

(a) a security currently convertible into a voting share, and

(b) a currently exercisable option or a right to acquire a voting share or a security referred to in paragraph (a).

Control

(2) For the purposes of this section and sections 266 to 272, a person controls a body corporate when the person controls the body corporate within the meaning of section 3, determined without regard to paragraph 3(1)(d).

Deemed insiders and beneficial owners

(3) For the purposes of this section and sections 266 to 272,

(a) a director or an officer of a body corporate that is an insider of a distributing bank is deemed to be an insider of the distributing bank;

(b) a director or an officer of a body corporate that is a subsidiary of a distributing bank is deemed to be an insider of the distributing bank;

(c) a person is deemed to beneficially own shares beneficially owned by a body corporate controlled directly or indirectly by that person;

(d) a body corporate is deemed to beneficially own shares beneficially owned by its affiliates; and

(e) the acquisition or disposition by an insider of an option or right to acquire a share is deemed to be a change in the beneficial ownership of the share to which the option or right to acquire relates.

Becoming an insider

(4) For the purposes of this section and sections 266 to 272,

(a) if a body corporate becomes an insider of a distributing bank or enters into a business combination with a distributing bank, or

(b) if a distributing bank becomes an insider of a body corporate,

every director or officer of the body corporate and every shareholder of the body corporate who is a person referred to in paragraph (c) of the definition "insider" in subsection (1) is deemed to have been an insider of the distributing bank for the previous six months or for such shorter period as the director, officer or shareholder was a director, officer or shareholder of the body corporate.

Insider Reporting

First insider report

266. (1) An insider shall send to the Superintendent an insider report in prescribed form not later than ten days after the later of

- (a) the end of the month in which the person became an insider, and
- (b) the end of the month in which regulations prescribing the form of an insider report come into force.

(2) [Repealed, 1997, c. 15, s. 31]

Where bank continued

(3) A person who is an insider of a body corporate on the day it is continued as a bank under this Act shall, if the bank is a distributing bank, send to the Superintendent an insider report in prescribed form not later than ten days after

- (a) the end of the month in which the body corporate is continued under this Act, or
- (b) the end of the month in which regulations prescribing the form of an insider report come into force,

whichever is later.

Constructive insider

(4) A person who is deemed to have been an insider under subsection 265(4) shall, not later than ten days after

- (a) the end of the month in which the person is deemed to have become an insider, or
- (b) the end of the month in which regulations prescribing the form of an insider report come into force,

whichever is later, send to the Superintendent, in prescribed form and for the period in respect of which the person is deemed to have been an insider, the insider report that the person would have been required to send under this section had the person been otherwise an insider for that period.

1991, c. 46, s. 266; 1997, c. 15, s. 31.

Subsequent insider report

267. An insider whose interest in securities of a distributing bank changes from that shown or required to be shown in the last insider report sent or required to be sent by the insider shall, within ten days after the end of the month in which the change takes place, send to the Superintendent an insider report in prescribed form.

Exemption by regulation 267.1 Under prescribed circumstances, an insider is exempt from any of the requirements of section 266 or 267.

1997, c. 15, s. 32.

One insider report

268. (1) An insider report of a person that includes securities deemed to be beneficially owned by that person is deemed to be an insider report of a body corporate referred to in paragraph 265(3)(c) and the body corporate is not required to send a separate insider report.

Deemed report

(2) An insider report of a body corporate that includes securities deemed to be beneficially owned by the body corporate is deemed to be an insider report of an affiliate referred to in paragraph 265(3)(d) and the affiliate is not required to send a separate insider report.

Contents

(3) An insider report of a person that includes securities deemed to be beneficially owned by that person pursuant to paragraph 265(3)(c) or (d) shall disclose separately

(a) the number of securities owned by a body corporate; and

(b) the name of the body corporate.

Exemption by Superintendent

269. (1) On an application by or on behalf of an insider, the Superintendent may, in writing, on such terms as the Superintendent thinks fit, exempt the insider from any of the requirements of sections 266 to 268, and the exemption may be given retroactive effect.

Publication

(2) The Superintendent shall summarize or cause to be summarized in a periodical available to the public the information contained in insider reports sent to the Superintendent under sections 266 to 268 and the particulars of exemptions granted under subsection (1) together with the reasons therefor.

Insider Trading

Short selling prohibited

270. (1) An insider shall not knowingly sell, directly or indirectly, a share of the distributing bank or any of its affiliates if the insider does not own or has not fully paid for the share to be sold.

Exception for convertible shares

(2) Notwithstanding subsection (1), an insider may sell a share that the insider does not own if the insider owns another share convertible into the share sold or an option or right to acquire the share sold and, within ten days after the sale, the insider

(a) exercises the conversion privilege, option or right and delivers the share so acquired to the purchaser; or

(b) transfers the convertible share, option or right to the purchaser.

Prohibited calls and puts

(3) An insider shall not, directly or indirectly, buy or sell a call or put in respect of a share of the bank or any of its affiliates.

Civil Remedies

Extended meaning of "insider"

271. (1) In subsections (2) and 272(1), "insider" means, with respect to a bank,

(a) the bank;

(b) an affiliate of the bank;

(c) a director or an officer of the bank;

(d) a person who beneficially owns more than 10 per cent of the shares of the bank or who exercises control or direction over more than 10 per cent of the votes attached to the shares of the bank;

(e) a person employed or retained by the bank; and

(f) a person who receives specific confidential information from a person described in this section, including a person described in this paragraph, and who has knowledge that the person

giving the information is a person described in this section, including a person described in this paragraph.

Deemed insider

(2) For the purposes of subsection 272(1),

(a) if a body corporate becomes an insider of a bank or enters into a business combination with a bank, or

(b) if a bank becomes an insider of a body corporate, every director or officer of the body corporate is deemed to have been an insider of the bank for the previous six months or for such shorter period as the director or officer was a director or officer of the body corporate.

Civil liability

272. (1) An insider who, in connection with a transaction in a security of the bank or any of its affiliates, makes use of any specific confidential information for the insider's own benefit or advantage that, if generally known, might reasonably be expected to affect materially the value of the security

(a) is liable to compensate any person for any direct loss suffered by that person as a result of the transaction, unless the information was known or in the exercise of reasonable diligence should have been known to that person; and

(b) is accountable to the bank for any direct benefit or advantage received or receivable by the insider as a result of the transaction.

Limitation of action

(2) An action to enforce a right created by subsection (1) may not be commenced

(a) after a period of two years after discovery of the facts that gave rise to the cause of action; or

(b) if the transaction was required to be reported under sections 266 to 268, after a period of two years from the time of reporting under those sections.

Prospectus

Prospectus requirements

273. (1) A bank shall not distribute any of its securities and a person shall not distribute any securities of a bank unless a preliminary prospectus and a prospectus in a form substantially as

prescribed have been filed with the Superintendent in relation to the distribution and receipts have been received therefor from the Superintendent.

Idem

(2) Where there is filed in any jurisdiction a preliminary prospectus, prospectus, short-form prospectus or similar document relating to the distribution of securities in a form substantially as prescribed, a copy of that document may be accepted by the Superintendent under subsection (1).

Meaning of distribution

(3) For the purposes of this section and sections 274 to 282, "distribution" means

(a) a trade by or on behalf of a bank in securities of the bank that have not previously been issued; or

(b) a trade in previously issued securities of a bank from the holdings of any person or group of persons who act in concert and who hold in excess of 10 per cent of the shares of any class of voting shares of the bank.

Form and content

274. (1) A preliminary prospectus in relation to the distribution of securities shall substantially comply with the requirements of this Act and any regulations made under subsection 275(1) respecting the form and content of a prospectus, except that any report or reports of the auditor or auditors of the bank required by the regulations need not be included.

Idem

(2) A preliminary prospectus in relation to the distribution of securities need not include information in respect of the price to the securities underwriter or the offering price of any securities or any other matters dependent on or relating to that price.

Regulations

275. (1) The Governor in Council may make regulations

(a) respecting the form and content of a preliminary prospectus and a prospectus;

(b) specifying the financial statements, reports and other documents that are to be included with a preliminary prospectus and a prospectus;

(c) respecting, for the purposes of subsection 279(1), the disclosure of material facts in relation to securities to be distributed;

(d) respecting the distribution of a preliminary prospectus and a prospectus to prospective purchasers;

(e) exempting any class of distributions from the application of sections 273, 274 and 276 to 282; and

(f) generally, for carrying out the purposes and provisions of sections 273, 274 and 276 to 282.

Authority of Superintendent

(2) Any regulation made under subsection (1) may authorize the Superintendent to permit or require additions to, variations in or omissions from

(a) a preliminary prospectus or prospectus; or

(b) any information, report or document contained or required to be contained in the preliminary prospectus or prospectus or related thereto.

Idem

(3) Where a regulation described in subsection (2) has been made, the Superintendent may exercise the authority thereby given in any case where the Superintendent is satisfied that it is necessary to do so owing to the circumstances related to the issue of the securities concerned.

Idem

(4) All additions, variations or omissions referred to in subsection (2) shall be made in accordance with the permission or requirement of the Superintendent under that subsection and shall be in accordance with such terms and conditions, if any, as the Superintendent may impose as being necessary to ensure, to the greatest extent possible, a full, true and plain disclosure of all material facts relating to the securities to be distributed.

1991, c. 46, s. 275; 1994, c. 26, s. 5(F); 1999, c. 31, s. 11.

Order of exemption 276. (1) On application by a bank or any person proposing to make a distribution, the Superintendent may, by order, exempt that distribution from the application of sections 273, 274 and 277 to 282 if the Superintendent is satisfied that the bank has filed or is about to file, in compliance with the laws of the relevant jurisdiction, a prospectus relating to the distribution that, in form and content, substantially complies with the requirements of this Act and any regulations made under subsection 275(1).

Conditions (2) An order under subsection (1) may contain such conditions or limitations as the Superintendent deems appropriate.

1991, c. 46, s. 276; 1999, c. 31, s. 12.

Receipt for preliminary prospectus

277. (1) The Superintendent shall issue a receipt for a preliminary prospectus forthwith on its filing with the Superintendent.

Record to be maintained

(2) A person proposing to distribute securities of a bank to which a preliminary prospectus relates shall maintain a record of all persons to whom a copy of the preliminary prospectus has been sent.

Withdrawal of receipt

(3) Where it appears to the Superintendent, after providing a reasonable opportunity to the person by whom the preliminary prospectus was filed to make representations, that a preliminary prospectus in respect of which a receipt has been issued under subsection (1) is defective in that it does not substantially comply with the requirements of this Act and the regulations, the receipt may be withdrawn and the person by whom the preliminary prospectus was filed shall forthwith be notified of its withdrawal.

Notice

(4) Notice of withdrawal of a receipt under subsection (3) shall forthwith be sent by the person by whom the preliminary prospectus was filed to any persons proposing to take part in the distribution of the securities to which the preliminary prospectus relates and, by the bank and each such person, to each person named on the records maintained in respect of the preliminary prospectus by the bank and each such person.

Receipt for prospectus

278. (1) The Superintendent shall issue a receipt for a prospectus forthwith on its filing with the Superintendent unless, after providing a reasonable opportunity to the person by whom the prospectus was filed to make representations, it appears to the Superintendent that

(a) the prospectus or any document required to be filed therewith

(i) fails to substantially comply with any of the requirements of this Act or the regulations, or

(ii) contains a misrepresentation or any statement, promise, estimate or forecast that is misleading, false or deceptive; or

(b) it would not be in the public interest to issue a receipt for the prospectus.

(2) to (4) [Repealed, 1996, c. 6, s. 6]

1991, c. 46, s. 278; 1996, c. 6, s. 6.

Full disclosure

279. (1) A prospectus shall provide full, true and plain disclosure of all material facts relating to the securities to be distributed and shall contain or be accompanied by such financial statements, reports or other documents as are required by any regulations made under subsection 275(1).

Certificate

(2) A prospectus shall include a certificate in prescribed form signed

(a) by the chief executive officer and the chief financial officer of the bank making the distribution or, in the event of the absence or inability to act of either of those officers, any other officer of the bank authorized by the directors to sign in the stead of the officer who is absent or unable to act, and such other persons as are prescribed, and

(b) in the case of an initial distribution of shares of a bank, by each person who is a promoter of the bank,

to the effect that, according to the person's information, knowledge and belief, the disclosure required by subsection (1) and by any regulations made under subsection 275(1) has been provided.

Promoter

(3) For the purposes of subsection (2) and section 281, "promoter" means an applicant for letters patent to incorporate a bank or a director named in the application for letters patent, but such an applicant or director is a promoter only for the period of two years following the application.

Certificate of securities underwriter

280. Where a securities underwriter is associated in the distribution of securities of a bank, a prospectus shall include a certificate in prescribed form signed by each securities underwriter who, with respect to the securities offered by the prospectus, is in a contractual relationship with the bank or other distributor of the securities, to the effect that, according to the securities underwriter's information, knowledge and belief, the disclosure required by subsection 279(1) and by any regulations made under subsection 275(1) has been provided.

Signature by agent

281. With the consent of the Superintendent, an agent, duly authorized in writing, of a promoter or a securities underwriter referred to in subsection 279(2) or section 280 may, on behalf of the promoter or securities underwriter, as the circumstances require, sign the certificate referred to in that subsection or section.

Sending out prospectus

282. No person shall distribute a preliminary prospectus or a prospectus in relation to a distribution of securities of a bank except in accordance with any regulations made under subsection 275(1).

Compulsory Acquisitions

Definitions

283. (1) In this section and sections 284 to 293,

"affiliate" « groupe »

"affiliate" means a body corporate that is affiliated with another body corporate within the meaning of subsection 6(2);

"associate of the offeror" « associé du pollicitant »

"associate of the offeror" means

(a) a body corporate that an offeror, directly or indirectly, controls, determined without regard to paragraph 3(1)(d), or of which an offeror beneficially owns shares or securities currently convertible into shares carrying more than 10 per cent of the voting rights under all circumstances or by reason of the occurrence of an event that has occurred and is continuing, or a currently exercisable option or right to purchase the shares or the convertible securities,

(b) a partner of the offeror acting on behalf of the partnership of which they are partners,

(c) a trust or estate in which the offeror has a substantial beneficial interest or in respect of which the offeror serves as a trustee or in a similar capacity,

(d) a spouse or child of the offeror, or

(e) a relative of the offeror or of the offeror's spouse if that relative has the same residence as the offeror;

"dissenting offeree" « pollicité opposant »

"dissenting offeree" means, in respect of a take-over bid made for all the shares of a class of shares, a holder of a share of that class who does not accept the take-over bid and includes a subsequent holder of that share who acquires it from the first-mentioned holder;

"exempt offer" « offre franche »

"exempt offer" means an offer

(a) to fewer than fifteen shareholders to purchase shares by way of separate agreements,

(b) to purchase shares through a stock exchange or in the over-the-counter market in such circumstances as may be prescribed,

(c) to purchase shares of a bank that has fewer than fifteen shareholders, two or more joint holders being counted as one shareholder, or

(d) exempted under the order of a court having jurisdiction in the place where the head office of the offeree bank is located;

"offeree" « pollicité »

"offeree" means a person to whom a take-over bid is made;

"offeree bank" « banque pollicitée »

"offeree bank" means a bank the shares of which are the object of a take-over bid;

"offeror" « pollicitant »

"offeror" means a person, other than an agent, who makes a take-over bid, and includes two or more persons who, directly or indirectly,

(a) make take-over bids jointly or in concert, or

(b) intend to exercise jointly or in concert voting rights attached to shares for which a take-over bid is made;

"share" « action »

"share" includes

(a) a security currently convertible into a share, and

(b) a currently exercisable option or right to acquire a share or a security referred to in paragraph (a);

"take-over bid" « offre publique d'achat »

"take-over bid" means

(a) an offer, other than an exempt offer, made by an offeror to shareholders at approximately the same time to acquire shares that, if combined with shares already beneficially owned or controlled, directly or indirectly, by the offeror or an affiliate or associate of the offeror on the date of the offer, would exceed 10 per cent of any class of issued shares of an offeree bank, and

(b) an offer to purchase shares of a bank having fewer than fifteen shareholders if the offer is made to all shareholders in the prescribed form and manner,

and includes every offer, other than an exempt offer, by an issuer to repurchase its own shares.

Control

(2) For the purposes of this section and sections 284 to 293, a person controls a body corporate when the person controls the body corporate within the meaning of section 3, determined without regard to paragraph 3(1)(d).

Date of bid

(3) A take-over bid is deemed to be dated as of the date on which it is sent.

Right to acquire shares

284. If, within one hundred and twenty days after the date of a take-over bid, the bid is accepted by the holders of not less than 90 per cent of the shares of any class of shares to which the take-over bid relates, other than shares held at the date of the take-over bid by or on behalf of the offeror or an affiliate or associate of the offeror, the offeror is entitled, on complying with sections 285 to 290, subsections 291(1) and (2) and section 292, to acquire the shares held by the dissenting offerees.

Offeror's notice to dissenters

285. (1) An offeror may acquire shares held by a dissenting offeree by sending by registered mail within sixty days after the date of termination of the take-over bid and in any event within one hundred and eighty days after the date of the take-over bid, an offeror's notice to each dissenting offeree and to the Superintendent stating that

(a) offerees holding not less than 90 per cent of the shares of any class of shares to which the take-over bid relates, other than shares held at the date of the take-over bid by or on behalf of the offeror or an affiliate or associate of the offeror, have accepted the take-over bid;

(b) the offeror is bound to take up and pay for or has taken up and paid for the shares of the offerees who accepted the take-over bid;

(c) a dissenting offeree is required to elect

(i) to transfer the dissenting offeree's shares to the offeror on the same terms on which the offeror acquired the shares from the offerees who accepted the take-over bid, or

(ii) to demand payment of the fair value of the dissenting offeree's shares in accordance with sections 289 to 292 by notifying the offeror within twenty days after receipt of the offeror's notice;

(d) a dissenting offeree who does not notify the offeror in accordance with subparagraph (c)(ii) is deemed to have elected to transfer the dissenting offeree's shares to the offeror on the same terms on which the offeror acquired the shares from the offerees who accepted the take-over bid; and

(e) a dissenting offeree must send the dissenting offeree's shares to which the take-over bid relates to the offeree bank within twenty days after the dissenting offeree receives the offeror's notice.

Notice of adverse claim

(2) Concurrently with sending the offeror's notice under subsection (1), the offeror shall send to the offeree bank a notice of adverse claim in accordance with subsection 129(1) with respect to each share held by a dissenting offeree.

Share certificates to be sent

286. A dissenting offeree to whom an offeror's notice is sent under subsection 285(1) shall, within twenty days after receipt of that notice, send the dissenting offeree's share certificates of the class of shares to which the take-over bid relates to the offeree bank.

Payment to dissenter 287. (1) Within twenty days after the offeror sends an offeror's notice under subsection 285(1), the offeror shall pay or transfer to the offeree bank the amount of money or other consideration that the offeror would have had to pay or transfer to a dissenting offeree if the dissenting offeree had elected to transfer the dissenting offeree's shares as described in subparagraph 285(1)(c)(i).

Consideration in trust

(2) An offeree bank is deemed to hold in a fiduciary capacity for the dissenting offerees the money or other consideration it receives under subsection (1).

Deposit or custody

(3) An offeree bank shall deposit the money received under subsection (1) in a separate account in another deposit-taking financial institution in Canada and the offeree bank shall place any other consideration in the custody of another deposit-taking financial institution in Canada.

Duty of offeree bank

288. Within thirty days after an offeror sends an offeror's notice under subsection 285(1), the offeree bank shall

(a) issue to the offeror a share certificate in respect of the shares that were held by dissenting offerees;

(b) give to each dissenting offeree who elects to transfer shares as described in subparagraph 285(1)(c)(i) and who sends the share certificates as required under section 286, the money or other consideration to which that dissenting offeree is entitled, disregarding fractional shares, which may be paid for in money; and

(c) send to each dissenting offeree who has not sent share certificates as required under section 286 a notice stating that

(i) the shares have been cancelled,

(ii) the offeree bank or some designated person holds in a fiduciary capacity for that offeree the money or other consideration to which that offeree is entitled as payment for or in exchange for the shares, and

(iii) the offeree bank will, subject to sections 289 to 292, send that money or other consideration to that offeree forthwith after receiving the share certificates.

Application to court

289. (1) Where a dissenting offeree has elected to demand payment of the fair value of the offeree's shares as described in subparagraph 285(1)(c)(ii), the offeror may, within twenty days after it has paid the money or transferred the other consideration under subsection 287(1), apply to a court to fix the fair value of the shares of that dissenting offeree.

Idem

(2) If an offeror fails to apply to a court under subsection (1), a dissenting offeree may apply to a court for the same purpose within a further period of twenty days.

Venue

(3) An application under subsection (1) or (2) shall be made to a court having jurisdiction in the place at which the head office of the bank is situated or in the province in which the dissenting offeree resides if the bank carries on business in that province.

No security for costs (4) A dissenting offeree is not required to give security for costs in an application made under subsection (1) or (2).

Parties and notice

290. On an application under subsection 289(1) or (2),

(a) all dissenting offerees who have made elections under subparagraph 285(1)(c)(ii) and whose shares have not been acquired by the offeror shall be joined as parties and are bound by the decision of the court; and

(b) the offeror shall notify each affected dissenting offeree of the date, place and consequences of the application and of the dissenting offeree's right to appear and be heard in person or by counsel at the hearing of the application.

Powers of court 291. (1) On an application to a court under subsection 289(1) or (2), the court may determine whether any other person is a dissenting offeree who should be joined as a party, and the court shall then fix a fair value for the shares of all dissenting offerees.

Appraisers

(2) A court may in its discretion appoint one or more appraisers to assist the court in fixing a fair value for the shares of a dissenting offeree.

Final order

(3) The final order of a court shall be made against the offeror in favour of each dissenting offeree and for the amount for each dissenting offeree's shares as fixed by the court.

Additional powers of court (4) In connection with proceedings under subsection 289(1) or (2), a court may make any order it thinks fit and, without limiting the generality of the foregoing, may

(a) fix the amount of money or other consideration that is deemed to be held in a fiduciary capacity under subsection 287(2);

(b) order that the money or other consideration is to be held in trust by a person other than the offeree bank;

(c) allow a reasonable rate of interest on the amount payable to each dissenting offeree from the date the dissenting offeree sends the share certificates required under section 286 until the date of payment; or

(d) order that any money payable to a shareholder who cannot be found is to be paid to the Minister.

Status of dissenter

292. Where no application is made to a court under subsection 289(2) within the period set out in that subsection, a dissenting offeree is deemed to have elected to transfer the dissenting offeree's shares to the offeror on the same terms on which the offeror acquired the shares from the offerees who accepted the take-over bid.

Payment of unclaimed money 293. The Minister shall pay to the Bank of Canada any amounts paid to the Minister under subsection 291(4), and section 367 applies in respect thereof as if the amounts paid under subsection 291(4) had been paid under subsection 366(3).

Trust Indentures

Definitions

294. In this section and sections 295 to 306,

"event of default" « cas de défaut »

"event of default" means, in relation to a trust indenture, an event specified in the trust indenture on the occurrence of which the principal, interest and other moneys payable thereunder become or may be declared to be payable before maturity, but the event is not an event of default until all the conditions set out in the trust indenture in connection with the giving of notice of the event have been satisfied or the period of time for giving the notice has elapsed;

"issuer" « émetteur »

"issuer" means a bank that has issued, is about to issue or is in the process of issuing subordinated indebtedness;

"trustee" « fiduciaire »

"trustee" means any person appointed as trustee under the terms of a trust indenture to which a bank is a party, and includes any successor trustee;

"trust indenture" « acte de fiducie »

"trust indenture" means any deed, indenture or other instrument, including any supplement or amendment thereto, made by a bank under which the bank issues subordinated indebtedness and in which a person is appointed as trustee for the holders of the subordinated indebtedness issued thereunder.

Application 295. Sections 296 to 306 apply in respect of a trust indenture if the subordinated indebtedness issued or to be issued under the trust indenture is part of a distribution to the public.

Exemption

296. The Superintendent may, in writing, exempt a trust indenture from the application of sections 297 to 306 if, in the Superintendent's opinion, the trust indenture and the subordinated indebtedness are subject to a law of a province or other jurisdiction, other than Canada, that is substantially equivalent to the provisions of this Act relating to trust indentures.

Conflict of interest

297. (1) No person shall be appointed as trustee if at the time of the appointment there is a material conflict of interest between the person's role as trustee and any other role of the person.

Eliminating conflict of interest

(2) A trustee shall, within ninety days after the trustee becomes aware that a material conflict of interest exists,

(a) eliminate the conflict of interest; or

(b) resign from office.

Validity despite conflict

298. A trust indenture and any subordinated indebtedness issued thereunder are valid notwithstanding a material conflict of interest of the trustee.

Removal of trustee

299. If a trustee is appointed in contravention of subsection 297(1) or if a trustee contravenes subsection 297(2), any interested person may apply to a court for an order that the trustee be replaced, and the court may make an order on such terms as it thinks fit.

Trustee qualifications

300. A trustee, or at least one of the trustees if more than one is appointed, must be

(a) a company to which the Trust and Loan Companies Act applies; or

(b) a body corporate that is incorporated by or under an Act of the legislature of a province and authorized to carry on business as a trustee.

1991, c. 46, ss. 300, 577.

List of security holders

301. (1) A holder of subordinated indebtedness issued under a trust indenture may, on payment to the trustee of a reasonable fee and on delivery of a statutory declaration to the trustee, require the trustee to provide, within fifteen days after the delivery to the trustee of the statutory declaration, a list setting out

(a) the names and addresses of the registered holders of the outstanding subordinated indebtedness,

(b) the principal amount of outstanding subordinated indebtedness owned by each such holder, and

(c) the aggregate principal amount of subordinated indebtedness outstanding

as shown on the records maintained by the trustee on the day the statutory declaration is delivered to that trustee.

Duty of issuer

(2) On the demand of a trustee, the issuer of subordinated indebtedness shall provide the trustee with the information required to enable the trustee to comply with subsection (1).

Where applicant is entity

(3) Where the person requiring the trustee to provide a list under subsection (1) is an entity, the statutory declaration required under that subsection shall be made by a director or an officer of the entity or a person acting in a similar capacity.

Contents of statutory declaration

(4) The statutory declaration required under subsection (1) must state

(a) the name and address of the person requiring the trustee to provide the list and, if the person is an entity, the address for service thereof; and

(b) that the list will not be used except as permitted by subsection (5).

Use of list

(5) No person shall use a list obtained under this section except in connection with

(a) an effort to influence the voting of the holders of subordinated indebtedness;

(b) an offer to acquire subordinated indebtedness; or

(c) any other matter relating to the subordinated indebtedness or the affairs of the issuer or guarantor thereof.

Compliance with trust indentures

302. (1) An issuer or a guarantor of subordinated indebtedness issued or to be issued under a trust indenture shall, before undertaking

- (a) the issue, certification and delivery of subordinated indebtedness under the trust indenture, or
- (b) the satisfaction and discharge of the trust indenture,

provide the trustee with evidence of compliance with the conditions in the trust indenture in respect thereof.

Compliance by issuer or guarantor

(2) On the demand of a trustee, the issuer or guarantor of subordinated indebtedness issued or to be issued under a trust indenture shall provide the trustee with evidence of compliance with the conditions in the trust indenture by the issuer or guarantor in respect of any act to be done by the trustee at the request of the issuer or guarantor.

Evidence of compliance

(3) The following documents constitute evidence of compliance for the purposes of subsections (1) and (2):

- (a) a statutory declaration or certificate made by a director or an officer of the issuer or guarantor stating that the conditions referred to in subsections (1) and (2) have been complied with;
- (b) an opinion of legal counsel that the conditions of the trust indenture requiring review by legal counsel have been complied with, if the trust indenture requires compliance with conditions that are subject to review by legal counsel; and
- (c) an opinion or report of the auditors of the issuer or guarantor, or such other accountant as the trustee selects, that the conditions of the trust indenture have been complied with, if the trust indenture requires compliance with conditions that are subject to review by auditors.

Further evidence of compliance

(4) The evidence of compliance referred to in subsection (3) shall include a statement by the person giving the evidence

- (a) declaring that the person has read and understands the conditions of the trust indenture referred to in subsections (1) and (2);

(b) describing the nature and scope of the examination or investigation on which the person based the certificate, statement or opinion; and

(c) declaring that the person has made such examination or investigation as the person believes necessary to enable the statements to be made or the opinions contained or expressed therein to be given.

Trustee may require evidence

303. (1) On the request of a trustee, the issuer or guarantor of subordinated indebtedness issued under a trust indenture shall provide the trustee with evidence in such form as the trustee requires of compliance with any condition thereof relating to any action required or permitted to be taken by the issuer or guarantor under the trust indenture.

Certificate of compliance

(2) At least once in each twelve month period beginning on the date of the trust indenture and at any other time on the demand of a trustee, the issuer or guarantor of subordinated indebtedness issued under a trust indenture shall provide the trustee with a certificate stating that the issuer or guarantor has complied with all requirements contained in the trust indenture that, if not complied with, would, with the giving of notice, lapse of time or otherwise, constitute an event of default, or, if there has been failure to so comply, giving particulars thereof.

Notice of default

304. A trustee shall, within thirty days after the trustee becomes aware of the occurrence thereof, give to the holders of subordinated indebtedness issued under a trust indenture notice of every event of default arising under the trust indenture and continuing at the time the notice is given, unless the trustee believes on reasonable grounds that it is in the best interests of the holders of the subordinated indebtedness to withhold the notice and so informs the issuer and guarantor in writing.

Duty of care

305. (1) In exercising a trustee's powers and discharging a trustee's duties, the trustee shall

(a) act honestly and in good faith with a view to the best interests of the holders of the subordinated indebtedness issued under the trust indenture; and

(b) exercise the care, diligence and skill of a reasonably prudent trustee.

Reliance on statements

(2) Notwithstanding subsection (1), a trustee is not liable if the trustee relies in good faith on statements contained in a statutory declaration, certificate, opinion or report that complies with this Act or the trust indenture.

No exculpation

306. No term of a trust indenture or of any agreement between a trustee and the holders of subordinated indebtedness issued thereunder or between the trustee and the issuer or guarantor operates to relieve a trustee from the duties imposed on the trustee by sections 297, 301 and 304 and subsection 305(1).

Financial Statements and Auditors

Annual Financial Statement

Financial year of Schedule I bank

307. (1) The financial year of a bank named in Schedule I ends on the expiration of the thirty-first day of October of each year.

First financial year

(2) Where a bank named in Schedule I has, after the first day of July in any year, obtained an order approving the commencement and carrying on of business, the first financial year of the bank ends on the expiration of the thirty-first day of October in the next calendar year.

Financial year of Schedule II bank

(3) The financial year of a bank named in Schedule II ends, at the election of the bank in its by-laws, on the expiration of the thirty-first day of October or the thirty-first day of December in each year.

First financial year

(4) Where a bank named in Schedule II has, after the first day of July in any year, obtained an order approving the commencement and carrying on of business, the first financial year of the bank ends, at the election of the bank in its by-laws, on the expiration of the thirty-first day of October or the thirty-first day of December in the next calendar year.

Annual financial statement

308. (1) The directors of a bank shall place before the shareholders at every annual meeting

(a) a comparative annual financial statement (in this Act referred to as an "annual statement") relating separately to

(i) the financial year immediately preceding the meeting, and

(ii) the financial year, if any, immediately preceding the financial year referred to in subparagraph (i);

(b) the report of the auditor or auditors of the bank; and

(c) any further information respecting the financial position of the bank and the results of its operations required by the by-laws of the bank to be placed before the shareholders at the annual meeting.

Contents of annual statement

(2) An annual statement of a bank must contain, with respect to each of the financial years to which it relates,

(a) a balance sheet as at the end of the financial year,

(b) a statement of income for the financial year,

(c) a statement of change of financial position for the financial year, and

(d) a statement of changes in shareholders' equity for the financial year,

showing such information and particulars as in the opinion of the directors are necessary to present fairly, in accordance with the accounting principles referred to in subsection (4), the financial position of the bank as at the end of the financial year to which it relates and the results of the operations and changes in the financial position of the bank for that financial year.

Additional information

(3) A bank shall include with its annual statement

(a) a list of subsidiaries of the bank, other than subsidiaries acquired pursuant to section 472 or pursuant to a realization of security in accordance with section 473 and which the bank would not otherwise be permitted to hold, showing, with respect to each subsidiary,

(i) its name and the address of its head or principal office,

(ii) the book value of the aggregate of any shares of the subsidiary beneficially owned by the bank and by other subsidiaries of the bank, and

(iii) the percentage of the voting rights attached to all the outstanding voting shares of the subsidiary that is carried by the aggregate of any voting shares of the subsidiary beneficially owned by the bank and by other subsidiaries of the bank; and

(b) such other information as the Governor in Council may, by order, require in such form as may be prescribed.

Accounting principles

(4) The financial statements referred to in subsection (1), paragraph (3)(b) and subsection 310(1) shall, except as otherwise specified by the Superintendent, be prepared in accordance with generally accepted accounting principles, the primary source of which is the Handbook of the Canadian Institute of Chartered Accountants. A reference in any provision of this Act to the accounting principles referred to in this subsection shall be construed as a reference to those generally accepted accounting principles with any specifications so made.

1991, c. 46, s. 308; 1997, c. 15, s. 33.

Approval by directors

309. (1) The directors of a bank shall approve the annual statement and the approval of the directors shall be evidenced by the signature of

(a) the chief executive officer or, in the event of that officer's absence or inability to act, any other officer of the bank authorized by the directors to sign in the stead of the chief executive officer; and

(b) one director, if the signature required by paragraph (a) is that of a director, or two directors if the signature required by that paragraph is that of an officer who is not a director.

Condition precedent to publication

(2) A bank shall not publish copies of an annual statement unless it is approved and signed in accordance with subsection (1).

Statements - subsidiaries

310. (1) A bank shall keep at its head office a copy of the current financial statements of each subsidiary of the bank.

Examination

(2) Subject to this section, the shareholders of a bank and their personal representatives may, on request therefor, examine the statements referred to in subsection (1) during the usual business hours of the bank and may take extracts therefrom free of charge.

Barring examination

(3) A bank may refuse to permit an examination under subsection (2) by any person.

Application for order

(4) Within fifteen days after a refusal under subsection (3), the bank shall apply to a court for an order barring the right of the person concerned to make an examination under subsection (2) and the court shall either order the bank to permit the examination or, if it is satisfied that the examination would be detrimental to the bank or to any other body corporate the financial statements of which would be subject to examination, bar the right and make any further order it thinks fit.

Notice to Superintendent

(5) A bank shall give the Superintendent and the person seeking to examine the statements referred to in subsection (1) notice of an application to a court under subsection (4), and the Superintendent and the person may appear and be heard in person or by counsel at the hearing of the application.

Distribution of annual statement 311. (1) A bank shall, not later than twenty-one days before the date of each annual meeting or before the signing of a resolution under paragraph 152(1)(b) in lieu of the annual meeting, send to each shareholder at the shareholder's recorded address a copy of the documents referred to in subsections 308(1) and (3), unless that time period is waived by the shareholder.

Exception

(2) A bank is not required to comply with subsection (1) with respect to a shareholder who has informed the bank, in writing, that the shareholder does not wish to receive the annual statement.

Effect of default

(3) Where a bank is required to comply with subsection (1) and the bank does not comply with that subsection, the annual meeting at which the documents referred to in that subsection are to be considered shall be adjourned until that subsection has been complied with.

1991, c. 46, s. 311; 1997, c. 15, s. 34.

Copy to Superintendent

312. (1) A bank shall send to the Superintendent a copy of the documents referred to in subsections 308(1) and (3) not later than twenty-one days before

(a) the date of each annual meeting of shareholders of the bank; or

(b) the signing of a resolution under paragraph 152(1)(b) in lieu of an annual meeting of shareholders of the bank.

Consent to file later

(2) The Superintendent may give a bank consent in writing to comply with subsection (3) rather than subsection (1) on the condition that the bank's shareholders sign a resolution under paragraph 152(1)(b) in lieu of an annual meeting.

Later filing (3) Where the Superintendent has given that consent to a bank and has not notified the bank that the consent has been withdrawn, the bank shall send a copy of the documents referred to in subsections 308(1) and (3) to the Superintendent not later than thirty days after the signing of that resolution.

1991, c. 46, s. 312; 1997, c. 15, s. 35.

Auditors

Definitions

313. For the purposes of this section and sections 314 to 333,

"firm of accountants" « cabinet de comptables »

"firm of accountants" means a partnership, the members of which are accountants engaged in the practice of accounting, or a body corporate that is incorporated by or under an Act of the legislature of a province and engaged in the practice of accounting;

"member" « membre »

"member", in relation to a firm of accountants, means

(a) an accountant who is a partner in a partnership, the members of which are accountants engaged in the practice of accounting, or

(b) an accountant who is an employee of a firm of accountants.

Appointment of auditors

314. (1) The shareholders of a bank shall, by ordinary resolution at the first meeting of shareholders and at each succeeding annual meeting, appoint a firm of accountants to be the auditor of the bank until the close of the next annual meeting.

Auditors

(2) The shareholders of a bank may, by ordinary resolution at the first meeting of shareholders and at each succeeding annual meeting, appoint two firms of accountants to be the auditors of the bank until the close of the next annual meeting.

Remuneration of auditors

(3) The remuneration of the auditor or auditors may be fixed by ordinary resolution of the shareholders but, if not so fixed, shall be fixed by the directors.

Qualification of auditors

315. (1) A firm of accountants is qualified to be an auditor of a bank if

(a) two or more members thereof are accountants who

(i) are members in good standing of an institute or association of accountants incorporated by or under an Act of the legislature of a province,

(ii) each have at least five years experience at a senior level in performing audits of a financial institution,

(iii) are ordinarily resident in Canada, and

(iv) are independent of the bank; and

(b) the member of the firm jointly designated by the firm and the bank to conduct the audit of the bank on behalf of the firm is qualified in accordance with paragraph (a).

Independence

(2) For the purposes of subsection (1),

(a) independence is a question of fact; and

(b) a member of a firm of accountants is deemed not to be independent of a bank if that member or any other member of the firm of accountants, or if the firm of accountants

(i) is a director or an officer or employee of the bank or of any affiliate of the bank or is a business partner of any director, officer or employee of the bank or of any affiliate of the bank,

(ii) beneficially owns or controls, directly or indirectly, a material interest in the shares of the bank or of any affiliate of the bank, or

(iii) has been a liquidator, trustee in bankruptcy, receiver or receiver and manager of any affiliate of the bank within the two years immediately preceding the firm's proposed appointment as auditor of the bank, other than an affiliate that is a subsidiary of the bank acquired pursuant to section 472 or through a realization of security pursuant to section 473.

Notice of designation

(3) Within fifteen days after appointing a firm of accountants as auditor of a bank, the bank and the firm of accountants shall jointly designate a member of the firm who has the qualifications described in subsection (1) to conduct the audit of the bank on behalf of the firm and shall forthwith notify the Superintendent in writing of the designation.

New designation

(4) Where for any reason a member of a firm of accountants designated pursuant to subsection (3) ceases to conduct the audit of the bank, the bank and the firm of accountants may jointly designate another member of the same firm of accountants who has the qualifications described in subsection (1) to conduct the audit of the bank and the bank shall forthwith notify the Superintendent in writing of the designation.

Deemed vacancy

(5) In any case where subsection (4) applies and a designation is not made pursuant to that subsection within thirty days after the designated member ceases to conduct the audit of the bank, there shall be deemed to be a vacancy in the office of auditor of the bank.

Duty to resign

316. (1) An auditor that ceases to be qualified under section 315 shall resign forthwith after any member of the firm becomes aware that the firm has ceased to be so qualified.

Disqualification order

(2) Any interested person may apply to a court for an order declaring that an auditor of a bank has ceased to be qualified under section 315 and declaring the office of auditor to be vacant.

Revocation of appointment

317. (1) The shareholders of a bank may, by ordinary resolution at a special meeting, revoke the appointment of an auditor.

Idem

(2) The Superintendent may at any time revoke the appointment of an auditor made under subsection (3) or 314(1) or section 319 by notice in writing signed by the Superintendent and sent by registered mail to the auditor and to the bank addressed to the usual place of business of the auditor and the bank.

Filling vacancy

(3) A vacancy created by the revocation of the appointment of an auditor under subsection (1) may be filled at the meeting at which the appointment was revoked and, if not so filled, shall be filled by the directors under section 319.

Ceasing to hold office

318. (1) An auditor of a bank ceases to hold office when

(a) the auditor resigns; or

(b) the appointment of the auditor is revoked by the shareholders or the Superintendent.

Effective date of resignation

(2) The resignation of an auditor becomes effective at the time a written resignation is sent to the bank or at the time specified in the resignation, whichever is later.

Filling vacancy

319. (1) Subject to subsection 317(3), where a vacancy occurs in the office of auditor of a bank, the directors shall forthwith fill the vacancy, and the auditor so appointed holds office for the unexpired term of office of the predecessor of that auditor.

Where Superintendent may fill vacancy

(2) Where the directors fail to fill a vacancy in accordance with subsection (1), the Superintendent may fill the vacancy and the auditor so appointed holds office for the unexpired term of office of the predecessor of that auditor.

Designation of member of firm

(3) Where the Superintendent has, pursuant to subsection (2), appointed a firm of accountants to fill a vacancy, the Superintendent shall designate the member of the firm who is to conduct the audit of the bank on behalf of the firm.

Right to attend meetings

320. (1) The auditor or auditors of a bank are entitled to receive notice of every meeting of shareholders and, at the expense of the bank, to attend and be heard thereat on matters relating to the duties of the auditor or auditors.

Duty to attend meeting

(2) If a director or shareholder of a bank, whether or not the shareholder is entitled to vote at the meeting, gives written notice, not less than ten days before a meeting of shareholders, to an auditor or former auditor of the bank that the director or shareholder wishes the auditor's attendance at the meeting, the auditor or former auditor shall attend the meeting at the expense of the bank and answer questions relating to the auditor's or former auditor's duties as auditor.

Notice to bank (3) A director or shareholder who gives notice under subsection (2) shall send concurrently a copy of the notice to the bank and the bank shall forthwith send a copy thereof to the Superintendent.

Superintendent may attend

(4) The Superintendent may attend and be heard at any meeting referred to in subsection (2).

Statement of auditor

321. (1) An auditor of a bank that

(a) resigns,

(b) receives a notice or otherwise learns of a meeting of shareholders called for the purpose of revoking the appointment of the auditor, or

(c) receives a notice or otherwise learns of a meeting of directors or shareholders at which another firm of accountants is to be appointed in its stead, whether because of the auditor's resignation or revocation of appointment or because the auditor's term of office has expired or is about to expire,

shall submit to the bank and the Superintendent a written statement giving the reasons for the resignation or the reasons why the auditor opposes any proposed action.

Statement to be sent to shareholders

(2) Where a bank receives a written statement referred to in subsection (1) that relates to a resignation as a result of a disagreement with the directors or officers of the bank or that relates to a matter referred to in paragraph (1)(b) or (c), the bank shall forthwith send a copy of the statement to each shareholder who is entitled to vote at the annual meeting of shareholders.

Duty of replacement auditor

322. (1) Where an auditor of a bank has resigned or the appointment of an auditor has been revoked, no firm of accountants shall accept an appointment as auditor of the bank or consent to be an auditor of the bank until the firm of accountants has requested and received from the other auditor a written statement of the circumstances and reasons why the other auditor resigned or why, in the other auditor's opinion, the other auditor's appointment was revoked.

Exception

(2) Notwithstanding subsection (1), a firm of accountants may accept an appointment or consent to be appointed as auditor of a bank if, within fifteen days after a request under that subsection is made, no reply from the other auditor is received.

Effect of non-compliance

(3) Unless subsection (2) applies, an appointment as auditor of a bank is void if subsection (1) has not been complied with.

Auditors' examination

323. (1) The auditor or auditors of a bank shall make such examination as the auditor or auditors consider necessary to enable the auditor or auditors to report on the annual statement and on other financial statements required by this Act to be placed before the shareholders, except such annual statements or parts thereof as relate to the period referred to in subparagraph 308(1)(a)(ii).

Auditing standards

(2) The examination of the auditor or auditors referred to in subsection (1) shall, except as otherwise specified by the Superintendent, be conducted in accordance with generally accepted auditing standards, the primary source of which is the Handbook of the Canadian Institute of Chartered Accountants.

Right to information

324. (1) On the request of the auditor or auditors of a bank, the present or former directors, officers, employees or agents of the bank shall, to the extent that such persons are reasonably able to do so,

(a) permit access to such records, assets and security held by the bank or any entity in which the bank has a substantial investment, and

(b) provide such information and explanations as are, in the opinion of the auditor or auditors, necessary to enable the auditor or auditors to perform the duties of the auditor or auditors of the bank.

Directors to provide information

(2) On the request of the auditor or auditors of a bank, the directors of the bank shall, to the extent that they are reasonably able to do so,

(a) obtain from the present or former directors, officers, employees and agents of any entity in which the bank has a substantial investment the information and explanations that such persons are reasonably able to provide and that are, in the opinion of the auditor or auditors, necessary to enable them to perform the duties of the auditor or auditors of the bank; and

(b) provide the auditor or auditors with the information and explanations so obtained.

No civil liability

(3) A person who in good faith makes an oral or written communication under subsection (1) or (2) shall not be liable in any civil action arising from having made the communication.

Auditors' report and extended examination

325. (1) The Superintendent may, in writing, require that the auditor or auditors of a bank report to the Superintendent on the extent of the procedures of the auditor or auditors in the examination of the annual statement and may, in writing, require that the auditor or auditors enlarge or extend the scope of that examination or direct that any other particular procedure be performed in any particular case, and the auditor or auditors shall comply with any such requirement of the Superintendent and report to the Superintendent thereon.

Special examination

(2) The Superintendent may, in writing, require that the auditor or auditors of a bank make a particular examination relating to the adequacy of the procedures adopted by the bank for the safety of its creditors and shareholders, or any other examination as, in the Superintendent's opinion, the public interest may require, and report to the Superintendent thereon.

Idem

(3) The Superintendent may direct that a special audit of a bank be made if, in the opinion of the Superintendent, it is so required and may appoint for that purpose a firm of accountants qualified pursuant to subsection 315(1) to be an auditor of the bank.

Expenses payable by bank

(4) The expenses entailed by any examination or audit referred to in any of subsections (1) to (3) are payable by the bank on being approved in writing by the Superintendent.

1991, c. 46, s. 325; 1999, c. 31, s. 13(F).

Auditors' report

326. (1) The auditor or auditors shall, not less than twenty-one days before the date of the annual meeting of the shareholders of the bank, make a report in writing to the shareholders on the annual statement referred to in subsection 308(1).

Audit for shareholders

(2) In each report required under subsection (1), the auditor or auditors shall state whether, in the opinion of the auditor or auditors, the annual statement presents fairly, in accordance with the accounting principles referred to in subsection 308(4), the financial position of the bank as at the end of the financial year to which it relates and the results of the operations and changes in the financial position of the bank for that financial year.

Auditors' remarks

(3) In each report referred to in subsection (2), the auditor or auditors shall include such remarks as the auditor or auditors consider necessary when

(a) the examination has not been made in accordance with the auditing standards referred to in subsection 323(2);

(b) the annual statement has not been prepared on a basis consistent with that of the preceding financial year; or

(c) the annual statement does not present fairly, in accordance with the accounting principles referred to in subsection 308(4), the financial position of the bank as at the end of the financial year to which it relates or the results of the operations or changes in the financial position of the bank for that financial year.

Report on directors' statement

327. (1) The auditor or auditors of a bank shall, if required by the shareholders, audit and report to the shareholders on any financial statement submitted by the directors to the shareholders, and the report shall state whether, in their opinion, the financial statement presents fairly the information required by the shareholders.

Making of report

(2) A report of the auditor or auditors made under subsection (1) shall be attached to the financial statement to which it relates and a copy of the statement and report shall be sent by the directors to every shareholder and to the Superintendent.

Report to officers

328. (1) It is the duty of the auditor or auditors of a bank to report in writing to the chief executive officer and chief financial officer of the bank any transactions or conditions that have come to the attention of the auditor or auditors affecting the well-being of the bank that in the opinion of the auditor or auditors are not satisfactory and require rectification and, without restricting the generality of the foregoing, the auditor or auditors shall, as occasion requires, make a report to those officers in respect of

(a) transactions of the bank that have come to the attention of the auditor or auditors and that in the opinion of the auditor or auditors have not been within the powers of the bank, and

(b) loans owing to the bank by any person the aggregate amount of which exceeds one half of one per cent of the regulatory capital of the bank and in respect of which, in the opinion of the auditor or auditors, loss to the bank is likely to occur,

but when a report required under paragraph (b) has been made in respect of loans to any person, it is not necessary to report again in respect of loans to that person unless, in the opinion of the auditor or auditors, the amount of the loss likely to occur has increased.

Transmission of report

(2) Where the auditor or auditors of a bank make a report under subsection (1),

(a) the auditor or auditors shall transmit the report, in writing, to the chief executive officer and chief financial officer of the bank;

(b) the report shall be presented to the first meeting of the directors following its receipt;

(c) the report shall be incorporated in the minutes of that meeting; and

(d) the auditor or auditors shall, at the time of transmitting the report to the chief executive officer and chief financial officer, provide the Superintendent with a copy of the report.

Auditors of subsidiaries

329. (1) A bank shall take all necessary steps to ensure that each of its subsidiaries has as its auditor the auditor or one of the auditors of the bank.

Subsidiary outside Canada

(2) Subsection (1) applies in the case of a subsidiary that carries on its operations in a country other than Canada unless the laws of that country do not permit the appointment of an auditor of the bank as the auditor of that subsidiary.

Exception

(3) Subsection (1) does not apply in respect of any particular subsidiary where the bank, after having consulted its auditor or auditors, is of the opinion that the total assets of the subsidiary are not a material part of the total assets of the bank.

Auditors' attendance

330. (1) The auditor or auditors of a bank are entitled to receive notice of every meeting of the audit committee and the conduct review committee of the bank and, at the expense of the bank, to attend and be heard at that meeting.

Attendance

(2) If so requested by a member of the audit committee, the auditor or auditors shall attend every meeting of the audit committee held during the member's term of office.

1991, c. 46, s. 330; 1993, c. 34, s. 7(F).

Calling meeting

331. (1) The auditor or auditors of a bank or a member of the audit committee may call a meeting of the audit committee.

Right to interview

(2) The chief internal auditor of a bank or any officer or employee of the bank acting in a similar capacity shall, at the request of the auditor or auditors of the bank and on receipt of reasonable notice, meet with the auditor or auditors.

Notice of errors

332. (1) A director or an officer of a bank shall forthwith notify the audit committee and the auditor or auditors of the bank of any error or misstatement of which the director or officer becomes aware in an annual statement or other financial statement on which the auditor or auditors or any former auditor or auditors have reported.

Error noted by auditors

(2) If the auditor or auditors or former auditor or auditors of a bank are notified or become aware of an error or misstatement in an annual statement or other financial statement on which the auditor or auditors reported and in the opinion of the auditor or auditors the error or misstatement is material, the auditor or auditors or former auditor or auditors shall inform each director of the bank accordingly.

Duty of directors

(3) When under subsection (2) the auditor or auditors or former auditor or auditors of a bank inform the directors of an error or misstatement in an annual statement or other financial statement, the directors shall

(a) prepare and issue a revised annual statement or financial statement; or

(b) otherwise inform the shareholders and the Superintendent of the error or misstatement.

Qualified privilege for statements

333. Any oral or written statement or report made under this Act by the auditor or auditors or former auditor or auditors of a bank has qualified privilege.

Remedial Actions

Derivative action

334. (1) Subject to subsection (2), a complainant or the Superintendent may apply to a court for leave to bring an action under this Act in the name and on behalf of a bank or any of its subsidiaries, or to intervene in an action under this Act to which the bank or a subsidiary of the bank is a party, for the purpose of prosecuting, defending or discontinuing the action on behalf of the bank or the subsidiary.

Conditions precedent

(2) No action may be brought and no intervention in an action may be made under subsection (1) by a complainant unless the court is satisfied that

(a) the complainant has given reasonable notice to the directors of the bank or the subsidiary of the complainant's intention to apply to the court under that section if the directors of the bank or its subsidiary do not bring, diligently prosecute or defend, or discontinue the action;

(b) the complainant is acting in good faith; and

(c) it appears to be in the interests of the bank or the subsidiary that the action be brought, prosecuted, defended or discontinued.

Notice to Superintendent

(3) A complainant under subsection (1) shall give the Superintendent notice of the application and the Superintendent may appear and be heard in person or by counsel at the hearing of the application.

Powers of court

335. (1) In connection with an action brought or intervened in under subsection 334(1), the court may at any time make any order it thinks fit including, without limiting the generality of the foregoing,

(a) an order authorizing the Superintendent, the complainant or any other person to control the conduct of the action;

(b) an order giving directions for the conduct of the action;

(c) an order directing that any amount adjudged payable by a defendant in the action be paid, in whole or in part, directly to former and present security holders of the bank or of the subsidiary instead of to the bank or to the subsidiary; and

(d) an order requiring the bank or the subsidiary to pay reasonable legal fees incurred by the Superintendent or the complainant in connection with the action.

Jurisdiction

(2) Notwithstanding subsection (1), the court may not make any order in relation to any matter that would, under this Act, require the approval of the Minister or the Superintendent.

Status of shareholder approval

336. (1) An application made or an action brought or intervened in under subsection 334(1) or section 338 need not be stayed or dismissed by reason only that it is shown that an alleged breach of a right or duty owed to the bank or its subsidiary has been or might be approved by the shareholders of the bank or subsidiary or both, but evidence of approval by the shareholders may be taken into account by the court in making an order under section 335.

Court approval to discontinue

(2) An application made or an action brought or intervened in under subsection 334(1) or section 338 shall not be stayed, discontinued, settled or dismissed for want of prosecution without the approval of the court given on such terms as the court thinks fit and, if the court determines that

the interests of any complainant might be substantially affected by any stay, discontinuance, settlement or dismissal, the court may order any party to the application or action to give notice to the complainant.

No security for costs

337. (1) A complainant is not required to give security for costs in any application made or any action brought or intervened in under subsection 334(1) or section 338.

Interim costs

(2) In an application made or an action brought or intervened in under subsection 334(1) or section 338, the court may at any time order the bank or its subsidiary to pay to the complainant interim costs, including legal fees and disbursements, but the complainant may be held accountable by the court for those interim costs on final disposition of the application or action.

Application to rectify records

338. (1) If the name of a person is alleged to be or to have been wrongly entered or retained in, or wrongly deleted or omitted from, the securities register or any other record of a bank, the bank, a security holder of the bank or any aggrieved person may apply to a court for an order that the securities register or record be rectified.

Notice to Superintendent

(2) An applicant under this section shall give the Superintendent notice of the application and the Superintendent may appear and be heard in person or by counsel at the hearing of the application.

Powers of court

(3) In connection with an application under this section, the court may make any order it thinks fit including, without limiting the generality of the foregoing,

(a) an order requiring the securities register or other record of the bank to be rectified;

(b) an order restraining a bank from calling or holding a meeting of shareholders or paying a dividend before the rectification;

(c) an order determining the right of a party to the proceedings to have the party's name entered or retained in, or deleted or omitted from, the securities register or records of the bank, whether the issue arises between two or more security holders or alleged security holders, or between the bank and any security holder or alleged security holder; and

(d) an order compensating a party who has incurred a loss.

Liquidation and Dissolution

Definition of "court"

339. For the purposes of subsections 346(1) and 347(1) and (2), sections 348 to 352, subsection 353(1), sections 355 and 357 to 359, subsections 363(3) and (4) and section 368, "court" means a court having jurisdiction in the place where the bank has its head office.

Application of subsection (2) and sections 341 to 368

340. (1) Subsection (2) and sections 341 to 368 do not apply to a bank that is insolvent within the meaning of the Winding-up and Restructuring Act.

Staying proceedings on insolvency (2) Any proceedings taken under this Part to dissolve or to liquidate and dissolve a bank shall be stayed if the bank is at any time found to be insolvent within the meaning of the Winding-up and Restructuring Act.

1991, c. 46, s. 340; 1996, c. 6, s. 167.

Returns to Superintendent

341. A liquidator appointed under this Part to wind up the business of a bank shall provide the Superintendent with such information relating to the business and affairs of the bank in such form as the Superintendent requires.

Simple Liquidation

No property and no liabilities

342. (1) A bank that has no property and no liabilities may, if authorized by a special resolution of the shareholders or, if there are no shareholders, by a resolution of all the directors, apply to the Minister for letters patent dissolving the bank.

Dissolution by letters patent

(2) Where the Minister has received an application under subsection (1) and is satisfied that all the circumstances so warrant, the Minister may issue letters patent dissolving the bank.

Effect of letters patent

(3) A bank in respect of which letters patent are issued under subsection (2) ceases to exist on the day stated in the letters patent.

Proposing liquidation

343. (1) The voluntary liquidation and dissolution of a bank, other than a bank referred to in subsection 342(1),

(a) may be proposed by its directors; or

(b) may be initiated by way of a proposal made by a shareholder who is entitled to vote at an annual meeting of shareholders in accordance with sections 143 and 144.

Terms must be set out

(2) A notice of any meeting of shareholders at which the voluntary liquidation and dissolution of a bank is to be proposed shall set out the terms of the proposal.

Shareholders' resolution

344. Where the voluntary liquidation and dissolution of a bank is proposed, the bank may apply to the Minister for letters patent dissolving the bank if authorized by a special resolution of the shareholders or, where the bank has issued more than one class of shares, by special resolution of each class of shareholders whether or not those shareholders are otherwise entitled to vote.

Approval of Minister required

345. (1) No action directed toward the voluntary liquidation and dissolution of a bank shall be taken by a bank, other than as provided in sections 343 and 344, until an application made by the bank pursuant to section 344 has been approved by the Minister.

Conditional approval

(2) Where the Minister is satisfied on the basis of an application made pursuant to section 344 that the circumstances warrant the voluntary liquidation and dissolution of a bank, the Minister may, by order, approve the application.

Effect of approval

(3) Where the Minister has approved an application made pursuant to section 344 with respect to a bank, the bank shall not carry on business except to the extent necessary to complete its voluntary liquidation.

Liquidation process

(4) Where the Minister has approved an application made pursuant to section 344 with respect to a bank, the bank shall

(a) cause notice of the approval to be sent to each known claimant against and creditor of the bank;

(b) publish notice of the approval once a week for four consecutive weeks in the Canada Gazette and once a week for two consecutive weeks in one or more newspapers in general circulation in each province in which the bank transacted any business within the preceding twelve months;

(c) proceed to collect its property, dispose of property that is not to be distributed in kind to its shareholders, discharge all its obligations and do all other acts required to liquidate its business; and

(d) after giving the notice required under paragraphs (a) and (b) and adequately providing for the payment or discharge of all its obligations, distribute its remaining property, either in money or in kind, among its shareholders according to their respective rights.

Dissolution instrument

346. (1) Unless a court has made an order in accordance with subsection 347(1), the Minister may, if satisfied that the bank has complied with subsection 345(4) and that all the circumstances so warrant, issue letters patent dissolving the bank.

Bank dissolved

(2) A bank in respect of which letters patent are issued under subsection (1) is dissolved and ceases to exist on the day stated in the letters patent.

Court-supervised Liquidation

Application for court supervision

347. (1) The Superintendent or any interested person may, at any time during the liquidation of a bank, apply to a court for an order for the continuance of the voluntary liquidation under the supervision of the court in accordance with this section and sections 348 to 360 and on such application the court may so order and make any further order it thinks fit.

Idem

(2) An application under subsection (1) to a court to supervise a voluntary liquidation shall state the reasons, verified by an affidavit of the applicant, why the court should supervise the liquidation.

Notice to Superintendent

(3) Where a person, other than the Superintendent, makes an application under subsection (1), the person shall give the Superintendent notice of the application and the Superintendent may appear and be heard in person or by counsel at the hearing of the application.

Court supervision thereafter

348. (1) When a court makes an order under subsection 347(1), the liquidation of the bank shall continue under the supervision of the court.

Commencement of liquidation

(2) The supervision of the liquidation of a bank by the court pursuant to an order made under subsection 347(1) commences on the day the order is made.

Powers of court

349. In connection with the liquidation and dissolution of a bank, the court may, where it is satisfied that the bank is able to pay or adequately provide for the discharge of all its obligations, make any order it thinks fit including, without limiting the generality of the foregoing,

- (a) an order to liquidate;
- (b) an order appointing a liquidator, with or without security, fixing a liquidator's remuneration and replacing a liquidator;
- (c) an order appointing inspectors or referees, specifying their powers, fixing their remuneration and replacing inspectors or referees;
- (d) an order determining the notice to be given to any interested person, or dispensing with notice to any person;
- (e) an order determining the validity of any claims made against the bank;
- (f) an order, at any stage of the proceedings, restraining the directors and officers of the bank from
 - (i) exercising any of their powers, or
 - (ii) collecting or receiving any debt or other property of the bank, and from paying out or transferring any property of the bank, except as permitted by the court;
- (g) an order determining and enforcing the duty or liability of any present or former director, officer or shareholder

(i) to the bank, or

(ii) for an obligation of the bank;

(h) an order approving the payment, satisfaction or compromise of claims against the bank and the retention of assets for that purpose, and determining the adequacy of provisions for the payment, discharge or transfer of any obligation of the bank, whether liquidated, unliquidated, future or contingent;

(i) with the concurrence of the Superintendent, an order providing for the disposal or destruction of the documents, records or registers of the bank;

(j) on the application of a creditor, an inspector or the liquidator, an order giving directions on any matter arising in the liquidation;

(k) after notice has been given to all interested parties, an order relieving the liquidator from any omission or default on such terms as the court thinks fit and confirming any act of the liquidator;

(l) subject to sections 356 to 358, an order approving any proposed, interim or final distribution to shareholders, if any, or incorporators, in money or in property;

(m) an order disposing of any property belonging to creditors, shareholders and incorporators who cannot be found;

(n) on the application of any director, officer, shareholder, incorporator, creditor or the liquidator,

(i) an order staying the liquidation proceedings on such terms and conditions as the court thinks fit,

(ii) an order continuing or discontinuing the liquidation proceedings, or

(iii) an order to the liquidator to restore to the bank all of its remaining property; and

(o) after the liquidator has rendered the liquidator's final account to the court, an order directing the bank to apply to the Minister for letters patent dissolving the bank.

Cessation of business and powers

350. (1) Where a court makes an order for the liquidation of a bank,

(a) the bank continues in existence but shall cease to carry on business, except the business that is, in the opinion of the liquidator, required for an orderly liquidation; and

(b) the powers of the directors and shareholders, if any, are vested in the liquidator and cease to be vested in the directors or shareholders, except as specifically authorized by the court.

Delegation by liquidator

(2) A liquidator may delegate any of the powers vested by paragraph (1)(b) to the directors or shareholders, if any.

Appointment of liquidator

351. When making an order for the liquidation of a bank or at any time thereafter, the court may appoint any person, including a director, an officer or a shareholder of the bank or any other bank, as liquidator of the bank.

Vacancy in liquidator's office 352. Where an order for the liquidation of a bank has been made and the office of liquidator is or becomes vacant, the property of the bank is under the control of the court until the office of liquidator is filled.

Duties of liquidator 353. (1) A liquidator shall

(a) forthwith after appointment give notice thereof to the Superintendent and to each claimant and creditor of the bank known to the liquidator;

(b) forthwith after appointment publish notice thereof once a week for four consecutive weeks in the Canada Gazette and once a week for two consecutive weeks in one or more newspapers in general circulation in each province in which the bank has transacted any business within the preceding twelve months, requiring

(i) any person indebted to the bank to render an account and pay to the liquidator at the time and place specified in the notice any amount owing,

(ii) any person possessing property of the bank to deliver it to the liquidator at the time and place specified in the notice, and

(iii) any person having a claim against the bank, whether liquidated, unliquidated, future or contingent, to present particulars thereof in writing to the liquidator not later than sixty days after the first publication of the notice;

(c) take into custody and control the property of the bank;

(d) open and maintain a trust account for the moneys received by the liquidator in the course of the liquidation of the bank;

(e) keep accounts of the moneys received and paid out by the liquidator in the course of the liquidation of the bank;

(f) maintain separate lists of each class of creditors, shareholders and other persons having claims against the bank;

(g) if at any time the liquidator determines that the bank is unable to pay or adequately provide for the discharge of its obligations, apply to the court for directions;

(h) deliver to the court and to the Superintendent, at least once in every twelve month period after the liquidator's appointment or more often as the court requires, the annual statement of the bank prepared in accordance with subsection 308(1) or prepared in such manner as the liquidator thinks proper or as the court requires; and

(i) after the final accounts are approved by the court, distribute any remaining property of the bank among the shareholders, if any, or incorporators, according to their respective rights.

Powers of liquidator

(2) A liquidator may

(a) retain lawyers, notaries, accountants, appraisers and other professional advisers;

(b) bring, defend or take part in any civil, criminal or administrative action or proceeding in the name and on behalf of the bank;

(c) carry on the business of the bank as required for an orderly liquidation;

(d) sell by public auction or private sale any property of the bank;

(e) do all acts and execute documents in the name and on behalf of the bank;

(f) borrow money on the security of the property of the bank;

(g) settle or compromise any claims by or against the bank; and

(h) do all other things necessary for the liquidation of the bank and distribution of its property.

Reliance on statements

354. A liquidator is not liable if the liquidator relies in good faith on

(a) financial statements of the bank represented to the liquidator by an officer of the bank, or on a written report of the auditor or auditors of the bank, to reflect fairly the financial condition of the bank; or

(b) an opinion, a report or a statement of a lawyer, a notary, an accountant, an appraiser or other professional adviser retained by the liquidator.

Examination of others

355. (1) Where a liquidator has reason to believe that any property of the bank is in the possession or under the control of a person or that a person has concealed, withheld or misappropriated any such property, the liquidator may apply to the court for an order requiring that person to appear before the court at the time and place designated in the order and to be examined.

Restoration and compensation

(2) Where an examination conducted pursuant to subsection (1) discloses that a person has concealed, withheld or misappropriated any property of the bank, the court may order that person to restore the property or pay compensation to the liquidator.

Costs of liquidation

356. A liquidator shall pay the costs of liquidation out of the property of the bank and shall pay or make adequate provision for all claims against the bank.

Final accounts

357. (1) Within one year after the appointment of a liquidator and after paying or making adequate provision for all claims against the bank, the liquidator shall apply to the court

(a) for approval of the final accounts of the liquidator and for an order permitting the distribution, in money or in kind, of the remaining property of the bank to its shareholders, if any, or to the incorporators, according to their respective rights; or

(b) for an extension of time, setting out the reasons therefor.

Shareholder application

(2) If a liquidator fails to make the application required by subsection (1), a shareholder of the bank or, if there are no shareholders of the bank, an incorporator may apply to the court for an order for the liquidator to show cause why a final accounting and distribution should not be made.

Notification of final accounts

(3) A liquidator shall give notice of the liquidator's intention to make an application under subsection (1) to the Superintendent, to each inspector appointed under section 349, to each shareholder of the bank or, if there are no shareholders, to each incorporator and to any person who provided a security or fidelity bond for the liquidation.

Publication

(4) The liquidator shall publish the notice required under subsection (3) in the Canada Gazette and once a week for two consecutive weeks in one or more newspapers in general circulation in each province in which the bank has transacted any business within the preceding twelve months or as otherwise directed by the court.

Final order

358. (1) If the court approves the final accounts rendered by a liquidator, the court shall make an order

- (a) directing the bank to apply to the Minister for letters patent dissolving the bank;
- (b) directing the custody or disposal of the documents, records and registers of the bank; and
- (c) discharging the liquidator except in respect of the duty of a liquidator under subsection (2).

Delivery of order

(2) The liquidator shall forthwith send a certified copy of the order referred to in subsection (1) to the Superintendent.

Right to distribution of money

359. (1) If in the course of the liquidation of a bank the shareholders resolve to, or the liquidator proposes to,

- (a) exchange all or substantially all of the remaining property of the bank for securities of another entity that are to be distributed to the shareholders or to the incorporators, or
- (b) distribute all or part of the remaining property of the bank to the shareholders or to the incorporators in kind,

a shareholder or incorporator may apply to the court for an order requiring the distribution of the remaining property of the bank to be in money.

Powers of court

(2) On an application under subsection (1), the court may order

- (a) all of the remaining property of the bank to be converted into and distributed in money; or
- (b) the claim of any shareholder or incorporator applying under this section to be satisfied by a distribution in money.

Order by court

(3) Where an order is made by a court under paragraph (2)(b), the court

(a) shall fix a fair value on the share of the property of the bank attributable to the shareholder or incorporator;

(b) may in its discretion appoint one or more appraisers to assist the court in fixing a fair value in accordance with paragraph (a); and

(c) shall render a final order against the bank in favour of the shareholder or incorporator for the amount of the share of the property of the bank attributable to the shareholder or incorporator.

Dissolution by letters patent

360. (1) On an application made pursuant to an order under paragraph 358(1)(a), the Minister may issue letters patent dissolving the bank.

Bank dissolved

(2) A bank in respect of which letters patent are issued under subsection (1) is dissolved and ceases to exist on the date of the issuance of the letters patent.

General

Definition of "shareholder" and "incorporator"

361. In sections 363 and 364, "shareholder" and "incorporator" include the heirs and personal representatives of a shareholder or incorporator.

Continuation of actions 362.

(1) Notwithstanding the dissolution of a bank under this Part,

(a) a civil, criminal or administrative action or proceeding commenced by or against the bank before its dissolution may be continued as if the bank had not been dissolved;

(b) a civil, criminal or administrative action or proceeding may be brought against the bank within two years after its dissolution as if the bank had not been dissolved; and

(c) any property that would have been available to satisfy any judgment or order if the bank had not been dissolved remains available for that purpose.

Service on bank

(2) Service of a document on a bank after its dissolution may be effected by serving the document on a person shown as a director in the incorporating instrument of the bank or, if applicable, in the latest return sent to the Superintendent under section 632.

1991, c. 46, s. 362; 1999, c. 28, s. 17.

Limitations on liability

363. (1) Notwithstanding the dissolution of a bank, a shareholder or incorporator to whom any of its property has been distributed is liable to any person claiming under subsection 362(1) to the extent of the amount received by that shareholder or incorporator on the distribution.

Limitation

(2) An action to enforce liability under subsection (1) may not be commenced except within two years after the date of the dissolution of the bank.

Action against class

(3) A court may order an action referred to in subsections (1) and (2) to be brought against the persons who were shareholders or incorporators as a class, subject to such conditions as the court thinks fit.

Reference

(4) If the plaintiff establishes a claim in an action under subsection (3), the court may refer the proceedings to a referee or other officer of the court who may

(a) add as a party to the proceedings each person found by the plaintiff to have been a shareholder or incorporator;

(b) determine, subject to subsection (1), the amount that each person who was a shareholder or incorporator must contribute towards satisfaction of the plaintiff's claim; and

(c) direct payment of the amounts so determined.

Where creditor cannot be found

364. Where a creditor, shareholder or incorporator to whom property is to be distributed on the dissolution of a bank cannot be found, the portion of the property to be distributed to that creditor, shareholder or incorporator shall be converted into money and paid in accordance with section 366.

Vesting in Crown

365. Subject to subsection 362(1) and sections 366 and 367, property of a bank that has not been disposed of at the date of the dissolution of the bank vests in Her Majesty in right of Canada.

Unclaimed money on winding-up

366. (1) Notwithstanding the Winding-up and Restructuring Act, where the business of a bank is being wound up, the liquidator or the bank shall pay to the Minister on demand and in any event before the final winding-up of that business any amount that is payable by the liquidator or the bank to a creditor, shareholder or incorporator of the bank to whom payment thereof has not, for any reason, been made.

Records (2) Where a liquidator or a bank makes a payment to the Minister under subsection (1) with respect to a creditor, shareholder or incorporator, the liquidator or bank shall concurrently forward to the Minister all documents, records and registers in the possession of the liquidator or bank that relate to the entitlement of the creditor, shareholder or incorporator.

Payment to Bank of Canada

(3) The Minister shall pay to the Bank of Canada all amounts paid to the Minister under subsection (1) and shall provide the Bank of Canada with any document, record or register received by the Minister under subsection (2).

Liquidator and bank discharged

(4) Payment by a liquidator or a bank to the Minister under subsection (1) discharges the liquidator and the bank in respect of which the payment is made from all liability for the amount so paid, and payment by the Minister to the Bank of Canada under subsection (3) discharges the Minister from all liability for the amount so paid.

1991, c. 46, s. 366; 1996, c. 6, s. 167.

Liability of Bank of Canada

367. (1) Subject to section 22 of the Bank of Canada Act, where payment has been made to the Bank of Canada of an amount under subsection 366(3), the Bank of Canada, if payment is demanded by a person who, but for subsection 366(4), would be entitled to receive payment of that amount from the liquidator, the bank or the Minister, is liable to pay to that person at its head office an amount equal to the amount so paid to it, with interest thereon for the period, not exceeding ten years, from the day on which the payment was received by the Bank of Canada until the date of payment to the person, at such rate and computed in such manner as the Minister determines.

Enforcing liability

(2) The liability of the Bank of Canada under subsection (1) may be enforced by action against the Bank of Canada in the court in the province in which the debt or instrument was payable.

Custody of records after dissolution

368. A person who has been granted custody of the documents, records and registers of a dissolved bank shall keep them available for production for six years following the date of the dissolution of the bank or until the expiration of such shorter period as may be ordered by the court when it orders the dissolution.

Insolvency

369. (1) In the case of the insolvency of a bank,

(a) the payment of any amount due to Her Majesty in right of Canada, in trust or otherwise, except indebtedness evidenced by subordinated indebtedness, shall be a first charge on the assets of the bank;

(b) the payment of any amount due to Her Majesty in right of a province, in trust or otherwise, except indebtedness evidenced by subordinated indebtedness, shall be a second charge on the assets of the bank;

(c) the payment of the deposit liabilities of the bank and all other liabilities of the bank, except the liabilities referred to in paragraphs (d) and (e), shall be a third charge on the assets of the bank;

(d) subordinated indebtedness of the bank and all other liabilities that by their terms rank equally with or subordinate to such subordinated indebtedness shall be a fourth charge on the assets of the bank; and

(e) the payment of any fines and penalties for which the bank is liable shall be a last charge on the assets of the bank.

Priority not affected

(2) Nothing in subsection (1) prejudices or affects the priority of any holder of any security interest in any property of a bank that the bank is permitted to create under subsection 419(1).

Priorities (3) Priorities within each of paragraphs (1)(a) to (e) shall be determined in accordance with the laws governing priorities and, where applicable, by the terms of the indebtedness and liabilities referred to therein.

**PART VII
OWNERSHIP
DIVISION I
DEFINITIONS AND INTERPRETATION**

Definitions

370. (1) In this Part,

"agent" « mandataire »

"agent" means

(a) in relation to Her Majesty in right of Canada or of a province, any agent of Her Majesty in either of those rights and includes a municipal or public body empowered to perform a function of government in Canada or any entity empowered to perform a function or duty on behalf of Her Majesty in either of those rights, but does not include

(i) an official or entity performing a function or duty in connection with the administration or management of the estate or property of a natural person,

(ii) an official or entity performing a function or duty in connection with the administration, management or investment of a fund established to provide compensation, hospitalization, medical care, annuities, pensions or similar benefits to natural persons, or moneys derived from such a fund, or

(iii) the trustee of any trust for the administration of a fund to which Her Majesty in either of those rights contributes and of which an official or entity that is an agent of Her Majesty in either of those rights is a trustee, and

(b) in relation to the government of a foreign country or any political subdivision thereof, a person empowered to perform a function or duty on behalf of the government of the foreign country or political subdivision, other than a function or duty in connection with the administration or management of the estate or property of a natural person;

"eligible Canadian financial institution" « institution financière canadienne admissible »

"eligible Canadian financial institution" means a Canadian financial institution, other than a bank, that is a body corporate and that is widely held within the meaning of subsection (2);

"eligible financial institution" « institution financière admissible » "eligible financial institution" means an eligible Canadian financial institution or an eligible foreign institution;

"eligible foreign institution" « institution étrangère admissible »

"eligible foreign institution" means

(a) a foreign bank within the meaning of any of paragraphs (a) to (f) of the definition "foreign bank" in section 2, or

(b) a foreign institution that, in the opinion of the Minister,

(i) is widely held, taking into account the meaning of "widely held" as set out in subsection (2), and

(ii) on the advice of the Superintendent, would, if it were to control a bank named in Schedule II,

(A) have sufficient financial resources to be a source of continuing financial support for the bank,

(B) have sound and feasible business plans for the future conduct of the bank, and

(C) be able to provide persons who have sufficient business experience to manage the bank;

"foreign institution" « institution étrangère »

"foreign institution" means an entity that is

(a) engaged in the trust, loan or insurance business, the business of a cooperative credit society or the business of dealing in securities, and

(b) incorporated or formed otherwise than by or under an Act of Parliament or the legislature of a province.

Widely held

(2) For the purposes of subsection (1), "widely held" in respect of a Canadian financial institution means

(a) a Canadian financial institution in which no person holds shares

(i) carrying more than 10 per cent of the voting rights attached to all the outstanding shares of the Canadian financial institution, or

(ii) having an aggregate book value in excess of 10 per cent of the shareholders' equity of the Canadian financial institution;

(b) an insurance company incorporated or formed under the mutual plan;

(c) an association to which the Cooperative Credit Associations Act applies; or

(d) a cooperative credit society regulated by or under an Act of the legislature of a province.

Shares held by entities included

(3) For the purposes of subsection (2), in calculating the number of shares of a Canadian financial institution held by a person there shall be included all the shares held by entities controlled by the person.

Degree of supervision

(4) In considering the matters referred to in subparagraph (b)(ii) of the definition "eligible foreign institution" in relation to any foreign institution, the Superintendent shall have regard to the nature and degree of supervision applying to the foreign institution in the jurisdiction where it principally carries on business.

1991, c. 46, s. 370, c. 48, s. 494.

Associates

371. (1) For the purposes of determining ownership of a bank named in Schedule I, where two persons who each beneficially own shares of a bank are associated with each other, those persons are deemed to be a single person who beneficially owns the aggregate number of shares of the bank beneficially owned by them.

Idem

(2) For the purposes of subsection (1), a person who beneficially owns shares of a bank is associated with another person who beneficially owns shares of the bank if

(a) one person is Her Majesty in right of Canada and the other person is Her Majesty in right of a province or one person is Her Majesty in right of a province and the other person is Her Majesty in right of another province;

(b) each person is an agent of Her Majesty in right of Canada or in right of a province;

(c) each person is an official, a trustee or an entity referred to in subparagraphs (a)(ii) and (iii) of the definition "agent" in subsection 370(1);

(d) each person is an entity owned or controlled by Her Majesty in right of Canada or in right of a province that is not an agent of Her Majesty and is not empowered to perform a function or duty on behalf of Her Majesty;

- (e) both persons are trustees of any trusts for the administration of funds to which Her Majesty in right of Canada contributes and of which no official or entity that is an agent of Her Majesty in such right is a trustee;
- (f) both persons are trustees of any trusts for the administration of funds to which Her Majesty in right of a particular province contributes and of which no official or entity that is an agent of Her Majesty in right of that province is a trustee;
- (g) one person is a local cooperative credit society and the other person is a central cooperative credit society of which the first person is a member;
- (h) both persons are local cooperative credit societies that are members of the same central cooperative credit society;
- (i) one person is a central cooperative credit society, the other person is a federation of cooperative credit societies of which the first is a member, and both persons are incorporated or organized by or pursuant to legislation enacted by the same legislative body;
- (j) both persons are central cooperative credit societies that are members of the same federation of cooperative credit societies, and both persons and the federation of cooperative credit societies are incorporated or organized by or pursuant to legislation enacted by the same legislative body;
or
- (k) both persons are associated within the meaning of paragraphs (a) to (j) with the same person.

DIVISION II OWNERSHIP OF BANKS

Significant interests

372. No person shall have a significant interest in any class of shares of a bank named in Schedule I and, except as permitted by this Part, no person shall have a significant interest in any class of shares of a bank named in Schedule II.

No acquisition of control without approval

372.1 No person shall acquire control, within the meaning of paragraph 3(1)(d), of a bank named in Schedule I and no person shall, without the prior written approval of the Minister, acquire control, within the meaning of that paragraph, of a bank named in Schedule II.

1993, c. 44, s. 24; 1994, c. 47, s. 17; 1997, c. 15, s. 36.

Schedule II banks - first 10 years

373. (1) Subject to section 377, a person may, at any time before the day that is ten years after the day the bank came into existence, have a significant interest in any class of shares of a bank named in Schedule II.

Activities of a non-financial nature

(2) With respect to an application by any person to incorporate a bank named in Schedule II or to acquire a significant interest in any class of shares of such a bank, the Minister, in deciding whether to approve the incorporation or the acquisition, may, in addition to any other matters to be taken into account pursuant to this Act, take into account any activities of the person of a non-financial nature.

1991, c. 46, s. 373; 1994, c. 47, s. 17; 1997, c. 15, s. 37(E).

373.1 [Repealed, 1999, c. 28, s. 18]

Eligible Canadian financial institutions

374. (1) Subject to section 377, an eligible Canadian financial institution may have a significant interest in any class of shares of a bank named in Schedule II at any time after the day that is ten years after the day the bank came into existence if at that time the eligible Canadian financial institution itself holds a sufficient number of shares of the bank to control the bank within the meaning of paragraph 3(1)(a).

Provincial financial institutions

(2) Subject to section 377, an eligible Canadian financial institution that is incorporated by or under an Act of the legislature of a province may have a significant interest in a bank named in Schedule II only if it enters into an agreement with the Minister imposing terms and conditions with respect to the acquisition or increase of a substantial investment by the eligible Canadian financial institution in bodies corporate or unincorporated entities, other than bodies corporate or unincorporated entities in which a bank is permitted to have a substantial investment pursuant to sections 468 and 469.

Substantial investments to be considered

(3) With respect to an application by any eligible Canadian financial institution referred to in subsection (2) to incorporate a bank named in Schedule II or to acquire a significant interest in any class of shares of such a bank, the Minister, in deciding whether to approve the incorporation or the acquisition, may, in addition to any other matters to be taken into account pursuant to this Act, take into account whether the eligible Canadian financial institution has any substantial investments in bodies corporate or unincorporated entities, other than bodies corporate or

unincorporated entities in which a bank is permitted to have a substantial investment pursuant to sections 468 and 469.

Cooperative credit societies

(4) Where an application to incorporate a bank named in Schedule II or to acquire a significant interest in any class of shares of such a bank is made by an eligible Canadian financial institution referred to in paragraph 370(2)(c), the provisions of subsections (2) and (3) apply to any member of the applicant that is an eligible Canadian financial institution referred to in subsection (2) as if the member were the applicant.

1991, c. 46, s. 374, c. 48, s. 494.

Eligible foreign institution

375. (1) Subject to sections 377 and 518, and subject to any agreement entered into with the Minister imposing terms and conditions concerning the ownership of the eligible foreign institution, an eligible foreign institution may have a significant interest in any class of shares of a bank named in Schedule II if the eligible foreign institution controls the bank within the meaning of paragraph 3(1)(a).

Substantial investments to be considered

(2) With respect to an application by any eligible foreign institution referred to in subsection (1) to incorporate a bank named in Schedule II or to acquire a significant interest in any class of shares of such a bank, the Minister, in deciding whether to approve the incorporation or the acquisition, may, in addition to any other matters to be taken into account pursuant to this Act, take into account whether the eligible foreign institution has any substantial investments in bodies corporate or unincorporated entities, other than bodies corporate or unincorporated entities in which a bank is permitted to have a substantial investment pursuant to sections 468 and 469.

Agreement

376. Notwithstanding sections 374 and 375, an eligible financial institution may have a significant interest in any class of shares of a bank named in Schedule II and cease to control the bank within the meaning of paragraph 3(1)(a) if the eligible financial institution and the bank have entered into an agreement with the Minister to do all things necessary so that no person has a significant interest in any class of shares of the bank at the expiration of

(a) ten years from the day on which the eligible financial institution first ceases to control the bank; or

(b) such period that is less than ten years as the Minister may direct.

Continuance under the Trust and Loan Companies Act

376.1 (1) Where, on the day that is ten years after the day a bank named in Schedule II came into existence, a person holds a significant interest in any class of shares of the bank and the person is not permitted by section 374 or 375 to hold that interest, the bank shall apply under subsection 31(1) of the Trust and Loan Companies Act for letters patent continuing the bank as a company under that Act.

Idem

(2) Where

(a) on or after the day that is ten years after the day a bank named in Schedule II came into existence, a Canadian financial institution that is the holding body corporate of the bank ceases to be an eligible financial institution, or

(b) there has been a breach of any term or condition set out in an agreement referred to in section 375 entered into between the Minister and the eligible foreign institution that is the holding body corporate of the bank,

the bank, after having been given reasonable notice by the Minister, shall apply to be continued as a company under section 31 of the Trust and Loan Companies Act.

Extension

(3) On application therefor by a bank to which subsection (2) applies, the Minister may, by order, grant to the bank a period not exceeding two years to allow the holding body corporate of the bank to do all things necessary so that subsection (2) does not apply to the bank.

Idem

(4) The Minister shall not make an order pursuant to subsection (3) unless it is in the best interest of the financial system in Canada to do so.

(5) [Repealed, 1999, c. 28, s. 19]

1991, c. 46, s. 578; 1997, c. 15, s. 39; 1999, c. 28, s. 19.

DIVISION III CONSTRAINTS ON OWNERSHIP

Constraining acquisition

377. (1) No person, or entity controlled by a person, shall, without the approval of the Minister, purchase or otherwise acquire any share of a bank named in Schedule II or purchase or otherwise acquire control of any entity that holds any share of a bank named in Schedule II if

(a) the acquisition would cause the person to have a significant interest in any class of shares of the bank; or

(b) where the person has a significant interest in a class of shares of the bank, the acquisition would increase the significant interest of the person in that class of shares.

Amalgamation, etc., constitutes acquisition

(2) Where, as a result of an amalgamation, merger or reorganization, the entity that results therefrom would have a significant interest in a class of shares of a bank named in Schedule II, that entity shall be deemed to be acquiring a significant interest in that class of shares of the bank through an acquisition for which the approval of the Minister is required pursuant to subsection (1).

Exemption

(3) The Superintendent may, by order, exempt from the application of this section and section 378 any class of non-voting shares of a bank named in Schedule II that does not amount to more than 10 per cent of the equity, within the meaning of subsection 381(4), of the bank.

Constraining registration

378. No bank named in Schedule II shall, unless the acquisition of the share has been approved by the Minister, record in its securities register a transfer or issue of any share of the bank to any person or to any entity controlled by a person if

(a) the transfer or issue of the share would cause the person to have a significant interest in any class of shares of the bank; or

(b) where the person has a significant interest in a class of shares of the bank, the transfer or issue of the share would increase the significant interest of the person in that class of shares of the bank.

Exception for small holdings

378.1 Notwithstanding section 378, where, as a result of a transfer or issue of shares of a class of shares of a bank to a person, the total number of shares of that class registered in the securities register of the bank in the name of that person

- (a) would not exceed five thousand, and
- (b) would not exceed 0.1 per cent of the outstanding shares of that class,

the bank is entitled to assume that no person is acquiring or increasing a significant interest in that class of shares of the bank as a result of that issue or transfer of shares.

1994, c. 47, s. 18.

Where approval not required

379. (1) Notwithstanding subsections 377(1) and (2) and section 378, approval of the Minister is not required where a person with a significant interest in a class of shares of a bank named in Schedule II or an entity controlled by a person with a significant interest in a class of shares of a bank named in Schedule II

- (a) purchases or otherwise acquires shares of that class, or
- (b) acquires control of any entity that holds any share of that class,

and the number of shares of that class purchased or otherwise acquired, or the acquisition of control of the entity, as the case may be, would not increase the significant interest of the person in that class of shares of the bank to a percentage that is greater than the percentage referred to in subsection (2) or (3), whichever is applicable.

Percentage

(2) Subject to subsection (3), for the purposes of subsection (1), the percentage is 5 percentage points in excess of the significant interest of the person in that class of shares of the bank on the later of the day this Part comes into force and the day of the most recent purchase or other acquisition by

- (a) the person, or
- (b) any entity controlled by the person, other than the entity referred to in paragraph (1)(b), of shares of that class of shares of the bank, or of control of an entity that held shares of that class of shares of the bank, for which approval was given by the Minister.

Idem

(3) Where a person has a significant interest in a class of shares of a bank named in Schedule II and the person's percentage of that class has decreased after the date of the most recent purchase or other acquisition by

(a) the person, or

(b) any entity controlled by the person, other than the entity referred to in paragraph (1)(b),

of shares of that class of shares of the bank, or of control of an entity that held shares of that class of shares of the bank, for which approval was given by the Minister, the percentage for the purposes of subsection (1) is the percentage that is the lesser of

(c) 5 percentage points in excess of the significant interest of the person in that class of shares of the bank on the later of the day this Part comes into force and the day of the most recent purchase or other acquisition by

(i) the person, or

(ii) any entity controlled by the person, other than the entity referred to in paragraph (1)(b),

of shares of that class of shares of the bank, or of control of an entity that held shares of that class of shares of the bank, for which approval was given by the Minister, and

(d) 10 percentage points in excess of the lowest significant interest of the person in that class of shares of the bank at any time after the later of the day this Part comes into force and the day of the most recent purchase or other acquisition by

(i) the person, or

(ii) any entity controlled by the person, other than the entity referred to in paragraph (1)(b), of shares of that class of shares of the bank, or of control of an entity that held shares of that class of shares of the bank, for which approval was given by the Minister.

Exception

(4) Subsection (1) does not apply if the purchase or other acquisition of shares or the acquisition of control referred to in that subsection would

(a) result in the acquisition of control of the bank by the person referred to in that subsection;

(b) where the person controls the bank but the voting rights attached to the aggregate of any voting shares of the bank beneficially owned by the person and by entities controlled by the person do not exceed 50 per cent of the voting rights attached to all of the outstanding voting

shares of the bank, cause the voting rights attached to that aggregate to exceed 50 per cent of the voting rights attached to all of the outstanding voting shares of the bank;

(c) result in the acquisition of a significant interest in a class of shares of the bank by an entity controlled by the person and the acquisition of that investment is not exempted by the regulations; or

(d) result in an increase in a significant interest in a class of shares of the bank by an entity controlled by the person by a percentage that is greater than the percentage referred to in subsection (2) or (3), whichever applies, and the increase is not exempted by the regulations.

Regulations

(5) The Governor in Council may make regulations

(a) exempting from the application of paragraph (4)(c) the acquisition of a significant interest in a class of shares of the bank by an entity controlled by the person; and

(b) exempting from the application of paragraph (4)(d) an increase in a significant interest in a class of shares of the bank by an entity controlled by the person by a percentage that is greater than the percentage referred to in subsection (2) or (3), whichever applies.

1991, c. 46, s. 379; 1997, c. 15, s. 40.

Where approval not required

380. (1) Notwithstanding subsections 377(1) and (2) and section 378, the approval of the Minister is not required where

(a) the Superintendent has, by order, directed a bank named in Schedule II to increase its capital and shares of the bank are issued and acquired in accordance with such terms and conditions as may be specified in the order; or

(b) a person who holds 95 per cent or more of the total voting rights attached to all of the outstanding voting shares of a bank named in Schedule II purchases or otherwise acquires additional shares of the bank.

Pre-approval

(2) For the purposes of subsections 377(1) and (2) and section 378, the Minister may approve

(a) the purchase or other acquisition of such number or percentage of shares of a bank named in Schedule II as may be required in a particular transaction or series of transactions; or

(b) the purchase or other acquisition of up to a specified number or percentage of shares of a bank named in Schedule II within a specified period.

Public holding requirement

381. (1) Every bank named in Schedule II shall, from and after the day determined pursuant to this section in respect of that bank, have, and continue to have, voting shares that carry at least 35 per cent of the voting rights attached to all of the outstanding voting shares of the bank and that are

(a) shares of one or more classes of shares that are listed and posted for trading on a recognized stock exchange in Canada; and

(b) beneficially owned by persons

(i) who have no significant interest in any class of voting shares of the bank, and

(ii) who are not entities controlled by a person who has a significant interest in any class of voting shares of the bank.

Determination of day

(2) The day referred to in subsection (1) is the day that is five years after the day of the first annual meeting of the shareholders of the bank held after the equity of the bank first reaches seven hundred and fifty million dollars.

Extension

(3) Where general market conditions so warrant and the Minister is satisfied that a bank has used its best efforts to be in compliance with this section on the day determined pursuant to subsection (2), the Minister may specify a later day as the day from and after which the bank must comply with subsection (1).

Meaning of "equity" (4) For the purposes of this section, "equity", in respect of a bank, means the sum of the shareholders' equity of the bank and the minority interests in entities controlled by the bank as they appear in the consolidated financial statements of the bank.

Limit on assets

382. (1) Unless an exemption order with respect to the bank is granted under section 384, where a bank named in Schedule II fails to comply with section 381 in any month, the Minister may, by order, require the bank not to have, until it complies with that section, average total assets in any three month period ending on the last day of a subsequent month exceeding the bank's average total assets in the three month period ending on the last day of the month immediately preceding the month specified in the order.

Average total assets

(2) For the purposes of subsection (1), the average total assets of a bank in a three month period shall be computed by adding the total assets of the bank as calculated for the month end of each of the three months in the period and by dividing the sum by three.

Definition of "total assets"

(3) For the purposes of subsections (1) and (2), "total assets", in respect of a bank, has the meaning given that expression by the regulations.

Increase of capital

383. Where the Superintendent has, by order, directed a bank named in Schedule II to increase its capital and shares of the bank are issued and acquired in accordance with such terms and conditions as may be specified in the order, section 381 shall not apply in respect of the bank until such time as the Superintendent may, by order, specify.

Exemption by order of the Minister

384. (1) On application therefor by a bank named in Schedule II, the Minister may, where the Minister considers it appropriate to do so, grant an order exempting the bank from the requirements of section 381, subject to such terms and conditions as the Minister considers appropriate.

Compliance with s. 381

(2) Where an exemption order granted under this section expires, the bank named in Schedule II in respect of which the exemption order was granted shall comply with section 381 as of the day the exemption order expires.

Limit on assets

(3) Where a bank named in Schedule II fails to comply with section 381 on the day referred to in subsection (2), the bank shall not, until it complies with section 381, have average total assets in any three month period ending on the last day of a subsequent month exceeding the bank's average total assets in the three month period ending on the last day of the month immediately preceding the day referred to in subsection (2) or such later day as the Minister may, by order, specify.

Application of ss. 382(2) and (3)

(4) Subsections 382(2) and (3) apply for the purposes of subsection (3).

Exception

385. (1) Where a bank named in Schedule II fails to comply with section 381 as the result of

- (a) a distribution to the public of voting shares of the bank,
- (b) a redemption or purchase of voting shares of the bank,
- (c) the exercise of any option to acquire voting shares of the bank, or
- (d) the conversion of any convertible securities into voting shares of the bank,

section 382 shall not apply in respect of that bank until the expiration of six months after the day the bank failed to comply with section 381.

Shares acquiring voting rights

(2) Where, as the result of an event that has occurred and is continuing, shares of a bank named in Schedule II acquire voting rights in such number as to cause the bank to no longer be in compliance with section 381, section 382 shall not apply in respect of that bank until the expiration of six months after the day the bank ceased to be in compliance with section 381 or such later day as the Minister may, by order, specify.

Acquisition of control permitted

386. (1) Subject to subsection (2) and sections 378 and 387, section 381 does not apply in respect of a bank named in Schedule II where a person acquires control of a bank with equity of seven hundred and fifty million dollars or more through the purchase or other acquisition of all or any number of the shares of the bank by the person or by any entity controlled by the person.

Undertaking required

(2) Subsection (1) applies only if the person referred to in that subsection provides the Minister with an undertaking satisfactory to the Minister to do all things necessary such that, within five years after the acquisition, or such other period as the Minister may specify, the bank named in Schedule II has voting shares that carry at least 35 per cent of the voting rights attached to all of the outstanding voting shares of the bank and that are

- (a) shares of one or more classes of shares that are listed and posted for trading on a recognized stock exchange in Canada; and
- (b) beneficially owned by persons
 - (i) who have no significant interest in any class of voting shares of the bank, and

(ii) who are not entities controlled by a person who has a significant interest in any class of voting shares of the bank.

Application of section 381

387. At the expiration of the period for compliance with an undertaking referred to in subsection 386(2), section 381 shall apply in respect of the bank named in Schedule II.

Restriction on voting rights

388. (1) Where, with respect to any bank named in Schedule II, a particular person contravenes section 372.1 or subsection 377(1) or fails to comply with an undertaking referred to in subsection 386(2), no person, and no entity controlled by the particular person, shall, in person or by proxy, exercise any voting rights

(a) that are attached to shares of the bank beneficially owned by the particular person or any entity controlled by the particular person; or

(b) that are subject to an agreement entered into by the particular person, or any entity controlled by the particular person, pertaining to the exercise of the voting rights.

Subsection (1) ceases to apply

(2) Subsection (1) shall cease to apply in respect of a person

(a) where the person contravened subsection 377(1), when the shares to which the contravention relates have been disposed of;

(b) where the person contravened section 372.1, when the person ceases to control the bank within the meaning of paragraph 3(1)(d); and

(c) where the person failed to comply with an undertaking referred to in subsection 386(2), when the bank complies with section 381.

1991, c. 46, s. 388; 1997, c. 15, s. 41.

Approval Process

Application for approval

389. (1) An application for an approval of the Minister required under subsection 377(1) or section 378 must be filed with the Superintendent and contain such information, material and evidence as the Superintendent may require.

Applicant

(2) Where, with respect to any particular transaction, subsection 377(1) applies to more than one person, any one of those persons may make the application to the Minister for approval on behalf of all of those persons.

Matters for consideration

390. (1) Where an application for an approval required under subsection 377(1) is made, the Minister, in determining whether or not to approve the transaction, 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 particular regard to

(a) the nature and sufficiency of the financial resources of the applicant or applicants as a source of continuing financial support for the bank;

(b) the soundness and feasibility of the plans of the applicant or applicants for the future conduct and development of the business of the bank;

(c) the business record and experience of the applicant or applicants;

(d) whether the bank will be operated responsibly by persons who are fit as to the character, competence and experience suitable for involvement in the operation of a financial institution;

(e) where the applicant or any of the applicants, or any affiliate of the applicant or any of the applicants, is a deposit-taking financial institution, the size of

(i) the bank,

(ii) any deposit-taking financial institution affiliated with the applicant or any of the applicants, and

(iii) the deposit-taking financial institution applicant or applicants, if the applicant or any of the applicants is such a financial institution,

calculated on such basis as the Minister considers appropriate; and

(f) the best interests of the financial system in Canada.

Favourable treatment

(2) Where a transaction in respect of which subsection 377(1) or (2) applies would cause a bank named in Schedule II to become the foreign bank subsidiary of a foreign bank, within the meaning of any of paragraphs (a) to (f) of the definition "foreign bank" in section 2, that does not have any other foreign bank subsidiary and that is a non-WTO Member foreign bank, the

Minister shall not approve the transaction unless the Minister is satisfied that treatment as favourable for banks to which this Act applies exists or will be provided in the jurisdiction in which the foreign bank principally carries on business, either directly or through a subsidiary.

1991, c. 46, s. 390; 1999, c. 28, s. 20.

Terms and conditions

391. The Minister may impose such terms and conditions in respect of any approval given under this Part as the Minister deems necessary or appropriate.

Certifying receipt of application

392. (1) Where, in the opinion of the Superintendent, an application filed with the Superintendent under subsection 389(1) contains all the required information, the Superintendent shall forthwith refer the application to the Minister and send a receipt to the applicant certifying the date on which the completed application was received by the Superintendent.

Incomplete application

(2) Where, in the opinion of the Superintendent, an application filed under subsection 389(1) is incomplete, the Superintendent shall send a notice to the applicant specifying the information required by the Superintendent to complete the application.

Notice of decision to applicant

393. (1) Subject to subsections (2) and (3) and 394(1), the Minister shall, within a period of thirty days after the certified date referred to in subsection 392(1), send to the applicant

(a) a notice approving the transaction to which the application relates; or

(b) where the Minister is not satisfied that the transaction to which the application relates should be approved, a notice to that effect, advising the applicant of the right to make representations to the Minister in respect of the matter.

Idem

(2) Subject to subsections (4) and 394(2), where an application filed under subsection 389(1) involves the acquisition of control of a bank, the Minister shall, within a period of forty-five days after the certified date referred to in subsection 392(1), send to the applicant

(a) a notice approving the transaction to which the application relates; or

(b) where the Minister is not satisfied that the transaction to which the application relates should be approved, a notice to that effect, advising the applicant of the right to make representations to the Minister in respect of the matter.

Extension of period for notice

(3) Where the Minister is unable to complete the consideration of an application within the period referred to in subsection (1), the Minister shall,

(a) within that period, send a notice to that effect to the applicant; and

(b) within a further period of thirty days after the date of the sending of the notice referred to in paragraph (a) or within such other further period as may be agreed on by the applicant and the Minister, send a notice referred to in paragraph (1)(a) or (b) to the applicant.

Idem

(4) Where the Minister considers it appropriate to do so, the Minister may extend the period referred to in subsection (2) for one or more periods of forty-five days.

Reasonable opportunity to make representations

394. (1) Where, after receipt of the notice referred to in paragraph 393(1)(b), the applicant advises the Minister that the applicant wishes to make representations, the Minister shall provide the applicant with a reasonable opportunity within a period of thirty days after the date of the notice, or within such further period as may be agreed on by the applicant and the Minister, to make representations in respect of the matter.

Idem

(2) Where, after receipt of the notice referred to in paragraph 393(2)(b), the applicant advises the Minister that the applicant wishes to make representations, the Minister shall provide the applicant with a reasonable opportunity within a period of forty-five days after the date of the notice, or within such further period as may be agreed on by the applicant and the Minister, to make representations in respect of the matter.

Notice of decision

395. (1) Within a period of thirty days after the expiration of the period for making representations referred to in subsection 394(1), the Minister shall, in the light of any such representations and having regard to the matters to be taken into account, send a notice to the applicant indicating whether or not the Minister approves the share transaction to which the application relates.

Idem

(2) Within a period of forty-five days after the expiration of the period for making representations referred to in subsection 394(2), the Minister shall, in the light of any such representations and having regard to the matters to be taken into account, send a notice to the applicant indicating whether or not the Minister approves the share transaction to which the application relates.

Deemed approval

396. Where the Minister does not send a notice under subsection 393(1) or (3) or 395(1) within the period provided for in those subsections, the Minister is deemed to have approved the share transaction to which the application relates.

396.1 and 397. [Repealed, 1994, c. 47, s. 19]

Constraining registration: Crown and foreign governments

398. (1) No bank shall record in its securities register a transfer or issue of any share of the bank to

(a) Her Majesty in right of Canada or of a province or any agent or agency of Her Majesty in either of those rights; or

(b) the government of a foreign country or any political subdivision thereof, or any agent or agency thereof.

Exception

(2) Notwithstanding subsection (1), a bank named in Schedule II may record in its securities register a transfer or issue of any share of the bank to a foreign bank that is controlled by the government of a foreign country or any political subdivision or any agency thereof if the bank is a subsidiary of the foreign bank.

399. [Repealed, 1994, c. 47, s. 20]

400. (1) [Repealed, 1994, c. 47, s. 21]

Suspension of voting rights held by governments

(2) Notwithstanding section 148, where any share of a class of shares of a bank is beneficially owned by

(a) Her Majesty in right of Canada or of a province or any agency of Her Majesty in either of those rights, or

(b) the government of a foreign country or any political subdivision thereof, or any agency thereof,

no person shall, in person or by proxy, exercise any voting rights attached to that share.

(3) [Repealed, 1994, c. 47, s. 21]

Idem

(4) Subsection (2) does not apply to a person who has a significant interest in a class of shares of a bank named in Schedule II pursuant to subsection 398(2). 1991, c. 46, s. 400; 1994, c. 47, s. 21.

401. [Repealed, 1994, c. 47, s. 22]

DIVISION V DIRECTIONS

Disposition of shareholdings

402. (1) Where, with respect to any bank, a person contravenes section 372 or 377 or fails to comply with an agreement referred to in section 376 or fails to comply with an undertaking referred to in subsection 386(2) or with any terms and conditions imposed pursuant to section 391, the Minister may, if the Minister deems it in the public interest to do so, by order,

(a) direct that person and any person controlled by that person not to exercise any voting rights attached to shares of the bank beneficially owned by any of those persons as the Minister deems appropriate and specifies in the order; and

(b) direct that person and any person controlled by that person to dispose of such number of shares of the bank beneficially owned by any of those persons as the Minister specifies in the order, within such time as the Minister specifies therein and in such proportion, if any, as between the person and the persons controlled by that person as is specified in the order.

Representations

(2) No direction shall be made under subsection (1) unless the Minister has provided each person to whom the direction relates and the bank concerned with a reasonable opportunity to make representations in respect of the subject-matter of the direction.

Appeal

(3) Any person with respect to whom a direction has been made under subsection (1) may, within thirty days after the date of the direction, appeal the matter in accordance with section 667.

No stay

(4) A direction made under paragraph (1)(a) is not stayed by an appeal under subsection (3).

1991, c. 46, s. 402; 1999, c. 28, s. 21.

Permission to become company

402.1 Where subsection 402(1) applies, the Minister may, on application therefor by the bank, permit the bank to apply to be continued as a company under the Trust and Loan Companies Act instead of, or in addition to, issuing an order under that subsection.

1991, c. 46, s. 579.

Application to court

403. (1) Where a person fails to comply with a direction made under subsection 402(1), an application on behalf of the Minister may be made to a court for an order to enforce the direction.

Court order

(2) A court may, on an application under subsection (1), make such order as the circumstances require to give effect to the terms of the direction and may, without limiting the generality of the foregoing, require the bank concerned to sell the shares that are the subject-matter of the direction.

Appeal

(3) An appeal from an order of a court under this section lies in the same manner as, and to the same court to which, an appeal may be taken from any other order of the court.

General Provisions

Interest of securities underwriter

404. This Part does not apply to a securities underwriter in respect of shares of a body corporate or ownership interests in an unincorporated entity that are acquired by the underwriter in the course of a distribution to the public of those shares or ownership interests and that are held by the underwriter for a period of not more than six months.

Arrangements to effect compliance

405. (1) The directors of a bank may make such arrangements as they deem necessary to carry out the intent of this Part and, in particular, but without limiting the generality of the foregoing, may

(a) require any person in whose name a share of the bank is held to submit a declaration setting out

(i) the beneficial ownership of the share, and

(ii) such other information as the directors deem relevant for the purposes of this Part;

(b) require any person who wishes to have a transfer of a share registered in the name of, or to have a share issued to, that person to submit a declaration referred to in paragraph (a) as though the person were the holder of that share; and

(c) determine the circumstances in which a declaration referred to in paragraph (a) is to be required, the form of the declaration and the times at which it is to be submitted.

Order of Superintendent

(2) The Superintendent may, by order, direct a bank to obtain from any person in whose name a share of the bank is held a declaration setting out the name of every entity controlled by that person and containing information concerning

(a) the ownership or beneficial ownership of the share; and

(b) such other related matters as are specified by the Superintendent.

Compliance required

(3) As soon as possible after receipt by a bank of a direction under subsection (2),

(a) the bank shall comply with the direction; and

(b) every person who is requested by the bank to provide a declaration containing information referred to in subsection (1) or (2) shall comply with the request.

Outstanding declaration: effect

(4) Where, pursuant to this section, a declaration is required to be submitted by a shareholder or other person in respect of the issue or transfer of any share, a bank may refuse to issue the share or register the transfer unless the required declaration is submitted.

Reliance on information 406.

A bank and any person who is a director or an officer, employee or agent of the bank may rely on any information contained in a declaration required by the directors pursuant to section 405 or on any information otherwise acquired in respect of any matter that might be the subject of such a declaration, and no action lies against the bank or any such person for anything done or omitted to be done in good faith in reliance on any such information.

407. [Repealed, 1994, c. 47, s. 23]

Competition Act 408. Nothing in, or done under the authority of, this Act affects the operation of the Competition Act.

PART VIII BUSINESS AND POWERS

General Business

Main business

409. (1) Subject to this Act, a bank shall not engage in or carry on any business other than the business of banking and such business generally as appertains thereto.

Idem

(2) For greater certainty, the business of banking includes

- (a) providing any financial service;
- (b) acting as a financial agent;
- (c) providing investment counselling services and portfolio management services; and
- (d) issuing payment, credit or charge cards and, in cooperation with others including other financial institutions, operating a payment, credit or charge card plan.

Additional powers

410. (1) In addition to the powers that a bank may exercise pursuant to section 409, a bank may

- (a) hold, manage and otherwise deal with real property;

(b) outside Canada, engage in the activities in which an information services corporation, within the meaning of subsection 464(1), may engage;

(c) in Canada, engage in such of the activities referred to in paragraph (b) that the bank was permitted to engage in by regulations made under the Bank Act, being chapter B-1 of the Revised Statutes of Canada, 1985;

(c.1) in Canada, engage in the activities in which an information services corporation, within the meaning of subsection 464(1), may engage, if before engaging in those activities the bank obtains the Minister's written approval for it to engage in those activities;

(c.2) engage in the activities in which a specialized financing corporation, as defined in subsection 464(1), may engage, if before engaging in those activities the bank obtains the Minister's written approval for it to engage in those activities;

(d) promote merchandise and services to the holders of any payment, credit or charge card issued by the bank;

(e) engage in the sale of

(i) tickets, including lottery tickets, on a non-profit public service basis in connection with special, temporary and infrequent non-commercial celebrations or projects that are of local, municipal, provincial or national interest,

(ii) urban transit tickets, and

(iii) tickets in respect of a lottery sponsored by the federal government or a provincial or municipal government or an agency of any such government or governments;

(f) act as a custodian of property; and

(g) act as receiver, liquidator or sequestrator.

Restriction

(2) Except as authorized by or under this Act, a bank shall not deal in goods, wares or merchandise or engage in any trade or other business.

Regulations

(3) The Governor in Council may make regulations

(a) respecting what a bank may or may not do with respect to the carrying on of the activities referred to in paragraphs (1)(b) to (c.2); and

(b) imposing terms and conditions in respect of

- (i) the provision of financial services referred to in paragraph 409(2)(a) that are financial planning services,
- (ii) the provision of services referred to in paragraph 409(2)(c), and
- (iii) the carrying on of the activities referred to in paragraphs (1)(b) to (c.2).

1991, c. 46, s. 410; 1993, c. 34, s. 8(F); 1997, c. 15, s. 42.

Networking

411. (1) Subject to section 416, a bank may

- (a) act as agent for any person in respect of the provision of any service that is provided by a financial institution or a body corporate in which the bank is permitted to have a substantial investment pursuant to section 468 and may enter into an arrangement with any person in respect of the provision of that service; or
- (b) refer any person to any such financial institution or body corporate.

Regulations

(2) The Governor in Council may make regulations respecting the disclosure of

- (a) the name of the principal for whom a bank is acting as agent pursuant to subsection (1); and
- (b) whether any commission is being earned by a bank when acting as agent pursuant to subsection (1).

Restriction on fiduciary activities

412. No bank shall act in Canada as

- (a) an executor, administrator or official guardian or a guardian, tutor, curator, judicial adviser or committee of a mentally incompetent person; or
- (b) a trustee for a trust.

Restriction on deposit taking

413. A bank shall not accept deposits in Canada unless it is a member institution within the meaning of the Canada Deposit Insurance Corporation Act.

Restriction on guarantees 414. (1) A bank shall not guarantee on behalf of any person other than itself the payment or repayment of any sum of money unless

(a) the sum of money is a fixed sum of money with or without interest thereon; and

(b) the person on whose behalf the bank has undertaken to guarantee the payment or repayment has an unqualified obligation to reimburse the bank for the full amount of the payment or repayment to be guaranteed.

Exception

(2) Paragraph (1)(a) does not apply where the person on whose behalf the bank has undertaken to guarantee the payment or repayment is a subsidiary of the bank. Regulations (3) The Governor in Council may make regulations imposing terms and conditions in respect of guarantees permitted by this section.

1991, c. 46, s. 414; 1997, c. 15, s. 44.

Restriction on securities activities

415. A bank shall not deal in Canada in securities to the extent prohibited or restricted by such regulations as the Governor in Council may make for the purposes of this section.

Restriction on insurance business

416. (1) A bank shall not undertake the business of insurance except to the extent permitted by this Act or the regulations.

Restriction on acting as agent

(2) A bank shall not act in Canada as agent for any person in the placing of insurance and shall not lease or provide space in any branch in Canada of the bank to any person engaged in the placing of insurance.

Regulations

(3) The Governor in Council may make regulations respecting the matters referred to in subsection (1) and regulations respecting relations between banks and

(a) entities that undertake the business of insurance; or

(b) insurance agents or insurance brokers.

Saving

(4) Nothing in this section precludes a bank from

- (a) requiring insurance to be placed by a borrower for the security of the bank; or
- (b) obtaining group insurance for its employees or the employees of any bodies corporate in which it has a substantial investment pursuant to section 468.

(5) [Repealed, 1997, c. 15, s. 45]

Annuities

- (6) For the purposes of this section, the business of insurance includes the issuance of any annuity where the liability thereon is contingent on the death of a person.

1991, c. 46, s. 416; 1997, c. 15, s. 45.

Restriction on leasing

417. A bank shall not engage in Canada in any personal property leasing activity in which a financial leasing corporation within the meaning of subsection 464(1) is not permitted to engage.

Restriction on residential mortgages

418. (1) A bank shall not make a loan in Canada on the security of residential property in Canada for the purpose of purchasing, renovating or improving that property, or refinance such a loan, if the amount of the loan, together with the amount then outstanding of any mortgage having an equal or prior claim against the property, would exceed 75 per cent of the value of the property at the time of the loan.

Exception

(2) Subsection (1) does not apply in respect of

- (a) a loan made or guaranteed under the National Housing Act or any other Act of Parliament by or pursuant to which a different limit on the value of property on the security of which the bank may make a loan is established;
- (b) a loan if repayment of the amount of the loan that exceeds the maximum amount set out in subsection (1) is guaranteed or insured by a government agency or a private insurer approved by the Superintendent;
- (c) the acquisition by the bank from an entity of securities issued or guaranteed by the entity that are secured on any residential property, whether in favour of a trustee or otherwise, or the making of a loan by the bank to the entity against the issue of such securities; or
- (d) a loan secured by a mortgage where

- (i) the mortgage is taken back by the bank on a property disposed of by the bank, including where the disposition is by way of a realization of a security interest, and
- (ii) the mortgage secures payment of an amount payable to the bank for the property.

1991, c. 46, s. 418; 1997, c. 15, s. 46.

Restriction on security interests

419. (1) Subject to subsection (3), a bank shall not create a security interest in any property of the bank to secure an obligation of the bank, unless

(a) the obligation is to the Bank of Canada or the Canada Deposit Insurance Corporation; or

(b) the Superintendent has approved in writing the creation of the security interest. Encumbered property (2) A bank shall notify the Superintendent in writing of any beneficial interest in real and personal property acquired by the bank, other than by way of realization, that is subject to a security interest.

Exceptions

(3) Subsection (1) does not apply in respect of security interests created on

(a) such classes of personal property as the Superintendent may, by order, designate; or

(b) property having an aggregate value that is less than such amount as the Superintendent may, by order, specify.

Restriction on receivers

420. A bank shall not grant to a person the right to appoint a receiver or a receiver and manager of the property or business of the bank.

Restriction on partnerships 421. (1) Except by order of the Superintendent, a bank shall not be a general partner in a limited partnership or a partner in a general partnership.

Meaning of "general partnership"

(2) For the purposes of subsection (1), "general partnership" means any partnership other than a limited partnership.

Limitation regarding branches

422. (1) No bank named in Schedule II shall have any branch, other than a representative office, outside Canada, without the approval of the Minister, which approval may be subject to such terms and conditions as the Minister considers appropriate.

(2) [Repealed, 1993, c. 44, s. 27]

1991, c. 46, s. 422; 1993, c. 44, s. 27.

Definition of "non-WTO Member bank subsidiary"

422.1 In section 422.2, "non-WTO Member bank subsidiary" means a foreign bank subsidiary that is not controlled by a WTO Member resident.

1993, c. 44, s. 28; 1994, c. 47, s. 24; 1999, c. 28, s. 22.

Limitation on branches in Canada of non-WTO Member bank subsidiaries

422.2 No non-WTO Member bank subsidiary shall have any branch in Canada, other than its head office and one branch, without the approval of the Minister.

1993, c. 44, s. 28; 1999, c. 28, s. 22.

422.3 to 424. [Repealed, 1994, c. 47, s. 25]

Special Security

Definitions

425. (1) For the purposes of sections 426 to 436,

"agricultural equipment" « installations agricoles » ou « matériel agricole immobilier »

"agricultural equipment" means implements, apparatus, appliances and machinery of any kind usually affixed to real property, for use on a farm, but does not include a farm electric system;

"agricultural implements" « instruments agricoles » ou « matériel agricole mobilier »

"agricultural implements" means tools, implements, apparatus, appliances and machines of any kind not usually affixed to real property, for use on or in connection with a farm, and vehicles for use in the business of farming and, without restricting the generality of the foregoing, includes plows, harrows, drills, seeders, cultivators, mowing machines, reapers, binders, threshing machines, combines, leaf tobacco tying machines, tractors, movable granaries, trucks for carrying products of agriculture, equipment for bee-keeping, cream separators, churns, washing machines, spraying apparatus, portable irrigation apparatus, incubators, milking machines, refrigerators and heating and cooking appliances for farming operations or use in the farm home of a kind not usually affixed to real property;

"aquacultural electric system" « installation électrique aquicole »

"aquacultural electric system" means all machinery, apparatus and appliances for the generation or distribution of electricity in an aquaculture operation, whether or not affixed to real property;

"aquacultural equipment" « installations aquicoles » ou « matériel aquicole immobilier »

"aquacultural equipment" means implements, apparatus, appliances and machinery of any kind usually affixed to real property for use in an aquaculture operation, but does not include an aquacultural electric system;

"aquacultural implements" « instruments aquicoles » ou « matériel aquicole mobilier »

"aquacultural implements" means tools, implements, apparatus, appliances and machines of any kind not usually affixed to real property, for use in an aquaculture operation, and includes net pen systems, vehicles and boats for use in aquaculture;

"aquacultural stock growing or produced in the aquaculture operation" « stock en croissance ou produits de l'exploitation aquicole »

"aquacultural stock growing or produced in the aquaculture operation" means all products of the aquaculture operation;

"aquaculture" « aquiculture »

"aquaculture" means the cultivation of aquatic plants and animals;

"aquaculture operation" « exploitation aquicole »

"aquaculture operation" means any premises or site where aquaculture is carried out;

"aquaculturist" « aquiculteur »

"aquaculturist" includes the owner, occupier, landlord and tenant of an aquaculture operation;

"aquatic broodstock" « stock géniteur aquicole »

"aquatic broodstock" means any aquatic plants and animals used to produce aquatic seedstock;

"aquatic plants and animals" « organismes animaux et végétaux aquatiques »

"aquatic plants and animals" means plants and animals that, at most stages of their development or life cycles, live in an aquatic environment;

"aquatic seedstock" « stock aquicole de départ »

"aquatic seedstock" means aquatic plants and animals that at any stage of their development are purchased or collected by an aquaculturist for cultivation;

"bill of lading" « connaissance »

"bill of lading" includes all receipts for goods, wares and merchandise accompanied by an undertaking

(a) to move the goods, wares and merchandise from the place where they were received to some other place, by any means whatever, or

(b) to deliver to a place other than the place where the goods, wares and merchandise were received a like quantity of goods, wares and merchandise of the same or a similar grade or kind;

"crops growing or produced on the farm" « récoltes sur pied ou produites à la ferme »

"crops growing or produced on the farm" means all products of the farm;

"farm" « ferme »

"farm" means land in Canada used for the purpose of farming, which term includes livestock raising, dairying, bee-keeping, fruit growing, the growing of trees and all tillage of the soil;

"farm electric system" « installation électrique de ferme »

"farm electric system" means all machinery, apparatus and appliances for the generation or distribution of electricity on a farm whether or not affixed to real property;

"farmer" « agriculteur »

"farmer" includes the owner, occupier, landlord and tenant of a farm;

"fish" « poisson »

"fish" includes shellfish, crustaceans and marine animals;

"fisherman" « pêcheur »

"fisherman" means a person whose business consists in whole or in part of fishing;

"fishing" « pêche »

"fishing" means fishing for or catching fish by any method;

"fishing equipment and supplies" « engins et fournitures de pêche » "fishing equipment and supplies" means equipment, apparatus, appliances and supplies for use in the operation of a fishing vessel and not forming part thereof, or for use in fishing, and, without restricting the generality of the foregoing, includes detachable engines and machinery, lines, hooks, trawls, nets, anchors, traps, bait, salt, fuel and stores;

"fishing vessel" « bateau de pêche »

"fishing vessel" means any ship or boat or any other description of vessel for use in fishing and equipment, apparatus and appliances for use in the operation thereof and forming part thereof, or any share or part interest therein;

"forest" « forêt »

"forest" means land in Canada covered with timber stands or that, formerly so covered, is not put to any use inconsistent with forestry, and includes a sugar bush;

"forestry" « sylviculture »

"forestry" means the conservation, cultivation, improvement, harvesting and rational utilization of timber stands and the resources contained therein and obtainable therefrom, and includes the operation of a sugar bush;

"forestry equipment" « matériel sylvicole immobilier »

"forestry equipment" means implements, apparatus, appliances and machinery of any kind usually affixed to real property, for use in a forest;

"forestry implements" « matériel sylvicole mobilier »

"forestry implements" means tools, implements, apparatus, appliances and machines of any kind not usually affixed to real property, for use in forestry, and includes vehicles for use in forestry;

"forestry producer" « sylviculteur »

"forestry producer" means a person whose business consists in whole or in part of forestry and includes a producer of maple products;

"goods, wares and merchandise" « effets, denrées ou marchandises »

"goods, wares and merchandise" includes products of agriculture, products of aquaculture, products of the forest, products of the quarry and mine, products of the sea, lakes and rivers, and all other articles of commerce;

"grain" « grain »

"grain" includes wheat, oats, barley, rye, corn, buckwheat, flax, beans and all kinds of seeds;

"hydrocarbons" « hydrocarbures »

"hydrocarbons" means solid, liquid and gaseous hydrocarbons and any natural gas whether consisting of a single element or of two or more elements in chemical combination or uncombined and, without restricting the generality of the foregoing, includes oil-bearing shale, tar sands, crude oil, petroleum, helium and hydrogen sulphide;

"livestock" « bétail »

"livestock" includes (a) horses and other equines, (b) cattle, sheep, goats and other ruminants, and (c) swine, poultry, bees and fur-bearing animals;

"manufacturer" « fabricant »

"manufacturer" means any person who manufactures or produces by hand, art, process or mechanical means any goods, wares and merchandise and, without restricting the generality of the foregoing, includes a manufacturer of logs, timber or lumber, maltster, distiller, brewer, refiner and producer of petroleum, tanner, curer, packer, canner, bottler and a person who packs, freezes or dehydrates any goods, wares and merchandise;

"minerals" « substances minérales »

"minerals" includes base and precious metals, coal, salt and every other substance that is an article of commerce obtained from the earth by any method of extraction, but does not include hydrocarbons or any animal or vegetable substance other than coal;

"products of agriculture" « produits agricoles »

"products of agriculture" includes

(a) grain, hay, roots, vegetables, fruits, other crops and all other direct products of the soil, and

(b) honey, livestock (whether alive or dead), dairy products, eggs and all other indirect products of the soil;

"products of aquaculture" « produits aquicoles »

"products of aquaculture" includes all cultivated aquatic plants and animals;

"products of the forest" « produits de la forêt »

"products of the forest" includes

(a) logs, pulpwood, piling, spars, railway ties, poles, pit props and all other timber,

(b) boards, laths, shingles, deals, staves and all other lumber, bark, wood chips and sawdust and Christmas trees,

(c) skins and furs of wild animals, and

(d) maple products;

"products of the quarry and mine" « produits des carrières et des mines »

"products of the quarry and mine" includes stone, clay, sand, gravel, metals, ores, coal, salt, precious stones, metalliferous and non-metallic minerals and hydrocarbons, whether obtained by excavation, drilling or otherwise;

"products of the sea, lakes and rivers" « produits aquatiques »

"products of the sea, lakes and rivers" includes fish of all kinds, marine and freshwater organic and inorganic life and any substances extracted or derived from any water, but does not include products of aquaculture;

"warehouse receipt" « récépissé d'entrepôt »

"warehouse receipt" includes

(a) any receipt given by any person for goods, wares and merchandise in the person's actual, visible and continued possession as bailee thereof in good faith and not as the owner thereof,

(b) receipts given by any person who is the owner or keeper of a harbour, cove, pond, wharf, yard, warehouse, shed, storehouse or other place for the storage of goods, wares and merchandise, for goods, wares and merchandise delivered to the person as bailee, and actually in the place or in one or more of the places owned or kept by the person, whether or not that person is engaged in other business,

(c) receipts given by any person in charge of logs or timber in transit from timber limits or other lands to the place of destination of the logs or timber,

(d) Lake Shippers' Clearance Association receipts and transfer certificates, British Columbia Grain Shippers' Clearance Association receipts and transfer certificates, and all documents recognized by the Canada Grain Act as elevator receipts, and

(e) receipts given by any person for any hydrocarbons received by the person as bailee, whether the person's obligation to restore requires delivery of the same hydrocarbons or may be satisfied by delivery of a like quantity of hydrocarbons of the same or a similar grade or kind.

Interpretation - products and by-products

(2) For the purposes of sections 426 to 436, each thing included in the following terms as defined in subsection (1), namely,

(a) "aquacultural stock growing or produced in the aquaculture operation",

- (b) "crops growing or produced on the farm",
- (c) "livestock",
- (d) "products of agriculture",
- (e) "products of aquaculture",
- (f) "products of the forest",
- (g) "products of the quarry and mine", and
- (h) "products of the sea, lakes and rivers",

comprises that thing in any form or state and any part thereof and any product or by-product thereof or derived therefrom.

Loans on hydrocarbons and minerals

426. (1) A bank may lend money and make advances on the security of any or all of the following, namely,

- (a) hydrocarbons or minerals in, under or on the ground, in place or in storage,
- (b) the rights, licences or permits of any person to obtain and remove any such hydrocarbons or minerals and to enter on, occupy and use lands from or on which any of such hydrocarbons or minerals are or may be extracted, mined or produced,
- (c) the estate or interest of any person in or to any such hydrocarbons or minerals, rights, licences, permits and lands whether the estate or interest is entire or partial, and
- (d) the equipment and casing used or to be used in extracting, mining or producing or seeking to extract, mine or produce, and storing any such, hydrocarbons or minerals,

or of any rights or interests in or to any of the foregoing whether the security be taken from the borrower or from a guarantor of the liability of the borrower or from any other person.

Security

(2) Security under this section may be given by signature and delivery to the bank, by or on behalf of the person giving the security, of an instrument in the prescribed form or in a form to the like effect, and shall affect the property described in the instrument giving the security

- (a) of which the person giving the security is the owner at the time of the delivery of the instrument, or

(b) of which that person becomes the owner at any time thereafter before the release of the security by the bank, whether or not the property is in existence at the time of the delivery,

all of which property is for the purposes of this Act property covered by the security.

Rights under security

(3) Any security given under this section vests in the bank, in addition to and without limitation of any other rights or powers vested in or conferred on it, full power, right and authority, through its officers, employees or agents, in the event of

(a) non-payment of any loan or advance as security for the payment of which the bank has taken the security, or

(b) failure to care for, maintain, protect or preserve the property covered by the security,

to do all or any of the following, namely, take possession of, seize, care for, maintain, use, operate and, subject to the provisions of any other Act and any regulations made under any other Act governing the ownership and disposition of the property that is the subject of the security, sell the property covered by the security or part thereof as it sees fit.

Liability to account for surplus

(4) Where a bank exercises any right conferred on it by subsection (3) in relation to property given to it as security, the bank shall provide to the person entitled thereto any surplus proceeds resulting from the exercise of the right that remain after payment of all loans and advances, together with interest and expenses, in relation to which the property was given as security.

Effect of sale

(5) A sale pursuant to subsection (3) of any property given to a bank as security vests in the purchaser all the right and title in and to such property that the person giving the security had when the security was given and that that person thereafter acquired.

Sale to be by public auction

(6) Unless a person by whom property was given to a bank as security has agreed otherwise, a sale pursuant to subsection (3) shall be made by public auction after

(a) notice of the time and place of the sale has been sent by registered mail to the recorded address of the person by whom the property was given as security at least ten days prior to the sale; and

(b) publication of an advertisement of the sale, at least two days prior to the sale, in at least two newspapers published in or nearest to the place where the sale is to be made.

Priority of bank's rights

(7) Subject to subsections (8), (9) and (10), all the rights and powers of a bank in respect of the property covered by security given under this section have priority over all rights subsequently acquired in, on or in respect of such property and also over the claim of any mechanics' lien holder or of any unpaid vendor of equipment or casing but this priority does not extend over the claim of any unpaid vendor who had a lien on the equipment or casing at the time of the acquisition by the bank of the security, unless the security was acquired without knowledge on the part of the bank of that lien.

Idem

(8) The rights and powers of a bank in respect of the property covered by security given under this section do not have priority over an interest or a right acquired in, on or in respect of the property unless, prior to

(a) the registration of such interest or right, or

(b) the registration or filing of the deed or other instrument evidencing such interest or right, or of a caution, caveat or memorial in respect thereof, there has been registered or filed in the proper land registry or land titles office or office in which are recorded the rights, licences or permits referred to in this section,

(c) an original of the instrument giving the security,

(d) a copy of the instrument giving the security, certified by an officer or employee of the bank to be a true copy, or

(e) a caution, caveat or memorial in respect of the rights of the bank.

Procedure for registering

(9) Every registrar or officer in charge of the proper land registry or land titles or other office to whom a document mentioned in paragraph (8)(c), (d) or (e) is tendered shall register or file the document according to the ordinary procedure for registering or filing within that office documents that evidence liens or charges against, or cautions, caveats or memorials in respect of claims to, interests in or rights in respect of any such property and subject to payment of the like fees.

Exception

(10) Subsections (8) and (9) do not apply if the law of the appropriate province does not permit the registration or filing of the tendered document or if any law enacted by or under the authority of Parliament, governing the ownership and disposal of the property that is the subject of security

given under this section, does not provide by specific reference to this section for the registration or filing of the tendered document.

Further security

(11) When making a loan or an advance on the security provided for by this section, a bank may take, on any property covered by the security, any further security it sees fit.

Substitution of security

(12) Notwithstanding anything in this Act, where the bank holds any security covering hydrocarbons or minerals, it may take in lieu of that security, to the extent of the quantity covered by the security taken, any security covering or entitling it to the delivery of the same hydrocarbons or minerals or hydrocarbons or minerals of the same or a similar grade or kind.

Loans to certain borrowers and security

427. (1) A bank may lend money and make advances

(a) to any wholesale or retail purchaser or shipper of, or dealer in, products of agriculture, products of aquaculture, products of the forest, products of the quarry and mine, products of the sea, lakes and rivers or goods, wares and merchandise, manufactured or otherwise, on the security of such products or goods, wares and merchandise and of goods, wares and merchandise used in or procured for the packing of such products or goods, wares and merchandise,

(b) to any person engaged in business as a manufacturer, on the security of goods, wares and merchandise manufactured or produced by that person or procured for such manufacture or production and of goods, wares and merchandise used in or procured for the packing of goods, wares and merchandise so manufactured or produced,

(c) to any aquaculturist, on the security of aquacultural stock growing or produced in the aquaculture operation or on the security of aquacultural equipment or aquacultural implements,

(d) to any farmer, on the security of crops growing or produced on the farm or on the security of agricultural equipment or agricultural implements,

(e) to any aquaculturist

(i) for the purchase of aquatic broodstock or aquatic seedstock, on the security of the aquatic broodstock or aquatic seedstock and any aquatic stock to be grown therefrom,

(ii) for the purchase of pesticide, on the security of the pesticide and any aquatic stock to be grown from the site on which the pesticide is to be used, and

(iii) for the purchase of feed, veterinary drugs, biologicals or vaccines, on the security of the feed, veterinary drugs, biologicals or vaccines and any aquatic stock to be grown in the aquaculture operation on which the feed, veterinary drugs, biologicals or vaccines are to be used,

(f) to any farmer

(i) for the purchase of seed grain or seed potatoes, on the security of the seed grain or seed potatoes and any crop to be grown therefrom, and

(ii) for the purchase of fertilizer or pesticide, on the security of the fertilizer or pesticide and any crop to be grown from land on which, in the same season, the fertilizer or pesticide is to be used,

(g) to any aquaculturist on the security of aquatic plants and animals, but security taken under this paragraph is not effective in respect of any aquatic plants and animals that, at the time the security is taken, by any statutory law that is then in force, are exempt from seizure under writs of execution and the aquaculturist is prevented from giving as security for money lent to the aquaculturist,

(h) to any farmer or to any person engaged in livestock raising, on the security of feed or livestock, but security taken under this paragraph is not effective in respect of any livestock that, at the time the security is taken, by any statutory law that is then in force, is exempt from seizure under writs of execution and the farmer or other person engaged in livestock raising is prevented from giving as security for money lent to the farmer or other person,

(i) to any aquaculturist for the purchase of aquacultural implements, on the security of those aquacultural implements,

(j) to any farmer for the purchase of agricultural implements, on the security of those agricultural implements,

(k) to any aquaculturist for the purchase or installation of aquacultural equipment or an aquacultural electric system, on the security of that aquacultural equipment or aquacultural electric system,

(l) to any farmer for the purchase or installation of agricultural equipment or a farm electric system, on the security of that agricultural equipment or farm electric system,

(m) to any aquaculturist for

(i) the repair or overhaul of an aquacultural implement, aquacultural equipment or an aquaculture electric system,

(ii) the alteration or improvement of an aquacultural electric system,

(iii) the erection or construction of fencing or works for drainage in an aquaculture operation for the holding, rearing or protection of aquatic plants and animals or for the supply of water to such plants and animals or the disposal of effluent from them,

(iv) the construction, repair or alteration of or making of additions to any building or structure in an aquaculture operation, and

(v) any works for the improvement or development of an aquaculture operation for which a loan, as defined in the Canada Small Business Financing Act, a business improvement loan, as defined in the Small Business Loans Act, or a farm improvement loan, as defined in the Farm Improvement Loans Act, may be made,

on the security of aquacultural equipment or aquacultural implements, but security taken under this paragraph is not effective in respect of aquacultural equipment or aquacultural implements that, at the time the security is taken, by any statutory law that is then in force, are exempt from seizure under writs of execution and the aquaculturist is prevented from giving as security for money lent to the aquaculturist,

(n) to any farmer for

(i) the repair or overhaul of an agricultural implement, agricultural equipment or a farm electric system,

(ii) the alteration or improvement of a farm electric system,

(iii) the erection or construction of fencing or works for drainage on a farm,

(iv) the construction, repair or alteration of or making of additions to any building or structure on a farm,

(v) any works for the improvement or development of a farm for which a farm improvement loan as defined in the Farm Improvement Loans Act may be made, and

(vi) any purpose for which a loan as defined in the Farm Improvement and Marketing Cooperatives Loans Act may be made,

on the security of agricultural equipment or agricultural implements, but security taken under this paragraph is not effective in respect of agricultural equipment or agricultural implements that, at the time the security is taken, by any statutory law that is then in force, are exempt from seizure under writs of execution and the farmer is prevented from giving as security for money lent to the farmer,

(o) to any fisherman, on the security of fishing vessels, fishing equipment and supplies or products of the sea, lakes and rivers, but security taken under this paragraph is not effective in respect of any such property that, at the time the security is taken, by any statutory law that is

then in force, is exempt from seizure under writs of execution and the fisherman is prevented from giving as security for money lent to the fisherman, and

(p) to any forestry producer, on the security of fertilizer, pesticide, forestry equipment, forestry implements or products of the forest, but security taken under this paragraph is not effective in respect of any such property that, at the time the security is taken, by any statutory law that is then in force, is exempt from seizure under writs of execution and the forestry producer is prevented from giving as security for money lent to the forestry producer,

and the security may be given by signature and delivery to the bank, by or on behalf of the person giving the security, of a document in the prescribed form or in a form to the like effect.

Rights and powers vested by delivery of document

(2) Delivery of a document giving security on property to a bank under the authority of this section vests in the bank in respect of the property therein described

(a) of which the person giving security is the owner at the time of the delivery of the document, or

(b) of which that person becomes the owner at any time thereafter before the release of the security by the bank, whether or not the property is in existence at the time of the delivery,

the following rights and powers, namely,

(c) if the property is property on which security is given under paragraph (1)(a), (b), (g), (h), (i), (j) or (o), under paragraph (1)(c) or (m) consisting of aquacultural implements, under paragraph (1)(d) or (n) consisting of agricultural implements or under paragraph (1)(p) consisting of forestry implements, the same rights and powers as if the bank had acquired a warehouse receipt or bill of lading in which that property was described, or

(d) if the property

(i) is property on which security is given under paragraph (1)(c) consisting of aquacultural stock growing or produced in the aquaculture operation or aquacultural equipment,

(ii) is property on which security is given under paragraph (1)(d) consisting of crops or agricultural equipment,

(iii) is property on which security is given under any of paragraphs (1)(e), (f), (k) and (l),

(iv) is property on which security is given under paragraph (1)(m) consisting of aquacultural equipment,

(v) is property on which security is given under paragraph (1)(n) consisting of agricultural equipment, or

(vi) is property on which security is given under paragraph (1)(p) consisting of forestry equipment,

a first and preferential lien and claim thereon for the sum secured and interest thereon, and as regards a crop as well before as after the severance from the soil, harvesting or threshing thereof, and, in addition thereto, the same rights and powers in respect of the property as if the bank had acquired a warehouse receipt or bill of lading in which the property was described, and all rights and powers of the bank subsist notwithstanding that the property is affixed to real property and notwithstanding that the person giving the security is not the owner of that real property,

and all such property in respect of which such rights and powers are vested in the bank under this section is for the purposes of this Act property covered by the security.

Power of the bank to take possession, etc.

(3) Where security on any property is given to a bank under any of paragraphs (1)(c) to (p), the bank, in addition to and without limitation of any other rights or powers vested in or conferred on it, has full power, right and authority, through its officers, employees or agents, in the case of

(a) non-payment of any of the loans or advances for which the security was given,

(b) failure to care for or harvest any crop or to care for any livestock covered by the security,

(c) failure to care for or harvest any aquatic stock growing or produced in the aquaculture operation or to care for any aquatic plants and animals covered by the security,

(d) failure to care for any property on which security is given under any of paragraphs (1)(i) to (p),

(e) any attempt, without the consent of the bank, to dispose of any property covered by the security, or

(f) seizure of any property covered by the security,

to take possession of or seize the property covered by the security, and in the case of aquacultural stock growing or produced in the aquaculture operation or a crop growing or produced on the farm to care for it and, where applicable, harvest it or thresh the grain therefrom, and in the case of livestock or aquatic plants and animals to care for them, and has the right and authority to enter on any land, premises or site whenever necessary for any such purpose and to detach and remove such property, exclusive of wiring, conduits or piping incorporated in a building, from any real property to which it is affixed.

Notice of intention

(4) The following provisions apply where security on property is given to a bank under this section:

(a) the rights and powers of the bank in respect of property covered by the security are void as against creditors of the person giving the security and as against subsequent purchasers or mortgagees in good faith of the property covered by the security unless a notice of intention signed by or on behalf of the person giving the security was registered in the appropriate agency not more than three years immediately before the security was given;

(b) registration of a notice of intention may be cancelled by registration in the appropriate agency in which the notice of intention was registered of a certificate of release signed on behalf of the bank named in the notice of intention stating that every security to which the notice of intention relates has been released or that no security was given to the bank, as the case may be;

(c) every person, on payment of the fee prescribed pursuant to subsection (6), is entitled to have access through the agent to any system of registration, notice of intention or certificate of release kept by or in the custody of the agent;

(d) any person desiring to ascertain whether a notice of intention given by a person is registered in an agency may inquire by sending a prepaid telegram or written communication addressed to the agent, and it is the duty of the agent, in the case of a written inquiry, only if it is accompanied by the payment of the fee prescribed pursuant to subsection (6), to make the necessary examination of the information contained in the system of registration and of the relevant documents, if any, and to reply to the inquirer stating the name of the bank mentioned in any such notice of intention, which reply shall be sent by mail unless a telegraphic reply is requested, in which case it shall be sent at the expense of the inquirer; and

(e) evidence of registration in an agency of a notice of intention or a certificate of release and of the place, date, time and serial number, if any, of its registration may be given by the production of a copy of the notice of intention or certificate of release duly certified by the agent to be a true copy thereof without proof of the signature or of the official character of the agent.

Definitions

(5) In subsections (4) and (6),

"agency" « agence »

"agency" means, in a province, the office of the Bank of Canada or its authorized representative but does not include its Ottawa office, and in the Yukon Territory, the Northwest Territories and Nunavut means the office of the clerk of the court of each of those territories respectively;

"agent" « agent »

"agent" means the officer in charge of an agency, and includes any person acting for that officer;

"appropriate agency" « agence appropriée »

"appropriate agency" means

(a) the agency for the province in which is located the place of business of the person by whom or on whose behalf a notice of intention is signed,

(b) if that person has more than one place of business in Canada and the places of business are not in the same province, the agency for the province in which is located the principal place of business of that person, or

(c) if that person has no place of business, the agency for the province in which the person resides,

and in respect of any notice of intention registered before the day this Part comes into force, means the office in which registration was required to be made by the law in force at the time of such registration;

"notice of intention" « préavis »

"notice of intention" means a notice of intention in the prescribed form or in a form to the like effect, and includes a notice of intention registered before the day this Part comes into force, in the form and registered in the manner required by the law in force at the time of the registration of the notice of intention;

"principal place of business" « principal établissement » "principal place of business" means

(a) in the case of a body corporate incorporated by or under an Act of Parliament or the legislature of a province, the place where, according to the body corporate's charter, memorandum of association or by-laws, the head office of the body corporate in Canada is situated, and

(b) in the case of any other body corporate, the place at which a civil process in the province in which the loans or advances will be made can be served on the body corporate;

"system of registration" « archives »

"system of registration" means all registers and other records required by subsection (4) to be prepared and maintained and any such system may be in a bound or loose-leaf form or in a photographic film form, or may be entered or recorded by any system of mechanical or

electronic data processing or any other information storage device that is capable of reproducing any required information in intelligible written form within a reasonable time.

Regulations

(6) The Governor in Council may, for the purposes of this section, make regulations

(a) respecting the practice and procedure for the operation of a system of registration, including registration of notices of intention, the cancellation of such registrations and access to the system of registration;

(b) requiring the payment of fees relating to the system of registration and prescribing the amounts thereof; and

(c) respecting any other matter necessary for the maintenance and operation of a system of registration.

Priority of wages and money owing for perishable agricultural products

(7) Notwithstanding subsection (2) and notwithstanding that a notice of intention by a person giving security on property under this section has been registered pursuant to this section, where, under the Bankruptcy and Insolvency Act, a receiving order is made against, or an assignment is made by, that person,

(a) claims for wages, salaries or other remuneration owing in respect of the period of three months immediately preceding the making of the order or assignment, to employees of the person employed in connection with the business or farm in respect of which the property covered by the security was held or acquired by the person, and

(b) claims of a grower or producer of products of agriculture for money owing by a manufacturer to the grower or producer for such products that were grown or produced by the grower or producer on land owned or leased by the grower or producer and that were delivered to the manufacturer during the period of six months immediately preceding the making of the order or assignment to the extent of the lesser of

(i) the total amount of the claims of the grower or producer therefor, and

(ii) the amount determined by multiplying by one thousand one hundred dollars the most recent annual average Index Number of Farm Prices of Agricultural Products for Canada published by Statistics Canada at the time the receiving order or claim is made,

have priority over the rights of the bank in a security given to the bank under this section, in the order in which they are mentioned in this subsection, and if the bank takes possession or in any way disposes of the property covered by the security, the bank is liable for those claims to the extent of the net amount realized on the disposition of the property, after deducting the cost of

realization, and the bank is subrogated in and to all the rights of the claimants to the extent of the amounts paid to them by the bank.

Effect of adjustment of index

(8) On the first occasion after December 19, 1990 on which the index number referred to in subparagraph (7)(b)(ii) is adjusted or re-established on a revised base, that subparagraph is amended by substituting for the reference to one thousand one hundred dollars therein the amount, stated in whole dollars, rounded upwards, obtained when one thousand one hundred dollars is multiplied by the index number immediately before the adjustment or re-establishment and the product so obtained is divided by the index number immediately following the adjustment or re-establishment, and on each subsequent occasion on which the index number is adjusted or re-established on a revised base, that subparagraph is amended by substituting for the amount then referred to therein, an amount determined in like manner.

1991, c. 46, s. 427; 1992, c. 27, s. 90; 1993, c. 6, s. 6(E), c. 28, s. 78; 1998, c. 36, s. 21.

Priority of bank's claim

428. (1) All the rights and powers of a bank in respect of the property mentioned in or covered by a warehouse receipt or bill of lading acquired and held by the bank, and the rights and powers of the bank in respect of the property covered by a security given to the bank under section 427 that are the same as if the bank had acquired a warehouse receipt or bill of lading in which that property was described, have, subject to subsection 427(4) and subsections (3) to (6) of this section, priority over all rights subsequently acquired in, on or in respect of that property, and also over the claim of any unpaid vendor.

Exception

(2) The priority referred to in subsection (1) does not extend over the claim of any unpaid vendor who had a lien on the property at the time of the acquisition by the bank of the warehouse receipt, bill of lading or security, unless the same was acquired without knowledge on the part of the bank of that lien, and where security is given to the bank under paragraph 427(1)(c) or (m) consisting of aquacultural equipment, under paragraph 427(1)(d) or (n) consisting of agricultural equipment, under paragraph 427(1)(k) consisting of aquacultural equipment or an aquacultural electric system, under paragraph 427(1)(l) consisting of agricultural equipment or a farm electric system or under paragraph 427(1)(p) consisting of forestry equipment, that priority shall exist notwithstanding that the property is or becomes affixed to real property.

Bank required to register against land in certain cases

(3) Where security has been given to a bank under paragraph 427(1)(c) or (m) consisting of aquacultural equipment, under paragraph 427(1)(d) or (n) consisting of agricultural equipment, under paragraph 427(1)(k) consisting of aquacultural equipment or an aquacultural electric system, under paragraph 427(1)(l) consisting of agricultural equipment or a farm electric system

or under paragraph 427(1)(p) consisting of forestry equipment that is or has become affixed to real property, the rights and powers of the bank do not have priority over any interest or right acquired in, on or in respect of the real property after that property has become affixed thereto unless, prior to

(a) the registration of the interest or right, or

(b) the registration or filing of the deed or other instrument evidencing the interest or right, or of a caution, caveat or memorial in respect thereof, there has been registered or filed in the proper land registry or land titles office,

(c) an original of the document giving the security,

(d) a copy of the document giving the security, certified by an officer or employee of the bank to be a true copy, or

(e) a caution, caveat or memorial in respect of the rights of the bank.

Procedure for registering

(4) Every registrar or officer in charge of the proper land registry or land titles office to whom a document mentioned in paragraph (3)(c), (d) or (e) is tendered shall register or file the document according to the ordinary procedure for registering or filing within that office documents that evidence liens or charges against, or cautions, caveats or memorials in respect of claims to, or interests or rights in respect of, real property and subject to payment of the like fees, but subsection (3) and this subsection do not apply if the provincial law does not permit such registration or filing of the tendered document.

Security on fishing vessels

(5) Where security has been given to a bank under paragraph 427(1)(o) on a fishing vessel that is recorded or registered under the Canada Shipping Act or registered under the Maritime Code, chapter 41 of the Statutes of Canada, 1977-78, the rights and powers of the bank do not have priority over any rights that are subsequently acquired in the vessel and are recorded or registered under that Act or Code unless a copy of the document giving the security, certified by an officer of the bank to be a true copy, has been recorded or registered under that Act or Code in respect of the vessel before the recording or registration thereunder of those rights.

Idem

(6) A copy of the document giving the security described in subsection (5), certified by an officer of the bank, may be recorded or registered under the Canada Shipping Act or the Maritime Code, chapter 41 of the Statutes of Canada, 1977-78, as if it were a mortgage given thereunder, and on the recording or registration thereof the bank, in addition to and without limitation of any other

rights or powers vested in or conferred on it, has all the rights and powers in respect of the vessel that it would have if the security were a mortgage recorded or registered under that Act or Code.

Sale of goods on non-payment of debt

(7) In the event of non-payment of any debt, liability, loan or advance, as security for the payment of which a bank has acquired and holds a warehouse receipt or bill of lading or has taken any security under section 427, the bank may sell all or any part of the property mentioned therein or covered thereby and apply the proceeds against that debt, liability, loan or advance, with interest and expenses, returning the surplus, if any, to the person by whom the security was given.

Idem

(8) The power of sale referred to in subsection (7) shall, unless the person by whom the security mentioned in that subsection was given has agreed to the sale of the property otherwise than as herein provided or unless the property is perishable and to comply with the following provisions might result in a substantial reduction in the value of the property, be exercised subject to the following provisions, namely,

(a) every sale of such property other than livestock shall be by public auction after

(i) notice of the time and place of the sale has been sent by registered mail to the recorded address of the person by whom the security was given, at least ten days prior to the sale in the case of any such property other than products of the forest, and at least thirty days prior to the sale in the case of any such property consisting of products of the forest, and

(ii) publication of an advertisement of the sale, at least two days prior to the sale, in at least two newspapers published in or nearest to the place where the sale is to be made stating the time and place thereof; and

(b) every sale of livestock shall be made by public auction not less than five days after

(i) publication of an advertisement of the time and place of the sale in a newspaper, published in or nearest to the place where the sale is to be made, and

(ii) posting of a notice in writing of the time and place of the sale, in or at the post office nearest to the place where the sale is to be made,

and the proceeds of such a sale of livestock, after deducting all expenses incurred by the bank and all expenses of seizure and sale, shall first be applied to satisfy privileges, liens or pledges having priority over the security given to the bank and for which claims have been filed with the person making the sale, and the balance shall be applied in payment of the debt, liability, loan or advance, with interest and the surplus, if any, returned to the person by whom the security was given.

Right and title of purchaser

(9) Any sale of property by a bank under subsections (7) and (8) vests in the purchaser all the right and title in and to the property that the person from whom security was taken under section 435 had when the security was given or that the person from whom security was taken under section 427 had when the security was given and that the person acquired thereafter.

Duty to act honestly and in good faith

(10) In connection with any sale of property by a bank pursuant to subsections (7) and (8) or pursuant to any agreement between the bank and the person by whom the security was given, the bank shall act honestly and in good faith and shall deal with the property in a timely and appropriate manner having regard to the nature of the property and the interests of the person by whom the security was given and, in the case of a sale pursuant to an agreement, shall give the person by whom the security was given reasonable notice of the sale except where the property is perishable and to do so might result in a substantial reduction in the value of the property.

Duty to act expeditiously in respect of seized property

(11) Subject to section 427 and this section and any agreement between the bank and the person by whom the property was given as security, where, pursuant to subsection 427(3), a bank takes possession of or seizes property given as security to the bank, the bank shall, as soon as is reasonably practical having regard to the nature of the property, sell the property or so much thereof as will enable it to satisfy the debt, liability, loan or advance, with interest and expenses, in relation to which the property was given as security.

Goods manufactured from articles pledged

(12) Where goods, wares and merchandise are manufactured or produced from goods, wares and merchandise, or any of them, mentioned in or covered by any warehouse receipt or bill of lading acquired and held by a bank or any security given to a bank under section 427, the bank has the same rights and powers in respect of the goods, wares and merchandise so manufactured or produced, as well during the process of manufacture or production as after the completion thereof, and for the same purposes and on the same conditions as it had with respect to the original goods, wares and merchandise.

Subrogation of security

(13) Where payment or satisfaction of any debt, liability, loan or advance in respect of which a bank has taken security under section 426, 427 or 435 is guaranteed by a third person and the debt, liability, loan or advance is paid or satisfied by the guarantor, the guarantor is subrogated in and to all of the powers, rights and authority of the bank under the security that the bank holds in respect thereof under sections 426, 427 and 435 and this section.

Bank may assign its rights

(14) A bank may assign to any person all or any of its rights and powers in respect of any property on which security has been given to it under paragraph 427(1)(i), (j), (k), (l), (m), (n), (o) or (p), whereupon that person has all or any of the assigned rights and powers of the bank under that security.

Conditions under which bank may take security

429. (1) A bank shall not acquire or hold any warehouse receipt or bill of lading, or any security under section 427, to secure the payment of any debt, liability, loan or advance unless the debt, liability, loan or advance is contracted or made

(a) at the time of the acquisition thereof by the bank, or

(b) on the written promise or agreement that a warehouse receipt or bill of lading or security under section 427 would be given to the bank, in which case the debt, liability, loan or advance may be contracted or made before or at the time of or after that acquisition,

and such debt, liability, loan or advance may be renewed, or the time for the payment thereof extended, without affecting any security so acquired or held.

Exchange of one security for another

(2) A bank may

(a) on the shipment of any property for which it holds a warehouse receipt or any security under section 427, surrender the receipt or security and receive a bill of lading in exchange therefor;

(b) on the receipt of any property for which it holds a bill of lading, or any security under section 427, surrender the bill of lading or security, store the property and take a warehouse receipt therefor, or ship the property, or part of it, and take another bill of lading therefor;

(c) surrender any bill of lading or warehouse receipt held by it and receive in exchange therefor any security that may be taken under this Act;

(d) when it holds any security under section 427 on grain in any elevator, take a bill of lading covering the same grain or grain of the same grade or kind shipped from that elevator, in lieu of that security, to the extent of the quantity shipped; and

(e) when it holds any security whatever covering grain, take in lieu of that security, to the extent of the quantity covered by the security taken, a bill of lading or warehouse receipt for, or any document entitling it under the Canada Grain Act to the delivery of, the same grain or grain of the same grade or kind. Loans to receiver, liquidator, etc.

430. A bank may lend money and make advances to a receiver, to a receiver and manager, to a liquidator appointed under any winding-up Act, or to a custodian, an interim receiver or a trustee under the Bankruptcy and Insolvency Act, if the receiver, receiver and manager, liquidator, custodian, interim receiver or trustee has been duly authorized or empowered to borrow, and, in making the loan or advance, and thereafter, the bank may take security, with or without personal liability, from the receiver, receiver and manager, liquidator, custodian, interim receiver or trustee to such an amount and on such property as may be directed or authorized by any court of competent jurisdiction.

1991, c. 46, s. 430; 1992, c. 27, s. 90.

Securities may be sold

431. Securities acquired and held by a bank as security may, in case of default in the payment of the loan, advance or debt or in the discharge of the liability for the securing of which they were so acquired and held, be dealt with, sold and conveyed, in like manner as and subject to the restrictions under which a private individual might in like circumstances deal with, sell and convey the same, and the right to deal with and dispose of securities as provided in this section may be waived or varied by any agreement between the bank and the person by whom the security was given.

Rights in respect of personal property

432. The rights, powers and privileges that a bank is by this Act declared to have, or to have had, in respect of real property on which it has taken security, shall be held and possessed by it in respect of any personal property on which it has taken security.

Purchase of realty

433. A bank may purchase any real property offered for sale

(a) under execution, or in insolvency, or under the order or decree of a court, or at a sale for taxes, as belonging to any debtor to the bank,

(b) by a mortgagee or other encumbrancer, having priority over a mortgage or other encumbrance held by the bank, or

(c) by the bank under a power of sale given to it for that purpose, notice of the sale by auction to the highest bidder having been first given by advertisement for four weeks in a newspaper published in the county or electoral district in which the property is situated,

in cases in which, under similar circumstances, an individual could so purchase, without any restriction as to the value of the property that it may so purchase, and may acquire title thereto as any individual, purchasing at a sheriff's sale or sale for taxes or under a power of sale, in like circumstances could do, and may take, have, hold and dispose of the property so purchased.

Bank may acquire absolute title

434. (1) A bank may acquire and hold an absolute title in or to real property affected by a mortgage or hypothec securing a loan or an advance made by the bank or a debt or liability to the bank, either by the obtaining of a release of the equity of redemption in the mortgaged property, or by procuring a foreclosure, or by other means whereby, as between individuals, an equity of redemption can, by law, be barred, or a transfer of title to real property can, by law, be effected, and may purchase and acquire any prior mortgage or charge on such property.

No act or law to prevent

(2) Nothing in any charter, Act or law shall be construed as ever having been intended to prevent or as preventing a bank from acquiring and holding an absolute title to and in any mortgaged or hypothecated real property, whatever the value thereof, or from exercising or acting on any power of sale contained in any mortgage given to or held by the bank, authorizing or enabling it to sell or convey any property so mortgaged.

Warehouse receipts and bills of lading

435. (1) A bank may acquire and hold any warehouse receipt or bill of lading as security for the payment of any debt incurred in its favour, or as security for any liability incurred by it for any person, in the course of its banking business.

Effect of taking

(2) Any warehouse receipt or bill of lading acquired by a bank under subsection (1) vests in the bank, from the date of the acquisition thereof,

(a) all the right and title to the warehouse receipt or bill of lading and to the goods, wares and merchandise covered thereby of the previous holder or owner thereof; and

(b) all the right and title to the goods, wares and merchandise mentioned therein of the person from whom the goods, wares and merchandise were received or acquired by the bank, if the warehouse receipt or bill of lading is made directly in favour of the bank, instead of to the previous holder or owner of the goods, wares and merchandise.

When previous holder is agent

436. (1) Where the previous holder of a warehouse receipt or bill of lading referred to in section 435 is a person

(a) entrusted with the possession of the goods, wares and merchandise mentioned therein, by or by the authority of the owner thereof,

(b) to whom the goods, wares and merchandise are, by or by the authority of the owner thereof, consigned, or

(c) who, by or by the authority of the owner of the goods, wares and merchandise, is possessed of any bill of lading, receipt, order or other document covering the same, such as is used in the course of business as proof of the possession or control of goods, wares and merchandise, or as authorizing or purporting to authorize, either by endorsement or by delivery, the possessor of such a document to transfer or receive the goods, wares and merchandise thereby represented,

a bank is, on the acquisition of that warehouse receipt or bill of lading, vested with all the right and title of the owner of the goods, wares and merchandise, subject to the right of the owner to have the same re-transferred to the owner if the debt or liability, as security for which the warehouse receipt or bill of lading is held by the bank, is paid.

Possessor

(2) For the purposes of this section, a person shall be deemed to be the possessor of goods, wares and merchandise, or a bill of lading, receipt, order or other document,

(a) who is in actual possession thereof; or

(b) for whom, or subject to whose control the goods, wares and merchandise are, or bill of lading, receipt, order or other document is, held by any other person.

Deposit Acceptance

Deposit acceptance

437. (1) A bank may, without the intervention of any other person,

(a) accept a deposit from any person whether or not the person is qualified by law to enter into contracts; and

(b) pay all or part of the principal of the deposit and all or part of the interest thereon to or to the order of that person.

Exception

(2) Paragraph (1)(b) does not apply if, before payment, the money deposited in the bank pursuant to paragraph (1)(a) is claimed by some other person

(a) in any action or proceeding to which the bank is a party and in respect of which service of a writ or other process originating that action or proceeding has been made on the bank, or

(b) in any other action or proceeding pursuant to which an injunction or order made by the court requiring the bank not to make payment of that money or make payment thereof to some person other than the depositor has been served on the bank,

and, in the case of any such claim so made, the money so deposited may be paid to the depositor with the consent of the claimant or to the claimant with the consent of the depositor.

Execution of trust

(3) A bank is not bound to see to the execution of any trust, whether express or arising by operation of law, to which any deposit made under the authority of this Act is subject.

Unclaimed Balances

Unclaimed balances

438. (1) Where

(a) a deposit has been made in Canada that is payable in Canada in Canadian currency and in respect of which no transaction has taken place and no statement of account has been requested or acknowledged by the creditor during a period of ten years

(i) in the case of a deposit made for a fixed period, from the day on which the fixed period terminated, and

(ii) in the case of any other deposit, from the day on which the last transaction took place or a statement of account was last requested or acknowledged by the creditor, whichever is later, or

(b) a cheque, draft or bill of exchange (including any such instrument drawn by one branch of a bank on another branch of the bank but not including such an instrument issued in payment of a dividend on the capital of a bank) payable in Canada in Canadian currency has been issued, certified or accepted by a bank in Canada and no payment has been made in respect thereof for a period of ten years after the date of issue, certification, acceptance or maturity, whichever is later,

the bank shall pay to the Bank of Canada not later than December 31 in each year an amount equal to the principal amount of the deposit or instrument, plus interest, if any, calculated in accordance with the terms of the deposit or instrument, and payment accordingly discharges the bank from all liability in respect of the deposit or instrument.

Particulars

(2) A bank shall, on making a payment pursuant to subsection (1), provide the Bank of Canada, for each deposit or instrument in respect of which the payment is made, with all the particulars of

the deposit or instrument listed in subsection 629(3) or 630(2), as the case may be, current as of the day the payment is made.

Payment to claimant

(3) Subject to section 22 of the Bank of Canada Act, where payment has been made to the Bank of Canada under subsection (1) in respect of any deposit or instrument, and if payment is demanded or the instrument is presented at the Bank of Canada by the person who, but for that section, would be entitled to receive payment of the deposit or instrument, the Bank of Canada is liable to pay, at its agency in the province in which the deposit or instrument was payable, an amount equal to the amount so paid to it together with interest, if interest was payable under the terms of the deposit or instrument,

(a) for a period not exceeding ten years from the day on which the payment was received by the Bank of Canada until the date of payment to the claimant; and

(b) at such rate and computed in such manner as the Minister determines.

Enforcing liability

(4) The liability of the Bank of Canada under subsection (3) may be enforced by action against the Bank of Canada in the court in the province in which the deposit or instrument was payable.

Application of subsection (1)

(5) Subsection (1) applies only in respect of

(a) deposits made, and cheques, drafts and bills of exchange issued, certified or accepted, in the ten year period immediately preceding the day on which this section comes into force; and

(b) deposits made, and cheques, drafts and bills of exchange issued, certified or accepted, on or after the day on which this section comes into force.

1991, c. 46, s. 438; 1999, c. 28, s. 23.

Notice of unpaid amount

439. (1) A bank shall mail to each person, in so far as is known to the bank,

(a) to whom a deposit referred to in paragraph 438(1)(a) is payable, or

(b) to whom or at whose request an instrument referred to in paragraph 438(1)(b) was issued, certified or accepted,

at the person's recorded address, a notice stating that the deposit or instrument remains unpaid.

When notice to be given

(2) A notice required by subsection (1) shall be given during the month of January next following the end of the first two year period, and also during the month of January next following the end of the first five year period,

(a) in the case of a deposit made for a fixed period, after the fixed period has terminated;

(b) in the case of any other deposit, in respect of which no transaction has taken place and no statement of account has been requested or acknowledged by the creditor; and

(c) in the case of a cheque, draft or bill of exchange, in respect of which the instrument has remained unpaid.

Interest and Charges

Accounts

Account charges

440. A bank shall not, directly or indirectly, charge or receive any sum for the keeping of an account unless the charge is made by express agreement between the bank and a customer or by order of a court.

Disclosure on opening account

441. (1) A bank shall not open or maintain an interest-bearing deposit account in Canada in the name of any natural person unless the bank discloses, in accordance with the regulations, to the person who requests the bank to open the account, the rate of interest applicable to the account and how the amount of interest to be paid is to be calculated.

Exception

(2) Subsection (1) does not apply in respect of an interest-bearing deposit account that is opened with a balance in excess of one hundred thousand dollars or such greater amount as is prescribed.

Disclosure in advertisements

442. No person shall authorize the publication, issue or appearance of any advertisement in Canada that indicates the rate of interest offered by a bank on an interest-bearing deposit or a debt obligation unless the advertisement discloses, in accordance with the regulations, how the amount of interest is to be calculated.

Disclosure regulations

443. The Governor in Council may make regulations respecting

(a) the manner in which and the time at which disclosure is to be made by a bank of

(i) interest rates applicable to debts of the bank and deposits with the bank, and

(ii) the manner in which the amount of interest paid is to be calculated; and

(b) such other matters or things as may be necessary to carry out the requirements of sections 441 and 442.

Definition of "personal deposit account"

444. For the purposes of sections 445 to 448, "personal deposit account" means a deposit account in the name of one or more natural persons that is kept by that person or those persons for a purpose other than that of carrying on business.

Disclosure required on opening a deposit account

445. (1) Subject to subsection (2), a bank shall not open a deposit account in the name of a customer unless, at or before the time the account is opened, the bank provides the individual who requests the opening of the account with

(a) a copy of the account agreement with the bank;

(b) information about all charges applicable to the account;

(c) information about how the customer will be notified of any increase in those charges and of any new charges applicable to the account;

(d) information about the bank's procedures relating to complaints about the application of any charge applicable to the account; and

(e) such other information as may be prescribed.

Exception

(2) Where a deposit account is not a personal deposit account and the amount of a charge applicable to the account cannot be established at or before the time the account is opened, the bank shall, as soon as is practicable after the amount is established, provide the customer in whose name the account is kept with a notice of the amount of the charge.

Manner of providing information

(3) The agreement or information to be provided under subsection (1) or (2) shall be provided in writing or in such manner as may be prescribed.

Information can be obtained in writing

(4) Whether or not the manner of providing the agreement or information is prescribed under subsection (3), the manner of providing the agreement or information to the individual shall be to provide it in writing if, at or before the time the account is opened, the individual requests the bank to provide it in writing.

Individual to be informed

(5) At or before the time the account is opened, the bank shall inform the individual that the agreement and the information will be provided in writing at the individual's request.

1991, c. 46, s. 445; 1997, c. 15, s. 48.

Disclosure of charges

446. A bank shall disclose, in the prescribed manner and at the prescribed time, to its customers and to the public, the charges applicable to deposit accounts with the bank and the usual amount, if any, charged by the bank for services normally provided by the bank to its customers and to the public.

No increase or new charges without disclosure

447. (1) A bank shall not increase any charge applicable to a personal deposit account with the bank or introduce any new charge applicable to a personal deposit account with the bank unless the bank discloses the charge in the prescribed manner and at the prescribed time to the customer in whose name the account is kept.

Idem

(2) With respect to such services in relation to deposit accounts, other than personal deposit accounts, as are prescribed, a bank shall not increase any charge for any such service in relation to a deposit account with the bank or introduce any new charge for any such service in relation to a deposit account with the bank unless the bank discloses the charge in the prescribed manner and at the prescribed time to the customer in whose name the account is kept.

Application

448. Sections 444 to 447 apply only in respect of charges applicable to deposit accounts with the bank in Canada and services provided by the bank in Canada.

Borrowing Costs

Definition of "cost of borrowing"

449. For the purposes of this section and sections 450 to 456, "cost of borrowing" means, in respect of a loan made by a bank,

- (a) the interest or discount applicable to the loan; and
- (b) such charges in connection therewith as are payable by the borrower to the bank or to any person from whom the bank receives any charges directly or indirectly and as are prescribed to be included in the cost of borrowing.

Disclosing borrowing costs

450. (1) A bank shall not make a loan to a natural person that is repayable in Canada unless the cost of borrowing, as calculated and expressed in accordance with section 451, has, in the prescribed manner, been disclosed by the bank or otherwise as prescribed to the borrower at or before the time when the loan is made.

Non-application

(2) Subsection (1) does not apply in respect of

- (a) a loan in excess of two hundred and fifty thousand dollars or such other amount as may be prescribed, where the loan is secured by a mortgage on real property;
- (b) a loan in excess of one hundred thousand dollars or such other amount as may be prescribed, where the loan is not secured by a mortgage on real property; or
- (c) a loan that is one of a prescribed class of loans.

Calculating borrowing costs

451. The cost of borrowing shall be calculated, in the prescribed manner, on the basis that all obligations of the borrower are duly fulfilled and shall be expressed as a rate per annum and, in prescribed circumstances, as an amount in dollars and cents.

Additional disclosure

452. (1) Where a bank makes a loan in respect of which the disclosure requirements of section 450 are applicable and the loan is required to be repaid either on a fixed future date or by instalments, the bank shall disclose to the borrower, in accordance with the regulations,

(a) whether the borrower has the right to repay the amount borrowed before the maturity of the loan and, if applicable,

(i) particulars of the circumstances in which the borrower may exercise that right, and

(ii) whether, in the event that the borrower exercises the right, any portion of the cost of borrowing is to be rebated, the manner in which any such rebate is to be calculated or, if a charge or penalty will be imposed on the borrower, the manner in which the charge or penalty is to be calculated; and

(b) in the event that an amount borrowed is not repaid at maturity or, if applicable, an instalment is not paid on the day the instalment is due to be paid, particulars of the charges or penalties to be paid by the borrower because of the failure to repay or pay in accordance with the contract governing the loan.

Disclosure re charge cards

(2) In addition to disclosing the costs of borrowing and any charges or penalties described in paragraph (1)(b) in respect of any loan obtained through the use of a payment, credit or charge card, a bank that issues such a card in Canada to a natural person shall, in accordance with the regulations, disclose to the person particulars of the person's rights and obligations and any charges for which the person is responsible by reason of accepting or using the card.

Disclosure in advertising

453. No person shall authorize the publication, issue or appearance of any advertisement in Canada relating to loans offered to natural persons by a bank and purporting to indicate a rate of interest or other charges to be paid by the borrower, unless the advertisement discloses the cost of borrowing in accordance with the regulations.

Regulations re borrowing costs

454. The Governor in Council may make regulations

(a) respecting the manner in which and the time at which the cost of borrowing and any rebate of the cost of borrowing are to be disclosed by a bank to a borrower;

(b) respecting the manner of calculating the cost of borrowing;

(c) respecting the circumstances under which the cost of borrowing is to be expressed as an amount in dollars and cents;

(d) specifying any class of loans that are not to be subject to subsection 450(1) or 452(1) or section 453 or the regulations or any specified provisions thereof;

(e) respecting the manner in which and the time at which any rights, obligations, charges or penalties referred to in sections 450 to 453 are to be disclosed;

(f) prohibiting the imposition of any charge or penalty referred to in sections 452 and 453 or providing that the charge or penalty, if imposed, will not exceed a prescribed amount;

(g) respecting the method of calculating the amount of rebate of the cost of borrowing, or the portion thereof referred to in subparagraph 452(1)(a)(ii); and

(h) respecting such other matters or things as are necessary to carry out the purposes of sections 450 to 453.

Procedures for dealing with complaints

455. (1) A bank shall

(a) establish procedures for dealing with complaints made by customers of the bank about the application of charges applicable to deposit accounts or payment, credit or charge cards with the bank or the disclosure of or manner of calculating the cost of borrowing in respect of a loan made by the bank;

(b) designate an officer or employee of the bank to be responsible for implementing those procedures; and

(c) designate one or more officers or employees of the bank to receive and deal with those complaints.

Procedures to be filed with Superintendent

(2) A bank shall file with the Superintendent a copy of its procedures established pursuant to subsection (1).

Contacting Superintendent

456. (1) A bank shall, in the prescribed manner, provide customers of the bank who have complaints with respect to their deposit accounts or payment, credit or charge cards or the disclosure of or manner of calculating the cost of borrowing in respect of a loan with prescribed information on how they may contact the Office of the Superintendent of Financial Institutions.

Report

(2) The Superintendent shall prepare a report, to be included in the report referred to in section 25 of the Office of the Superintendent of Financial Institutions Act, respecting complaints referred to in subsection (1) of customers who have exhausted the complaint procedures

established by banks pursuant to paragraph 455(1)(a) and who have contacted the Superintendent with respect to their complaints.

Contents of report

(3) The report required by subsection (2) shall include information respecting the complaint procedures established by banks pursuant to paragraph 455(1)(a), the role of the Superintendent respecting complaints and the number, nature and disposition of the complaints.

457. [Repealed, 1999, c. 31, s. 14]

Miscellaneous

Prepayment protected

458. (1) A bank shall not make a loan to a natural person that is repayable in Canada, the terms of which prohibit prepayment of the money advanced or any instalment thereon before its due date.

Minimum balance

(2) Except by express agreement between the bank and the borrower, the making in Canada of a loan or advance by a bank to a borrower shall not be subject to a condition that the borrower maintain a minimum credit balance with the bank.

Non-application of subsection (1)

(3) Subsection (1) does not apply in respect of a loan

(a) that is secured by a mortgage on real property; or

(b) the principal amount of which is in excess of one hundred thousand dollars or such other amount as may be prescribed.

Government cheques

(4) A bank shall not make a charge

(a) for cashing a cheque or other instrument drawn on the Receiver General or on the Receiver General's account in the Bank of Canada, in any bank or other deposit-taking Canadian financial institution incorporated by or under an Act of Parliament or in any authorized foreign bank that is not subject to the restrictions and requirements referred to in subsection 524(2), in respect of its business in Canada;

(b) for cashing any other instrument issued as authority for the payment of money out of the Consolidated Revenue Fund; or

(c) in respect of any cheque or other instrument that is

(i) drawn in favour of the Receiver General, the Government of Canada or any department thereof or any public officer acting in the capacity of a public officer, and

(ii) tendered for deposit to the credit of the Receiver General.

Deposits of Government of Canada

(5) Nothing in subsection (4) precludes any arrangement between the Government of Canada and a bank concerning

(a) compensation for services performed by the bank for the Government of Canada; or

(b) interest to be paid on any or all deposits of the Government of Canada with the bank.

1991, c. 46, s. 458; 1999, c. 28, s. 24.

Regulations re customer information

459. The Governor in Council may make regulations

(a) requiring a bank to establish procedures regarding the collection, retention, use and disclosure of any information about its customers or any class of customers;

(b) requiring a bank to establish procedures for dealing with complaints made by a customer about the collection, retention, use or disclosure of information about the customer;

(c) respecting the disclosure by a bank of information relating to the procedures referred to in paragraphs (a) and (b);

(d) requiring a bank to designate the officers and employees of the bank who are responsible for

(i) implementing the procedures referred to in paragraph (b), and

(ii) receiving and dealing with complaints made by a customer of the bank about the collection, retention, use or disclosure of information about the customer;

(e) requiring a bank to report information relating to

(i) complaints made by customers of the bank about the collection, retention, use or disclosure of information, and

(ii) the actions taken by the bank to deal with the complaints; and

(f) defining "information", "collection" and "retention" for the purposes of paragraphs (a) to (e) and the regulations made under those paragraphs.

1991, c. 46, s. 459; 1997, c. 15, s. 55.

Restriction on tied selling

459.1 (1) A bank shall not impose undue pressure on, or coerce, a person to obtain a product or service from a particular person, including the bank and any of its affiliates, as a condition for obtaining a loan from the bank.

Favourable loan tied to other sale

(2) For greater certainty, a bank may offer to make a loan to a person on more favourable terms or conditions than the bank would otherwise offer to a borrower, where the more favourable terms and conditions are offered on the condition that the person obtain another product or service from any particular person.

Favourable other sale tied to loan

(3) For greater certainty, a bank or one of its affiliates may offer a product or service to a person on more favourable terms or conditions than the bank or affiliate would otherwise offer, where the more favourable terms and conditions are offered on the condition that the person obtain a loan from the bank.

Bank approval

(4) A bank may require that a product or service obtained by a borrower from a particular person as security for a loan from the bank meet with the bank's approval. That approval shall not be unreasonably withheld.

Regulations

(5) The Governor in Council may make regulations

(a) specifying types of conduct or transactions that shall be considered undue pressure or coercion for the purpose of subsection (1); and

(b) specifying types of conduct or transactions that shall be considered not to be undue pressure or coercion for the purpose of subsection (1).

1997, c. 15, s. 55; 1999, c. 28, s. 24.1(F).

Transmission in case of death

460. (1) Where the transmission of a debt owing by a bank by reason of a deposit, of property held by a bank as security or for safe-keeping or of rights with respect to a safety deposit box and property deposited therein takes place because of the death of a person, the delivery to the bank of

(a) an affidavit or declaration in writing in form satisfactory to the bank signed by or on behalf of a person claiming by virtue of the transmission stating the nature and effect of the transmission, and

(b) one of the following documents, namely,

(i) when the claim is based on a will or other testamentary instrument or on a grant of probate thereof or on such a grant and letters testamentary or other document of like import or on a grant of letters of administration or other document of like import, purporting to be issued by any court or authority in Canada or elsewhere, an authenticated copy or certificate thereof under the seal of the court or authority without proof of the authenticity of the seal or other proof, or

(ii) when the claim is based on a notarial will, an authenticated copy thereof,

is sufficient justification and authority for giving effect to the transmission in accordance with the claim.

Idem

(2) Nothing in subsection (1) shall be construed to prevent a bank from refusing to give effect to a transmission until there has been delivered to the bank such documentary or other evidence of or in connection with the transmission as it may deem requisite.

1991, c. 46, s. 460; 1999, c. 28, s. 25(E).

Branch of account with respect to deposits

461. (1) For the purposes of this Act, the branch of account with respect to a deposit account is

(a) the branch the address or name of which appears on the specimen signature card or other signing authority signed by a depositor with respect to the deposit account or that is designated by agreement between the bank and the depositor at the time of opening of the deposit account; or

(b) if no branch has been identified or agreed on as provided in paragraph (a), the branch that is designated as the branch of account with respect thereto by the bank by notice in writing to the depositor.

Where debt payable

(2) The amount of any debt owing by a bank by reason of a deposit in a deposit account in the bank is payable to the person entitled thereto only at the branch of account and the person entitled thereto is not entitled to demand payment or to be paid at any other branch of the bank.

Idem

(3) Notwithstanding subsection (2), a bank may permit either occasionally or as a regular practice, the person to whom the bank is indebted by reason of a deposit in a deposit account in the bank to withdraw moneys owing by reason of that deposit at a branch of the bank other than the branch of account or to draw cheques or other orders for the payment of such moneys at a branch other than the branch of account.

Situs of indebtedness

(4) The indebtedness of a bank by reason of a deposit in a deposit account in the bank shall be deemed for all purposes to be situated at the place where the branch of account is situated.

Effect of writ, etc.

462. (1) A writ or process originating a legal proceeding or issued therein or in pursuance thereof, an order or injunction made by a court or a notice by any person purporting to assign, perfect or otherwise dispose of an interest in any property or in any deposit account affects and binds only property in the possession of a bank belonging to a person at the branch where the writ, process, order, injunction or notice or notice thereof is served and, in the case of a deposit account in a bank, affects only money owing to a person by reason of the deposit account if the branch on which the writ, process, order, injunction or notice or notice thereof is served is the branch of account in respect of the deposit account.

Notices

(2) Any notification sent to a bank with respect to a customer of the bank, other than a document referred to in subsection (1), constitutes notice to the bank and fixes the bank with knowledge of the contents thereof only if sent to and received at the branch of the bank that is the branch of account of an account held by the bank in the name of that customer.

Deemed loan

463. For the purposes of sections 425 to 436, where a bank accepts a bill of exchange drawn on it and not payable on demand or pays or makes money available for the payment of such a bill of exchange, or issues a guarantee, or otherwise makes a promise to effect a payment, the bank is deemed to lend money or make an advance.

PART IX

INVESTMENTS

Definitions and Application

Definitions

464. (1) In this Part,

"factoring corporation" « société d'affacturage »

"factoring corporation" means a body corporate the activities of which are limited to acting as a factor in respect of accounts receivable, which activities include the raising of money for the purpose of acting as a factor and the lending of money while acting as such a factor;

"financial leasing corporation" « société de crédit-bail »

"financial leasing corporation" means a body corporate

(a) the activities of which are limited to the financial leasing of personal property and such related activities as are prescribed and whose activities conform to such restrictions and limitations thereon as are prescribed, and

(b) that, in conducting the activities referred to in paragraph (a) in Canada, does not

(i) direct its customers or potential customers to particular dealers in the leased property or the property to be leased,

(ii) enter into lease agreements with persons in respect of any motor vehicle having a gross vehicle weight, as that expression is defined by the regulations, of less than twenty-one tonnes, or

(iii) enter into lease agreements with natural persons in respect of personal household property, as that expression is defined by the regulations;

"information processing services" « services de traitement des données »

"information processing services" means the collection, manipulation and transmission of information that is primarily financial or economic in nature or that relates to the business of an entity referred to in any of paragraphs 468(1)(a) to (n) or subsection 468(2) or any other information that the Minister may, by order, specify;

"information services corporation" « société d'information »

"information services corporation" means a body corporate that, except as may be prescribed, is primarily engaged in

(a) providing information processing services,

(b) providing advisory or other services in the design, development or implementation of information management systems, or

(c) designing, developing or marketing computer software,

and the activities of which may include, as an ancillary activity, the design, development, manufacture or sale of special purpose computer hardware;

"investment counselling and portfolio management corporation" « société de conseil en placement et de gestion de portefeuille »

"investment counselling and portfolio management corporation" means a body corporate the principal activity of which consists of

(a) the offering of advice, or advising, on investments, or

(b) the investment or control, in any way that involves an element of discretionary judgment by the body corporate, of money, property, deposits or securities that

(i) are not owned by the body corporate, or

(ii) are not moneys deposited with the body corporate in the ordinary course of business;

"loan" « prêt » ou « emprunt »

"loan" includes an acceptance, endorsement or other guarantee, a deposit, a financial lease, a conditional sales contract, a repurchase agreement and any other similar arrangement for obtaining funds or credit but does not include investments in securities;

"motor vehicle" « véhicule à moteur »

"motor vehicle" means a motorized vehicle designed to be used primarily on a public highway for the transportation of persons or things, but does not include

(a) a fire-engine, bus, ambulance or utility truck, or

(b) any other special purpose motorized vehicle that contains significant special features that make it suitable for a specific purpose;

"mutual fund corporation" « société de fonds mutuels »

"mutual fund corporation" means a body corporate whose activities are limited to the investing of the funds of the body corporate, and includes a body corporate that is an issuer of securities that entitle the holder to receive, on demand, or within a specified period after demand, an amount computed by reference to the value of a proportionate interest in the whole or in a part of the net assets, including a separate fund or trust account, of the issuer of the securities;

"mutual fund distribution corporation" « société de courtage de fonds mutuels »

"mutual fund distribution corporation" means a body corporate whose principal activity is acting as a selling agent of units, shares or other interests in a mutual fund and acting as a collecting agent in the collection of payments for any such interests if

(a) the proceeds of the sales of any such interests, less any sales commissions and service fees, are paid to the fund, and

(b) the existence of a sales commission and service fee in respect of the sale of any such interest is disclosed to the purchaser of the interest prior to the purchase thereof;

"participating share" « action participante »

"participating share" means a share of a body corporate that carries the right to participate in the earnings of the body corporate to an unlimited degree and to participate in a distribution of the remaining property of the body corporate on dissolution;

"prescribed subsidiary" « filiale réglementaire »

"prescribed subsidiary" means a subsidiary that is one of a prescribed class of subsidiaries;

"real property brokerage corporation" « société de courtage immobilier »

"real property brokerage corporation" means a body corporate that is primarily engaged in

(a) acting as an agent for vendors, purchasers, mortgagors, mortgagees, lessors or lessees of real property, and

(b) the provision of consulting or appraisal services in respect of real property;

"real property corporation" « société immobilière »

"real property corporation" means a body corporate that is primarily engaged in holding, managing or otherwise dealing with real property or shares of a body corporate or ownership interests in an unincorporated entity that is also primarily engaged in holding or otherwise

dealing with real property, including another real property corporation or a real property holding vehicle;

"real property holding vehicle" « société d'opérations immobilières »

"real property holding vehicle" means a limited partnership or a trust that is primarily engaged in holding, managing or otherwise dealing with real property or shares of a body corporate or ownership interests in an unincorporated entity that is also primarily engaged in holding or otherwise dealing with real property, including a real property corporation or another real property holding vehicle;

"service corporation" « société de services »

"service corporation", in relation to a bank, means a body corporate that engages exclusively in the provision of services to any or all of the following, namely,

(a) the bank,

(b) any entity in which the bank has a substantial investment,

(c) any financial institution that is affiliated with the bank,

(d) any entity in which a financial institution referred to in paragraph (c) has a substantial investment,

(e) any other Canadian financial institution incorporated or formed by or under an Act of Parliament, or any central cooperative credit society to which the Superintendent has, by order under subsection 473(1) of the Cooperative Credit Associations Act, applied Part XVI of that Act, that has a substantial investment in the body corporate,

(f) any entity in which any Canadian financial institution referred to in paragraph (e) has a substantial investment,

(g) any financial institution that is affiliated with any Canadian financial institution referred to in paragraph (e), and

(h) any entity in which a financial institution referred to in paragraph (g) has a substantial investment,

so long as the body corporate is providing services to the bank or any of the entities referred to in paragraphs (b) to (d);

"special purpose computer hardware" « matériel informatique spécial »

"special purpose computer hardware" means computer equipment that is integral to the provision of

(a) financial services, or

(b) information services related to the business of financial institutions;

"specialized financing corporation" « société de financement spécial »

"specialized financing corporation" means a body corporate that is primarily engaged, under prescribed terms and conditions, in providing specialized business management, in making investments or in providing financing or advisory services.

Holding shares

(2) For the purposes of this Part, a "factoring corporation", a "financial leasing corporation", an "information services corporation", an "investment counselling and portfolio management corporation", a "mutual fund corporation", a "mutual fund distribution corporation", a "real property brokerage corporation", a "service corporation" and a "specialized financing corporation" includes any such body corporate that is also engaged in

(a) the holding of shares of another "factoring corporation", "financial leasing corporation", "information services corporation", "investment counselling and portfolio management corporation", "mutual fund corporation", "mutual fund distribution corporation", "real property brokerage corporation", "service corporation" and "specialized financing corporation", respectively; or

(b) the holding of shares of a financial holding corporation referred to in paragraph 468(1)(l).

Non-application of Part

(3) This Part does not apply in respect of

(a) the holding of a security interest in real property, unless the security interest is prescribed pursuant to paragraph 477(a) to be an interest in real property; or

(b) the holding of a security interest in securities of an entity.

1991, c. 46, ss. 464, 603; 1993, c. 34, s. 9(F); 1997, c. 15, s. 56.

General Constraints on Investments

Investment standards

465. The directors of a bank shall establish and the bank shall adhere to investment and lending policies, standards and procedures 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.

Restriction on substantial investments

466. (1) Subject to subsections (2) to (3.1), no bank shall acquire or increase a substantial investment in any entity, other than an entity referred to in section 468 or 469.

Exception: indirect investments

(2) A bank may acquire or increase a substantial investment in an entity that is not an entity referred to in section 468 or 469 by way of

(a) an acquisition of control of a financial institution or specialized financing corporation that has a substantial investment in the entity; or

(b) an acquisition of shares or ownership interests in the entity by

(i) a financial institution or specialized financing corporation that is controlled by the bank, or

(ii) an entity controlled by a financial institution or specialized financing corporation that is controlled by the bank. Exception: temporary investments, realizations and loan workouts

(3) A bank may acquire or increase a substantial investment in an entity by way of

(a) a temporary investment permitted by section 471;

(b) an acquisition of shares of a body corporate or of ownership interests in an unincorporated entity permitted by section 472; or

(c) a realization of security permitted by section 473.

Exception: specialized financing corporation type investment

(3.1) A bank may acquire or increase a substantial investment in an entity as permitted by paragraph 410(1)(c.2).

Exception: uncontrolled event

(4) A bank shall be deemed not to contravene subsection (1) where the bank acquires a substantial investment solely as the result of an event not within the control of the bank.

1991, c. 46, s. 466; 1997, c. 15, s. 57.

Regulations re limits

467. The Governor in Council may make regulations

(a) respecting the determination of the amount or value of loans, investments and interests for the purposes of this Part;

(b) respecting the loans and investments, and the maximum aggregate amount of all loans and investments, that may be made or acquired by a bank and its prescribed subsidiaries to or in a person and any persons connected with that person; and

(c) specifying the classes of persons who are connected with any person for the purposes of paragraph (b).

Subsidiaries and Equity Investments

Permitted substantial investments

468. (1) Subject to subsections (3) and (6) and Part XI, a bank may acquire or increase a substantial investment in a body corporate if the body corporate is any of the following, namely,

(a) a financial institution;

(b) a factoring corporation;

(c) a financial leasing corporation;

(d) an information services corporation;

(e) an investment counselling and portfolio management corporation;

(f) a mutual fund corporation;

(g) a mutual fund distribution corporation;

(h) a real property brokerage corporation;

(i) a real property corporation;

- (j) a service corporation;
- (k) a specialized financing corporation;
- (l) a financial holding corporation that does not have a substantial investment in any entity other than in
 - (i) a body corporate referred to in this subsection,
 - (ii) an entity referred to in subsection (1.1),
 - (iii) a real property holding vehicle referred to in subsection (2), or
 - (iv) any other entity in which a financial institution or specialized financing corporation controlled by the financial holding corporation has a substantial investment;
- (m) a body corporate whose activities are ancillary to the business of the bank or of a financial institution that is its subsidiary; or
- (n) a body corporate that engages in two or more of the businesses or activities engaged in or carried on by bodies corporate referred to in any of paragraphs (b) to (m).

Other permitted substantial investments

(1.1) Subject to Part XI and any terms and conditions that may be imposed by the Minister, a bank may, with the approval of the Minister, acquire or increase a substantial investment in an entity that is not a body corporate if the activities of the entity are the same as or substantially similar to those of a body corporate referred to in any of paragraphs (1)(b) to (n).

Exception

(1.2) Subsection (1.1) does not apply to the acquisition or increase of a substantial investment in a real property holding vehicle.

Real property holding vehicles

(2) Subject to Part XI, a bank may acquire or increase a substantial investment in a real property holding vehicle.

Where control or approval required

(3) A bank may not acquire or increase a substantial investment in a body corporate pursuant to subsection (1) unless

(a) in the case of a body corporate that is a financial institution or that carries on one or more of the businesses or activities engaged in or carried on by bodies corporate referred to in any of paragraphs (1)(b), (c), (k) and (l),

(i) the bank controls the body corporate or would thereby acquire control of the body corporate, or

(ii) the bank is permitted by regulations made pursuant to paragraph 474(a) to acquire or increase the substantial investment;

(a.1) in the case of a body corporate referred to in paragraph (1)(n) that carries on one or more of the businesses or activities engaged in or carried on by bodies corporate referred to in any of paragraphs (1)(b), (c), (k) and (l),

(i) the bank controls the body corporate or would thereby acquire control of the body corporate, or

(ii) the bank is permitted by regulations made under paragraph 474(a) to acquire or increase the substantial investment;

(b) the bank obtains the prior written approval of the Minister on the recommendation of the Superintendent in the case of

(i) a body corporate that is a financial institution or that carries on one or more of the businesses or activities engaged in or carried on by bodies corporate referred to in any of paragraphs (1)(d), (k) and (m), or

(ii) a body corporate that carries on one or more of the businesses or activities engaged in or carried on by bodies corporate referred to in paragraph (1)(b), (c) or (l) where the bank is permitted by regulations made pursuant to paragraph 474(a) to acquire or increase the substantial investment; and

(c) the bank obtains the prior written approval of the Minister on the recommendation of the Superintendent in the case of

(i) a body corporate referred to in paragraph (1)(n) that carries on one or more of the businesses or activities engaged in or carried on by bodies corporate referred to in paragraph (1)(d), (k) or (m), or

(ii) a body corporate referred to in paragraph (1)(n) that carries on one or more of the businesses or activities engaged in or carried on by bodies corporate referred to in paragraph (1)(b), (c) or (l), if the bank is permitted by regulations made under paragraph 474(a) to acquire or increase the substantial investment.

Control not required

(4) Notwithstanding paragraphs (3)(a) and (a.1), a bank need not control a foreign institution or other body corporate incorporated elsewhere than in Canada in which it has a substantial investment, and that it would otherwise be required by one of those paragraphs to control, if the laws or customary business practices of the country under the laws of which the foreign institution or body corporate was incorporated do not permit the bank to control the foreign institution or body corporate.

(5) [Repealed, 1997, c. 15, s. 58]

Foreign investments

(6) Notwithstanding paragraph (3)(b), a bank named in Schedule II may acquire or increase a substantial investment in an entity referred to in subsection (1) or (2) that is incorporated or formed elsewhere than in Canada only if the bank obtains the prior written approval of the Minister.

Approval for indirect investments

(7) For the purposes of paragraphs (3)(b) and (c), where a bank obtains the prior written approval of the Minister for the bank to acquire or increase a substantial investment in a financial institution or a specialized financing corporation and through that acquisition or increase the bank indirectly acquires or increases a substantial investment in another body corporate referred to in any of paragraphs (1)(d), (k) and (m), and that indirect acquisition or increase is disclosed to the Minister in writing before that approval is obtained, the bank is deemed to have obtained the prior written approval of the Minister for that indirect acquisition or increase.

Acquisition of legal control without control in fact

(8) A bank shall not, without the prior written approval of the Minister, acquire control of a body corporate, as authorized by subparagraph (3)(a)(i) or (a.1)(i), unless it also acquires control of the body corporate within the meaning of paragraph 3(1)(d).

Giving up control in fact

(9) A bank that acquires control of a body corporate, as authorized by subparagraph (3)(a)(i) or (a.1)(i), shall not, without the prior written approval of the Minister, give up control of the body corporate within the meaning of paragraph 3(1)(d) while continuing to control the body corporate.

Giving up control

(10) A bank that controls a body corporate referred to in paragraph (3)(a) or (a.1) may give up control of the body corporate and keep a substantial investment in the body corporate if

(a) the bank is permitted to do so by regulations made under paragraph 474(b); and

(b) the bank has the prior written approval of the Superintendent.

1991, c. 46, s. 468; 1997, c. 15, s. 58; 1999, c. 28, s. 26.

Similar activities

469. (1) On application in writing by a bank, the Minister may, by order and on such terms and conditions as are specified in the order, deem a body corporate named in the order to be, for all purposes of this Act, a body corporate referred to in any of paragraphs 468(1)(b) to (n) if the activities of the body corporate are substantially similar to those of a body corporate referred to in any of those paragraphs.

Revocation of order

(2) Where, in the opinion of the Minister, a bank has failed to comply with any term or condition set out in an order made under subsection (1) or the activities of a body corporate in respect of which an order is made under that subsection are no longer substantially similar to those of a body corporate referred to in any of paragraphs 468(1)(b) to (n), the Minister may revoke the order and, where the Minister does so, the bank is deemed to have acquired a temporary investment in the body corporate in respect of which paragraph 471(1)(b) applies.

Undertakings

470. (1) Where a bank controls a financial institution incorporated by or under an Act of Parliament or a body corporate referred to in any of paragraphs 468(1)(b) to (n), the bank shall provide the Superintendent with such undertakings as the Superintendent may require regarding

(a) the activities of the financial institution or body corporate; and

(b) access to information about the financial institution or body corporate.

Idem

(2) Where a bank acquires control of a financial institution, other than a financial institution incorporated by or under an Act of Parliament, the bank shall provide the Superintendent with such undertakings concerning the financial institution as the Superintendent may require.

Agreements with other jurisdictions

(3) The Superintendent may enter into an agreement with the appropriate official or public body responsible for the supervision of financial institutions in each province or in any other jurisdiction concerning any matters referred to in paragraphs (1)(a) and (b) or any other matter the Superintendent deems appropriate.

Access to records

(4) Notwithstanding any other provision of this Part, a bank shall not control a body corporate referred to in any of paragraphs 468(1)(a) to (n) unless

(a) where control is acquired after the coming into force of this Part, in the course of acquiring control or within a reasonable time thereafter, and

(b) in any other case, within a reasonable time after the coming into force of this Part,

the bank obtains from the body corporate an undertaking to provide the Superintendent with reasonable access to the records of the body corporate.

Exceptions and Exclusions

Temporary investment in body corporate

471. (1) A bank may, by way of a temporary investment, acquire or increase a substantial investment in a body corporate, subject to the following conditions:

(a) after the acquisition or increase, the voting rights attached to the aggregate of any voting shares of the body corporate beneficially owned by the bank and by any bodies corporate referred to in any of paragraphs 468(1)(a) to (n) that it controls shall not exceed 50 per cent of the voting rights attached to all of the outstanding voting shares of the body corporate; and

(b) within two years, or such other period as may be specified by the Superintendent, after acquiring the substantial investment in the body corporate, the bank shall do all things necessary to ensure that the bank no longer has a substantial investment in the body corporate.

Temporary investments in unincorporated entity

(2) A bank may, by way of a temporary investment, acquire or increase a substantial investment in an unincorporated entity, but within two years, or such other period as may be specified by the Superintendent, after acquiring the substantial investment the bank shall do all things necessary to ensure that the bank no longer has a substantial investment in the unincorporated entity.

Transitional

(3) Notwithstanding subsections (1) and (2), where on September 27, 1990 a bank that was in existence immediately prior to the day this Part comes into force had an investment in an entity that is a substantial investment within the meaning of section 10 and the bank subsequently increases that substantial investment by way of a temporary investment, the bank shall, within two years, or such other period as may be specified by the Superintendent, after increasing the substantial investment, do all things necessary to ensure that its substantial investment in the entity is no greater than it was on September 27, 1990.

Extension

(4) The Superintendent may, in the case of any particular bank, extend the period of two years, or the other period specified by the Superintendent, referred to in subsections (1) to (3) for such further period or periods, and on such terms and conditions, as the Superintendent considers necessary.

Exception

(5) Notwithstanding paragraph (1)(a), the Superintendent may, on application therefor, by order, and on such terms and conditions as may be specified in the order, permit a bank to purchase or otherwise acquire, by way of a temporary investment, voting shares of a body corporate in such number that, after the acquisition, the voting rights attached to the aggregate of any voting shares of the body corporate beneficially owned by the bank and by any bodies corporate referred to in any of paragraphs 468(1)(a) to (n) that it controls exceed 50 per cent of the voting rights attached to all of the outstanding voting shares of the body corporate.

Loan workouts

472. (1) Notwithstanding anything in this Part, where a bank has made a loan to an entity and, pursuant to the terms of the agreement between the bank and the entity with respect to the loan and any other documents governing the terms of the loan, a default has occurred, the bank may acquire

- (a) where the entity is a body corporate, all or any of the shares of the body corporate,
- (b) where the entity is an unincorporated entity, all or any of the ownership interests in the entity,
- (c) all or any of the shares or all or any of the ownership interests in any entity that is an affiliate of the entity, or
- (d) all or any of the shares of a body corporate that is primarily engaged in holding shares of, ownership interests in or assets acquired from the entity or any of its affiliates,

but the bank shall, within five years after acquiring the shares or ownership interests, do all things necessary to ensure that the bank does not have a substantial investment in any entity referred to in paragraphs (a) to (d).

Transitional

(2) Notwithstanding subsection (1), where on September 27, 1990 a bank that was in existence immediately before June 1, 1992, had an investment in an entity that is a substantial investment within the meaning of section 10 and the bank later increases that substantial investment by way of an investment made under subsection (1), the bank shall, within five years after increasing the substantial investment, do all things necessary to ensure that its substantial investment in the entity is no greater than it was on September 27, 1990.

Extension

(3) The Superintendent may, in the case of any particular bank, extend the period of five years referred to in subsections (1) and (2) for any further period or periods, and on any terms and conditions, that the Superintendent considers necessary.

Exception - entities controlled by foreign governments

(4) Notwithstanding anything in this Part, where a bank has made a loan to, or holds a debt obligation of, the government of a foreign country or an entity controlled by the government of a foreign country and, pursuant to the terms of the agreement between the bank and that government or the entity, as the case may be, and any other documents governing the terms of the loan or debt obligation, a default has occurred, the bank may acquire all or any of the shares of, or ownership interests in, that entity or in any other entity designated by that government, if the acquisition is part of a debt restructuring program of that government.

Time for holding shares

(5) Where a bank acquires any shares or ownership interests, pursuant to subsection (4), the bank, on such terms and conditions as the Superintendent considers appropriate, may hold those shares or ownership interests for an indeterminate period or for such other period as the Superintendent may specify.

Exception

(6) Where under subsection (1) a bank acquires a substantial investment in an entity that it would otherwise be permitted to acquire or increase under section 468, the bank may continue to hold the substantial investment if the approval in writing of the Minister is obtained before the end of the period referred to in subsection (1) or (2), including any extension of it granted under subsection (3).

1991, c. 46, s. 472; 1997, c. 15, s. 59.

Realizations

473. (1) Notwithstanding anything in this Act, a bank may acquire

- (a) an investment in a body corporate,
- (b) an interest in an unincorporated entity, or
- (c) an interest in real property,

if the investment or interest is acquired through the realization of a security interest held by the bank.

Disposition

(2) Subject to subsection 73(2), where a bank acquires a substantial investment in an entity by way of the realization of a security interest held by the bank, the bank shall, within five years after the day on which the substantial investment is acquired, do all things necessary to ensure that the bank no longer has a substantial investment in the entity.

Transitional

(3) Notwithstanding subsection (2), where on September 27, 1990 a bank that was in existence immediately before June 1, 1992, had an investment in an entity that is a substantial investment within the meaning of section 10 and the bank later increases that substantial investment by way of a realization of a security interest under subsection (1), the bank shall, within five years after increasing the substantial investment, do all things necessary to ensure that its substantial investment in the entity is no greater than it was on September 27, 1990.

Extension

(4) The Superintendent may, in the case of any particular bank, extend the period of five years referred to in subsections (2) and (3) for any further period or periods, and on any terms and conditions, that the Superintendent considers necessary.

Exception

(5) Where, pursuant to the realization of a security interest held by a bank, the bank acquires or increases a substantial investment in an entity that it would otherwise be permitted to acquire or increase pursuant to section 468, the bank may continue to hold the substantial investment if the approval in writing of the Minister is obtained prior to the expiration of the period referred to in subsection (2) or (3), including any extension thereof granted pursuant to subsection (4).

1991, c. 46, s. 473; 1997, c. 15, s. 60.

Regulations restricting ownership

474. The Governor in Council may make regulations

(a) for the purposes of subsection 468(3), permitting the acquisition or increase of substantial investments;

(b) for the purposes of subsection 468(10), permitting a bank to give up control of a body corporate; and

(c) restricting the ownership by a bank of shares of a body corporate or of interests in a real property holding vehicle pursuant to sections 468 to 473 and imposing terms and conditions applicable to banks that own such shares or interests.

1991, c. 46, s. 474; 1997, c. 15, s. 61.

Portfolio Limits

Exclusion from portfolio limits

475. (1) Subject to subsection (3), the value of all loans, investments and interests acquired by a bank and any of its prescribed subsidiaries as a result of a realization of a security interest or pursuant to section 472 shall not be included in calculating the value of loans, investments and interests of the bank and its prescribed subsidiaries under sections 476 to 479

(a) for a period of twelve years following the day on which the interest was acquired, in the case of an interest in real property; and

(b) for a period of five years after the day on which the loan, investment or interest was acquired, in the case of a loan, investment or interest, other than an interest in real property.

Extension

(2) The Superintendent may, in the case of any particular bank, extend any period referred to in subsection (1) for such further period or periods, and on such terms and conditions, as the Superintendent considers necessary.

Exception

(3) Subsection (1) does not apply to an investment or interest described in that subsection if the investment or interest is defined by a regulation made under section 477 to be an interest in real property and

(a) the bank or the subsidiary acquired the investment or interest as a result of the realization of a security interest securing a loan that was defined by a regulation made under section 477 to be an interest in real property; or

(b) the bank or the subsidiary acquired the investment or interest under section 472 as a result of a default referred to in that section in respect of a loan that was defined by a regulation made under section 477 to be an interest in real property.

1991, c. 46, s. 475; 1997, c. 15, s. 62.

Real Property

Limit on total property interest

476. A bank shall not, and shall not permit its prescribed subsidiaries to,

(a) purchase or otherwise acquire an interest in real property, or

(b) make an improvement to any real property in which the bank or any of its prescribed subsidiaries has an interest,

if the aggregate value of all interests of the bank in real property exceeds, or the acquisition of the interest or the making of the improvement would cause that aggregate value to exceed, 70 per cent of the regulatory capital of the bank.

Regulations

477. For the purposes of this Part, the Governor in Council may make regulations

(a) defining the interests of a bank in real property; and

(b) determining the method of valuing those interests.

Equities

Limits on equity acquisitions

478. A bank shall not, and shall not permit its prescribed subsidiaries to,

(a) purchase or otherwise acquire any participating shares of any body corporate or any ownership interests in any unincorporated entity, other than those of an entity referred to in section 468 in which the bank has, or by virtue of the acquisition would have, a substantial investment, or

(b) acquire control of a body corporate that holds shares or ownership interests referred to in paragraph (a),

if the aggregate value of

(c) all participating shares, excluding participating shares of bodies corporate referred to in section 468 in which the bank has a substantial investment, and

(d) all ownership interests in unincorporated entities, other than ownership interests acquired under section 468 in entities in which the bank has a substantial investment,

beneficially owned by the bank and its prescribed subsidiaries exceeds, or the purchase or acquisition would cause that aggregate value to exceed, 70 per cent of the regulatory capital of the bank.

1991, c. 46, s. 478; 1997, c. 15, s. 63.

Aggregate Limit

Aggregate limit

479. A bank shall not, and shall not permit its prescribed subsidiaries to,

(a) purchase or otherwise acquire

(i) participating shares of a body corporate, other than those of a body corporate referred to in section 468 in which the bank has, or by virtue of the acquisition would have, a substantial investment,

(ii) ownership interests in an unincorporated entity, other than ownership interests acquired under section 468 in an entity in which the bank has a substantial investment, or

(iii) interests in real property, or

(b) make an improvement to real property in which the bank or any of its prescribed subsidiaries has an interest

if the aggregate value of

(c) all participating shares and ownership interests referred to in subparagraphs (a)(i) and (ii) that are beneficially owned by the bank and its prescribed subsidiaries, and

(d) all interests of the bank in real property referred to in subparagraph (a)(iii)

exceeds, or the acquisition or the making of the improvement would cause that aggregate value to exceed, 100 per cent of the regulatory capital of the bank.

1991, c. 46, s. 479; 1997, c. 15, s. 64.

Miscellaneous

Divestment order

480. (1) The Superintendent may, by order, direct a bank to dispose of, within such period as the Superintendent considers reasonable, any loan, investment or interest made or acquired in contravention of this Part.

Idem

(2) Where, in the opinion of the Superintendent,

(a) an investment by a bank or any entity it controls in shares of a body corporate or in ownership interests in an unincorporated entity enables the bank to control the body corporate or the unincorporated entity, or

(b) the bank or any entity it controls has entered into an arrangement whereby it or its nominee may veto any proposal put before

(i) the board of directors of a body corporate, or

(ii) a similar group or committee of an unincorporated entity,

or whereby no proposal may be approved except with the consent of the bank, the entity it controls or the nominee,

the Superintendent may, by order, require the bank, within such period as the Superintendent considers reasonable, to do all things necessary to ensure that the bank no longer controls the body corporate or unincorporated entity or has the ability to veto or otherwise defeat any proposal referred to in paragraph (b).

Idem

(3) Where

(a) a bank

(i) fails to provide or obtain within a reasonable time the undertakings referred to in subsection 470(1), (2) or (4), or

(ii) is in default of an undertaking referred to in subsection 470(1) or (2) and the default is not remedied within ninety days after the day of receipt by the bank of a notice from the Superintendent of the default, or

(b) a body corporate referred to in subsection 470(4) is in default of an undertaking referred to in subsection 470(4) and the default is not remedied within ninety days after the day of receipt by the bank of a notice from the Superintendent of the default,

the Superintendent may, by order, require the bank, within such period as the Superintendent considers reasonable, to do all things necessary to ensure that the bank no longer has a substantial investment in the body corporate to which the undertaking relates.

Exception

(4) Subsection (2) does not apply in respect of an entity in which a bank has a substantial investment permitted by this Part.

Deemed temporary investment

481. (1) Where a bank has a substantial investment in an entity as permitted by this Part and the bank becomes aware of a change in the business or affairs of the entity that, if the change had taken place prior to the acquisition of the substantial investment, would have precluded the acquisition, the bank shall be deemed to have acquired, on the day the bank becomes aware of the change, a temporary investment in respect of which paragraph 471(1)(b) or subsection 471(2) applies.

Approved holding of investment

(2) The bank may continue to hold the substantial investment after the end of the period referred to in subsection 471(1) or (2) that applies in respect of the investment, including any extension of the period granted under subsection 471(4), with the approval in writing of the Minister obtained before the end of that period or extended period.

1991, c. 46, s. 481; 1997, c. 15, s. 65.

Assets transactions

482. (1) A bank shall not at any time, without the prior written approval of the Superintendent, directly or indirectly acquire assets from a person, or directly or indirectly transfer assets to a person, if

$A + B > C$ where A is the value of the assets; B is the total value of all assets that the bank directly or indirectly acquired from, or directly or indirectly transferred to, that person in the twelve months ending immediately before that time; and C is ten per cent of the total value of the assets of the bank, as shown in the last annual financial statement of the bank prepared before that time.

Exception

(1.1) Subsection (1) does not apply to

(a) assets that are debt obligations that are

(i) guaranteed by any financial institution other than the bank,

(ii) fully secured by deposits with any financial institution, including the bank, or

(iii) fully secured by debt obligations that are guaranteed by any financial institution other than the bank;

(b) assets that are debt obligations issued

(i) by, or by any agency of,

(A) the Government of Canada,

(B) the government of a province,

(C) a municipality, or

(D) the government of a foreign country or any political subdivision of a foreign country, or

(ii) by a prescribed international agency;

(c) assets that are debt obligations that are guaranteed by, or fully secured by securities issued by, a government, a municipality or an agency referred to in paragraph (b);

(d) assets that are debt obligations that are widely distributed, as that expression is defined by the regulations;

(e) assets that are debt obligations of an entity controlled by the bank; or

(f) a transaction or series of transactions by the bank with another financial institution as a result of the bank's participation in one or more syndicated loans with that financial institution.

Meaning of "total assets"

(2) For the purposes of subsection (1), "total assets", in respect of a bank, has the meaning given to that expression by the regulations.

1991, c. 46, s. 482; 1997, c. 15, s. 66.

Transitional

483. Nothing in this Part requires

(a) the termination of a loan or a commitment to make a loan or investment or to increase a loan or investment, or

(b) the disposal of an investment

made before the coming into force of this Part but, if the loan or investment would be precluded or limited by this Part, the amount of the loan or investment shall not, except as provided in subsections 471(3), 472(2) and 473(3), or pursuant to a commitment referred to in paragraph (a), be increased after the coming into force of this Part.

Saving

484. A loan or investment referred to in section 483 is deemed not to be prohibited by the provisions of this Part.

PART X ADEQUACY OF CAPITAL AND LIQUIDITY

Adequacy of capital and liquidity

485. (1) A bank shall, in relation to its operations, maintain

(a) adequate capital, and

(b) adequate and appropriate forms of liquidity,

and shall comply with any regulations in relation thereto.

Regulations and guidelines

(2) The Governor in Council may make regulations and the Superintendent may make guidelines respecting the maintenance by banks of adequate capital and adequate and appropriate forms of liquidity.

Directives

(3) Notwithstanding that a bank is complying with regulations or guidelines made under subsection (2), the Superintendent may, by order, direct the bank

(a) to increase its capital; or

(b) to provide additional liquidity in such forms and amounts as the Superintendent may require.

Compliance

(4) A bank shall comply with an order made under subsection (3) within such time as the Superintendent specifies therein.

Notice of value

(5) Where an appraisal of any asset held by a bank or any of its subsidiaries has been made by the Superintendent and the value determined by the Superintendent to be the appropriate value of the asset varies materially from the value placed by the bank or subsidiary on the asset, the Superintendent shall send to the bank, the auditor or auditors of the bank and the audit committee of the bank a written notice of the appropriate value of the asset as determined by the Superintendent.

1991, c. 46, s. 485; 1996, c. 6, s. 7.

PART XI SELF-DEALING

Interpretation and Application

Definition of "senior officer"

485.1 For the purposes of this Part, a "senior officer" of a body corporate is a person who is

(a) a director of the body corporate who is a full-time employee of the body corporate;

(b) the chief executive officer, chief operating officer, president, secretary, treasurer, controller, chief financial officer, chief accountant, chief auditor or chief actuary of the body corporate;

(c) a natural person who performs functions for the body corporate similar to those performed by a person referred to in paragraph (b);

(d) the head of the strategic planning unit of the body corporate;

(e) the head of the unit of the body corporate that provides legal services or human resources services to the body corporate; or

(f) any other officer reporting directly to the body corporate's board of directors, chief executive officer or chief operating officer.

1997, c. 15, s. 67.

Related party of bank

486. (1) For the purposes of this Part, a person is a related party of a bank where the person

(a) is a person who has a significant interest in a class of shares of the bank;

(b) is a director or senior officer of the bank or of a body corporate that controls the bank or is acting in a similar capacity in respect of an unincorporated entity that controls the bank;

(c) is the spouse, 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 referred to in any of paragraphs (a) to (c);

(e) is an entity in which a person who controls the bank has a substantial investment;

(f) is an entity in which the spouse, or a child who is less than eighteen years of age, of a person who controls the bank has a substantial investment; or

(g) is a person, or a member of a class of persons, designated under subsection (3) or (4) as, or deemed under subsection (5) to be, a related party of the bank.

(h) [Repealed, 1997, c. 15, s. 68]

Exception - subsidiaries and substantial investments of banks

(2) Where an entity in which a bank has a substantial investment would, but for this subsection, be a related party of the bank only because a person who controls the bank controls the entity or has a substantial investment in the entity, and the person does not control the entity or have a substantial investment in the entity otherwise than through the person's controlling interest in the bank, the entity is not a related party of the bank.

Designated related party

(3) For the purposes of this Part, the Superintendent may, with respect to a particular bank, designate as a related party of the bank

(a) any person or class of persons whose direct or indirect interest in or relationship with the bank or a related party of the bank might reasonably be expected to affect the exercise of the best judgment of the bank in respect of a transaction; or

(b) any person who is a party to any agreement, commitment or understanding referred to in section 9 if the bank referred to in that section is the particular bank.

Idem

(4) Where a person is designated as a related party of a bank pursuant to subsection (3), the Superintendent may also designate any entity in which the person has a substantial investment and any entity controlled by such an entity to be a related party of the bank.

Deemed related party

(5) Where, in contemplation of a person becoming a related party of a bank, the bank enters into a transaction with the person, the person is deemed for the purposes of this Part to be a related party of the bank in respect of that transaction.

Holders of exempted shares

(6) The Superintendent may, by order, designate a class of non-voting shares of a bank for the purpose of this subsection. If a class of non-voting shares of a bank is so designated, a person is deemed, notwithstanding paragraph (1)(a), not to be a related party of the bank if the person would otherwise be a related party of the bank only because the person has a significant interest in that class.

Determination of substantial investment

(7) For the purpose of determining whether an entity or a person has a substantial investment for the purposes of paragraph (1)(e) or (f), the references to "control" and "controlled" in section 10 shall be construed as references to "control, within the meaning of section 3, determined without regard to paragraph 3(1)(d)" and "controlled, within the meaning of section 3, determined without regard to paragraph 3(1)(d)", respectively.

Determination of control

(8) For the purposes of paragraph (1)(d), "controlled" means "controlled, within the meaning of section 3, determined without regard to paragraph 3(1)(d)".

1991, c. 46, s. 486; 1997, c. 15, s. 68.

Non-application of Part

487. (1) This Part does not apply in respect of any transaction entered into prior to the coming into force of this Part but, after the coming into force of this Part, any modification of, addition to, or renewal or extension of a prior transaction is subject to this Part.

Idem

(2) This Part does not apply in respect of

(a) the issue of shares of any class of shares of a bank when fully paid for in money or when issued

(i) in accordance with any provisions for the conversion of other issued and outstanding securities of the bank into shares of that class of shares,

(ii) as a share dividend,

(iii) in exchange for shares of a body corporate that has been continued as a bank under Part III,

(iv) in accordance with the terms of an amalgamation under Part VI,

(v) by way of consideration in accordance with the terms of a sale agreement under Part VI, or

(vi) with the approval in writing of the Superintendent, in exchange for shares of another body corporate;

(b) the payment of dividends by a bank; or

(c) transactions that consist of the payment or provision by a bank to persons who are related parties of the bank of salaries, fees, stock options, pension benefits, incentive benefits or other benefits or remuneration in their capacity as directors, officers or employees of the bank.

Exception

(3) Nothing in paragraph (2)(c) exempts from the application of this Part the payment by a bank of fees or other remuneration to a person for

(a) the provision of services referred to in paragraph 495(1)(a); or

(b) duties outside the ordinary course of business of the bank.

Exception for holding body corporate

(4) A holding body corporate of a bank is not a related party of the bank where the holding body corporate is

(a) a Canadian financial institution that is referred to in any of paragraphs (a) to (d) of the definition "financial institution" in section 2; or

(b) a central cooperative credit society for which an order has been made under subsection 473(1) of the Cooperative Credit Associations Act.

Substantial investment - related party exception

(5) Where a holding body corporate of a bank is, because of subsection (4), not a related party of the bank, any entity in which the holding body corporate has a substantial investment is not a related party of the bank if no related party of the bank has a substantial investment in the entity otherwise than through the control of the holding body corporate.

1991, c. 46, s. 487, c. 48, s. 494; 1997, c. 15, s. 69.

Meaning of "transaction"

488. (1) For the purposes of this Part, entering into a transaction with a related party of a bank includes

(a) making a guarantee on behalf of the related party;

(b) making an investment in any securities of the related party;

(c) taking an assignment of or otherwise acquiring a loan made by a third party to the related party; and

(d) taking a security interest in the securities of the related party.

Interpretation

(2) For the purposes of this Part, the fulfilment of an obligation under the terms of any transaction, including the payment of interest on a loan or deposit, is part of the transaction, and not a separate transaction.

Meaning of "loan"

(3) For the purposes of this Part, "loan" includes a deposit, a financial lease, a conditional sales contract, a repurchase agreement and any other similar arrangement for obtaining funds or credit,

but does not include investments in securities or the making of an acceptance, endorsement or other guarantee.

Prohibited Related Party Transactions

Prohibited transactions

489. (1) Except as provided in this Part, a bank shall not, directly or indirectly, enter into any transaction with a related party of the bank.

Transaction of entity

(2) Without limiting the generality of subsection (1), a bank is deemed to have indirectly entered into a transaction in respect of which this Part applies where the transaction is entered into by an entity that is controlled by the bank.

Exception

(3) Subsection (2) does not apply where an entity that is controlled by a bank is a financial institution incorporated or formed under the laws of a province and is subject to regulation and supervision, satisfactory to the Minister, regarding transactions with related parties of the bank.

Idem

(4) Subsection (2) does not apply in respect of transactions entered into by an entity that is controlled by a bank if the transaction is a prescribed transaction or is one of a class of prescribed transactions.

Permitted Related Party Transactions

Nominal value transactions

490. Notwithstanding anything in this Part, a bank may enter into a transaction with a related party of the bank if the value of the transaction is nominal or immaterial to the bank when measured by criteria that have been established by the conduct review committee of the bank and approved in writing by the Superintendent.

Secured loans

491. A bank may make a loan to or a guarantee on behalf of a related party of the bank or take an assignment of or otherwise acquire a loan to a related party of the bank if

(a) the loan or guarantee is fully secured by securities of or guaranteed by the Government of Canada or the government of a province; or

(b) the loan is a loan permitted by section 418 made to a related party who is a natural person on the security of a mortgage of the principal residence of that related party.

Deposits

492. A bank may enter into a transaction with a related party of the bank if the transaction consists of a deposit by the bank with a financial institution that is a direct clearer or a member of a clearing group under the by-laws of the Canadian Payments Association and the deposit is made for clearing purposes.

Borrowing, etc., from related party

493. A bank may borrow money from, take deposits from, or issue debt obligations to, a related party of the bank.

Acquisition of assets

494. (1) A bank may purchase or otherwise acquire from a related party of the bank

(a) securities of, or securities guaranteed by, the Government of Canada or the government of a province;

(b) assets fully secured by securities of, or securities guaranteed by, the Government of Canada or the government of a province; or

(c) goods for use in the ordinary course of business.

Sale of assets

(2) Subject to section 482, a bank may sell any assets of the bank to a related party of the bank if

(a) the consideration for the assets is fully paid in money; and

(b) there is an active market for those assets.

Asset transactions with financial institutions

(3) Notwithstanding any of the provisions of subsections (1) and (2), a bank may, in the normal course of business and pursuant to arrangements that have been approved by the Superintendent in writing, acquire or dispose of any assets, other than real property, from or to a related party of the bank that is a financial institution.

Asset transactions in restructuring

(4) Notwithstanding any of the provisions of subsections (1) and (2), a bank may acquire any assets from, or dispose of any assets to, a related party of the bank as part of, or in the course of, a restructuring, if the acquisition or disposition has been approved in writing by the Superintendent.

Goods or space for use in business

(5) A bank may lease assets

(a) from a related party of the bank for use in the ordinary course of business of the bank, or

(b) to a related party of the bank

if the lease payments are made in money.

Services

495. (1) A bank may enter into a transaction with a related party of the bank if the transaction

(a) subject to subsection (2), consists of a written contract for the purchase by the bank of services used in the ordinary course of business;

(b) subject to subsection (4), involves the provision of services normally offered to the public by the bank in the ordinary course of business;

(c) consists of a written contract with a financial institution or an entity in which the bank is permitted to have a substantial investment pursuant to section 468 that is a related party of the bank

(i) for the networking of any services provided by the bank or the financial institution or entity, or

(ii) for the referral of any person by the bank to the financial institution or entity, or for the referral of any person by the financial institution or entity to the bank;

(d) consists of a written contract for such pension or benefit plans or their management or administration as are incidental to directorships or to the employment of officers or employees of the bank or its subsidiaries; or

(e) involves the provision by the bank of management, advisory, accounting, information processing or other services in relation to any business of the related party.

Order concerning management by employees

(2) Where a bank has entered into a contract pursuant to paragraph (1)(a) and the contract, when taken together with all other such contracts entered into by the bank, results in all or substantially all of the management functions of the bank being exercised by persons who are not employees of the bank, the Superintendent may, by order, if the Superintendent considers that result to be inappropriate, require the bank, within such time as may be specified in the order, to take all steps necessary to ensure that management functions that are integral to the carrying on of business by the bank are exercised by employees of the bank to the extent specified in the order.

Service corporations

(3) Notwithstanding subsection 489(2), a bank is deemed not to have indirectly entered into a transaction in respect of which this Part applies if the transaction is entered into by a service corporation, as defined in subsection 464(1), that is controlled by the bank and the transaction is on terms and conditions at least as favourable to the bank as market terms and conditions, as defined in subsection 501(2).

Services (4) The provision of services, for the purposes of paragraph (1)(b), does not include the making of loans or guarantees.

1991, c. 46, s. 495; 1997, c. 15, s. 70.

Directors and officers and their interests

496. (1) Subject to subsection (2) and sections 497 and 498, a bank may enter into any transaction with a related party of the bank if the related party is

(a) a natural person who is a related party of the bank only because the person is

(i) a director or a senior officer of the bank or of an entity that controls the bank, or

(ii) the spouse, or a child who is less than eighteen years of age, of a director or senior officer of the bank or of an entity that controls the bank; or

(b) an entity that is a related party of the bank only because the entity is controlled by

(i) a director or senior officer of the bank or of an entity that controls the bank, or

(ii) the spouse, or a child who is less than eighteen years of age, of a director or senior officer referred to in subparagraph (i).

Loans to full-time officers

(2) A bank may, with respect to a related party of the bank referred to in subsection (1) who is a full-time senior officer of the bank, make, take an assignment of or otherwise acquire a loan to the related party only if the aggregate principal amount of all outstanding loans to the related party that are held by the bank and its subsidiaries, together with the principal amount of the proposed loan, does not exceed the greater of twice the annual salary of the related party and \$100,000.

Exception

(3) Subsection (2) does not apply in respect of

(a) loans referred to in paragraph 491(b), and

(b) margin loans referred to in section 498,

and the amount of any such loans to a related party of a bank shall not be included in determining, for the purposes of subsection (2), the aggregate principal amount of all outstanding loans made by the bank to the related party.

Preferred terms - loan to officer

(4) Notwithstanding section 501, a bank may make a loan, other than a margin loan, to a senior officer of the bank on terms and conditions more favourable to the officer than those offered to the public by the bank if those terms and conditions have been approved by the conduct review committee of the bank.

Preferred terms - loan to spouse of officer

(5) Notwithstanding section 501, a bank may make a loan referred to in paragraph 491(b) to the spouse of a senior officer of the bank on terms and conditions more favourable to the spouse of that officer than those offered to the public by the bank if those terms and conditions have been approved by the conduct review committee of the bank.

Preferred terms - other financial services

(6) Notwithstanding section 501, a bank may offer financial services, other than loans or guarantees, to a senior officer of the bank, or to the spouse, or a child who is less than eighteen years of age, of a senior officer of the bank, on terms and conditions more favourable than those offered to the public by the bank if

(a) the financial services are offered by the bank to employees of the bank on those favourable terms and conditions; and

(b) the conduct review committee of the bank has approved the practice of making those financial services available on those favourable terms and conditions to senior officers of the bank or to the spouses, or the children under eighteen years of age, of senior officers of the bank.

1991, c. 46, s. 496; 1997, c. 15, s. 71.

Board approval required

497. (1) Except with the concurrence of at least two thirds of the directors present at a meeting of the board of directors of the bank, a bank shall not, with respect to a related party of the bank referred to in subsection 496(1),

(a) make, take an assignment of or otherwise acquire a loan to the related party, including a margin loan referred to in section 498,

(b) make a guarantee on behalf of the related party, or

(c) make an investment in the securities of the related party if, immediately following the transaction, the aggregate of

(d) the principal amount of all outstanding loans to the related party that are held by the bank and its subsidiaries, other than

(i) loans referred to in paragraph 491(b), and

(ii) where the related party is a full-time senior officer of the bank, loans to the related party that are permitted by subsection 496(2),

(e) the sum of all outstanding amounts guaranteed by the bank and its subsidiaries on behalf of the related party, and

(f) where the related party is an entity, the book value of all investments by the bank and its subsidiaries in the securities of the entity

would exceed 2 per cent of the regulatory capital of the bank.

Limit on transactions with directors, officers and their interests

(2) A bank shall not, with respect to a related party of the bank referred to in subsection 496(1),

(a) make, take an assignment of or otherwise acquire a loan to the related party, including a margin loan referred to in section 498,

(b) make a guarantee on behalf of the related party, or

(c) make an investment in the securities of the related party if, immediately following the transaction, the aggregate of

(d) the principal amount of all outstanding loans to all related parties of the bank referred to in subsection 496(1) that are held by the bank and its subsidiaries, other than

(i) loans referred to in section 491, and

(ii) loans permitted by subsection 496(2),

(e) the sum of all outstanding amounts guaranteed by the bank and its subsidiaries on behalf of all related parties of the bank referred to in subsection 496(1), and

(f) the book value of all investments by the bank and its subsidiaries in the securities of all entities that are related parties of the bank referred to in subsection 496(1)

would exceed 50 per cent of the regulatory capital of the bank.

Exclusion of de minimus transactions

(3) Loans, guarantees and investments that are referred to in section 490 shall not be included in calculating the aggregate of loans, guarantees and investments referred to in subsections (1) and (2).

1991, c. 46, s. 497; 1997, c. 15, s. 72.

Margin loans

498. The Superintendent may establish terms and conditions with respect to the making by a bank of margin loans to a director or senior officer of the bank.

1991, c. 46, s. 498; 1997, c. 15, s. 73.

Exemption by order

499. (1) A bank may enter into a transaction with a related party of the bank if the Superintendent, by order, has exempted the transaction from the provisions of section 489.

Conditions for order

(2) The Superintendent shall not make an order referred to in subsection (1) unless the Superintendent is satisfied that the decision of the bank to enter into the transaction has not been and is not likely to be influenced in any significant way by a related party of the bank and does not involve in any significant way the interests of a related party of the bank.

1991, c. 46, s. 499; 1996, c. 6, s. 8.

Prescribed transactions

500. A bank may enter into a transaction with a related party of the bank if the transaction is a prescribed transaction or one of a class of prescribed transactions.

Restrictions on Permitted Transactions

Market terms and conditions

501. (1) Except as provided in subsections 496(4) to (6), any transaction entered into with a related party of the bank shall be on terms and conditions that are at least as favourable to the bank as market terms and conditions.

Meaning of "market terms and conditions"

(2) For the purposes of subsection (1), "market terms and conditions" means

(a) in respect of a service or a loan facility or a deposit facility offered to the public by the bank in the ordinary course of business, terms and conditions that are no more or less favourable than those offered to the public by the bank in the ordinary course of business; and

(b) in respect of any other transaction, terms and conditions, including those relating to price, rent or interest rate, that might reasonably be expected to apply in a similar transaction in an open market under conditions requisite to a fair transaction between parties who are at arm's length and acting prudently, knowledgeably and willingly.

502. and 503. [Repealed, 1997, c. 15, s. 74]

Disclosure

Bank obligation

504. (1) Where, in respect of any proposed transaction permitted by this Part, other than those referred to in section 490, a bank has reason to believe that the other party to the transaction is a related party of the bank, the bank shall take all reasonable steps to obtain from the other party full disclosure, in writing, of any interest or relationship, direct or indirect, that would make the other party a related party of the bank.

Reliance on information

(2) A bank and any person who is a director or an officer, employee or agent of the bank may rely on any information contained in any disclosure received by the bank pursuant to subsection (1) or any information otherwise acquired in respect of any matter that might be the subject of such a disclosure and no action lies against the bank or any such person for anything done or omitted in good faith in reliance on any such information.

Notice to Superintendent

505. Where a bank has entered into a transaction that the bank is prohibited by this Part from entering into or where a bank has entered into a transaction for which approval is required under subsection 497(1) without having obtained the approval, the bank shall, on becoming aware of that fact, notify the Superintendent without delay.

1991, c. 46, s. 505; 1997, c. 15, s. 75.

Remedial Actions

Voidable contracts

506. (1) Where a bank enters into a transaction that it is prohibited from entering into by this Part, the bank or the Superintendent may apply to a court for an order setting aside the transaction and directing that the related party of the bank involved in the transaction account to the bank for any profit or gain realized.

Court order

(2) On an application to a court under subsection (1), the court may make such order as it thinks fit, including an order for compensation for any loss or damage incurred by the bank.

Time limit

(3) An application under subsection (1) in respect of a particular transaction may only be made within the period of three months following the day the notice referred to in section 505 in respect of the transaction is given to the Superintendent.

PART XII

FOREIGN BANKS

Definitions and Interpretation

Definitions

507. (1) In this Part,

"entity associated with a foreign bank" « entité liée à une banque étrangère »

"entity associated with a foreign bank" means an entity associated with a foreign bank within the meaning of subsection (2);

"non-bank affiliate of a foreign bank" « établissement affilié à une banque étrangère »

"non-bank affiliate of a foreign bank" means a Canadian entity, other than a bank,

(a) in which a foreign bank or an entity associated with a foreign bank has a substantial investment, or

(b) that is controlled by a foreign bank or an entity associated with a foreign bank,

but a Canadian entity is not a non-bank affiliate of a foreign bank by reason only that a foreign bank subsidiary of the foreign bank controls, or has a substantial investment, as permitted by Part IX, in the Canadian entity;

"representative office" « bureau de représentation »

"representative office" means an office established to represent a foreign bank in Canada that is not occupied or controlled by an entity incorporated or formed by or under an Act of Parliament or of the legislature of a province, and the personnel of which are employed directly or indirectly by the foreign bank.

When entity associated with foreign bank

(2) For the purposes of this Part, an entity is associated with a foreign bank if

(a) the entity controls, or is controlled by, the foreign bank,

(b) the entity and the foreign bank are controlled by the same person, or

(c) two or more persons who are acting in concert in relation to the entity and in relation to the foreign bank would, if they were one person, control the entity and the foreign bank,

and an entity may be associated with more than one foreign bank.

Deemed substantial investment

(3) For the purposes of the definition "non-bank affiliate of a foreign bank" in subsection (1) and section 518, a foreign bank is deemed to have a substantial investment in a Canadian entity if

(a) the foreign bank and one or more entities associated with the foreign bank, or

(b) two or more entities associated with the foreign bank

would, if they were one person, have a substantial investment in the Canadian entity.

Deemed control

(3.1) For the purposes of the definition "non-bank affiliate of a foreign bank" in subsection (1) and section 518, a foreign bank is deemed to control a Canadian entity if

- (a) the foreign bank and one or more entities associated with the foreign bank, or
- (b) two or more entities associated with the foreign bank

would, if they were one person, control the Canadian entity.

Exemption from associated status

(4) The Minister may, by order, and subject to such terms and conditions as the Minister deems appropriate, exempt

- (a) any entity from the status of being associated with a foreign bank, and
- (b) any Canadian entity from being a "non-bank affiliate of a foreign bank" for such purposes as may be set out in the order.

Revocation or variation of order

(5) The Minister may, by further order, revoke or vary any order made pursuant to subsection (4) and any such revocation or variation shall come into effect three months after the date the further order is made unless the Minister and the entity to which the order relates agree that the revocation or variation shall take effect at some other time agreed to by them.

Publication

(6) Where the Minister makes an order under subsection (4) or (5), the Minister shall publish in the Canada Gazette a notice of the making of the order.

1991, c. 46, s. 507; 1997, c. 15, s. 76; 1999, c. 28, s. 27.

General Prohibitions

508. (1) Subject to section 521, a foreign bank shall not, in Canada, directly or indirectly,

- (a) undertake any banking business;
- (b) maintain a branch for any purpose, unless authorized to do so under Part XIII of the Insurance Companies Act; or

(c) subject to subsection (4), establish, maintain or acquire for use in Canada an automated banking machine, a remote service unit or a similar automated service, or accept data from such a machine, unit or service.

Activity carried out by agent

(2) Without limiting the generality of subsection (1), where any activity prohibited by that subsection is carried out by a nominee or agent of a foreign bank or by an entity that is controlled by a foreign bank, the foreign bank is deemed to have indirectly carried out the activity.

(2.1) and (2.2) [Repealed, 1994, c. 47, s. 26]

Accessing accounts

(3) Nothing in subsection (1) shall be construed as prohibiting a foreign bank from entering into any arrangement with one or more Canadian financial institutions whereby customers of the foreign bank who are natural persons who are not ordinarily resident in Canada may access in Canada their accounts located outside Canada through the use of automated banking machines located in Canada and operated by the Canadian financial institution or institutions.

Quotes

(4) Nothing in paragraph (1)(c) shall be construed as prohibiting a foreign bank from establishing, maintaining or using a private telephone service or similar facility for the purpose of quoting to customers in Canada, or entering with customers in Canada into verbal agreements relating to, foreign exchange, deposit or loan rates if there is no accounting or information processing involved in the private telephone service or similar facility.

Regulations

(5) The Governor in Council may make regulations exempting the undertaking of such activities as the Governor in Council may specify from the prohibition set out in paragraph (1)(a).

Authorized foreign banks

(6) This section does not apply in respect of the business in Canada of an authorized foreign bank.

1991, c. 46, s. 508, c. 47, s. 756; 1993, c. 44, s. 29; 1994, c. 47, s. 26; 1999, c. 28, s. 28.

Permitted activities

509. Notwithstanding subsection 508(1), a foreign bank may

(a) with the approval of the Superintendent and

(i) subject to such terms and conditions as are attached to the approval, and

(ii) subject to and in accordance with such rules as are prescribed in relation to the operation of representative offices and the conduct of their personnel,

maintain representative offices in Canada that are registered with the Superintendent in the prescribed manner;

(b) in accordance with this Act, own shares in a foreign bank subsidiary; and

(c) with the approval of the Governor in Council and subject to such terms and conditions as are attached to the approval, locate its head office in Canada and, from that office, issue directions and do all other things reasonably necessary to the conduct of its banking business outside Canada.

Examination of representative offices

510. (1) The Superintendent shall, from time to time, make or cause to be made such examination and inquiry into the operation of any representative office of a foreign bank and the conduct of the personnel in that office as the Superintendent deems necessary for the purpose of ascertaining whether the office is being operated, and whether the personnel of the office are conducting themselves, in accordance with the rules prescribed for the purposes of paragraph 509(a).

Powers of Superintendent

(2) For the purposes of subsection (1), the Superintendent, and any person acting under the direction of the Superintendent, has the same powers and obligations that the Superintendent has in relation to the examination of banks under this Act.

Cancellation of registration

(3) The Superintendent may, by order, cancel the registration of a representative office of a foreign bank if

(a) the foreign bank requests the Superintendent to cancel the registration; or

(b) the Superintendent is of the opinion that the representative office is not being operated, or the personnel of that office are not conducting themselves, in accordance with the rules prescribed for the purposes of paragraph 509(a).

1991, c. 46, s. 510; 1996, c. 6, s. 9; 1997, c. 15, s. 77.

Investment Canada Act

511. For the purposes of the Investment Canada Act, the establishment by a foreign bank of a representative office in Canada that has been registered with the Superintendent shall be deemed not to be the establishment of a new Canadian business.

Business conducted from head office in Canada

512. (1) Subject to subsections (2) and (3), where, pursuant to paragraph 509(c), the head office of a foreign bank is located in Canada, the foreign bank shall not conduct any business from that office with persons resident in Canada or with Her Majesty in right of Canada or a province except for the purpose of acquiring premises, supplies, services and staff for that office.

Exception

(2) Where a foreign bank with its head office in Canada pursuant to paragraph 509(c) held, immediately prior to the establishment of that head office in Canada, deposits of, or had loans outstanding to, persons resident in Canada or Her Majesty in right of Canada or a province, the foreign bank may repay those deposits and collect those loans through the head office in Canada.

Idem

(3) Where a foreign bank with its head office in Canada pursuant to paragraph 509(c) owned, immediately prior to the establishment of that head office in Canada, shares in a foreign bank subsidiary, the foreign bank may continue to carry out from the head office in Canada such activities as were carried out from the head office of the bank in relation to the foreign bank subsidiary prior to the location of the head office in Canada.

Guarantee of certain securities prohibited

513. (1) A foreign bank shall not guarantee any securities or accept any bills of exchange that are

(a) issued by a person resident in Canada, and

(b) intended by the issuer or any party to be sold or traded in Canada,

and no person shall participate in any arrangement in connection with any of those guarantees or acceptances by that foreign bank.

Exception

(2) Subsection (1) does not apply in respect of the guarantee or acceptance by a foreign bank of securities or bills of exchange that are

(a) issued by a foreign bank subsidiary or non-bank affiliate of the foreign bank; or

(b) issued by another person resident in Canada and guaranteed or accepted by

(i) a foreign bank subsidiary of the foreign bank,

(ii) a Canadian financial institution in which a foreign bank subsidiary of the foreign bank has a substantial investment, or

(iii) a financial institution that is a non-bank affiliate of the foreign bank.

Non-application

(3) This section does not apply in respect of the business in Canada of an authorized foreign bank.

1991, c. 46, s. 513; 1997, c. 15, s. 78; 1999, c. 28, s. 29.

Non-bank affiliates - prohibited activities

514. (1) A non-bank affiliate of a foreign bank shall not, in Canada,

(a) engage in the business of accepting deposit liabilities; or

(b) represent to the public that any instrument issued by the non-bank affiliate is a deposit or that any liability incurred by the non-bank affiliate is a deposit.

Disclosure of status

(2) A non-bank affiliate of a foreign bank that carries on as part of its business the provision of financial services shall not borrow money in Canada from the public without disclosing that

(a) the non-bank affiliate is not a member institution of the Canada Deposit Insurance Corporation;

(b) the liability incurred by the non-bank affiliate through the borrowing is not a deposit; and

(c) the non-bank affiliate is not regulated as a financial institution in Canada.

Manner of disclosure

(3) The disclosure shall be

(a) in a prospectus, information circular or other offering document related to the borrowing or in a similar document related to the borrowing or, if there is no such document, in a statement delivered to the lender; or

(b) in any other manner that may be prescribed.

Exception for certain borrowings

(4) Subsection (2) does not apply

(a) to a borrowing of a prescribed class or type or to a borrowing in prescribed circumstances or in a prescribed manner; or

(b) except as may be provided in any regulations that may be made by the Governor in Council, to a borrowing

(i) from a person in an amount of \$100,000 or more, or

(ii) through the issue of instruments in denominations of \$100,000 or more.

Exception - trust or loan company

(5) The restrictions on a non-bank affiliate of a foreign bank under subsections (1) and (2) do not apply where the non-bank affiliate is a trust or loan corporation incorporated under an Act of Parliament or of the legislature of a province.

Exception - insurance company or securities dealer

(6) The restrictions on a non-bank affiliate of a foreign bank under subsection (2) do not apply where the non-bank affiliate is

(a) an insurance company incorporated under an Act of Parliament or of the legislature of a province; or

(b) a financial institution that is described in paragraph (g) of the definition "financial institution" in section 2.

1991, c. 46, s. 514; 1997, c. 15, s. 79.

515. [Repealed, 1997, c. 15, s. 80]

Statements and returns of non-bank affiliates

516. Unless the Superintendent has exempted it from the requirements of this section, a non-bank affiliate of a foreign bank shall, not later than six months after the end of its financial year, provide the Superintendent with

(a) a copy of its financial statements for the preceding financial year; and

(b) such other information returns as may be prescribed for the purposes of this section.

517. [Repealed, 1997, c. 15, s. 81]

Investment restriction - foreign banks

518. (1) Subject to subsection (3) and section 521, where shares in a foreign bank subsidiary are owned by a foreign bank, by a foreign bank and one or more entities associated with it, or by one or more entities associated with a foreign bank, the foreign bank and any entity associated with it shall not acquire control of, or acquire or hold a substantial investment in,

(a) any bank other than the foreign bank subsidiary; or

(b) any other Canadian entity other than

(i) a financial institution that is described in any of paragraphs (b) to (g) of the definition "financial institution" in section 2, or

(ii) a Canadian entity in which a bank is permitted to have a substantial investment under any of paragraphs 468(1)(b) to (n) or subsection 468(1.1) or (2) or 469(1).

Investment restriction - authorized foreign banks

(1.1) Subject to subsection (3) and section 521, an authorized foreign bank that is not subject to the restrictions and requirements referred to in subsection 524(2) and any entity associated with it shall not acquire control of, or acquire or hold a substantial investment in, any Canadian entity other than

(a) a bank named in Schedule II;

(b) a financial institution that is described in any of paragraphs (b) to (g) of the definition "financial institution" in section 2; or

(c) a Canadian entity in which a bank is permitted to have a substantial investment under any of paragraphs 468(1)(b) to (n) or subsection 468(1.1) or (2) or 469(1).

Investment restriction - authorized foreign banks

(1.2) Subject to subsection (3) and section 521, an authorized foreign bank that is subject to the restrictions and requirements referred to in subsection 524(2) and any entity associated with it shall not acquire control of, or acquire or hold a substantial investment in, any Canadian entity other than

(a) a body corporate that is a trust company described in paragraph (b) or (e) of the definition "financial institution" in section 2 and that is not authorized to take deposits;

(b) a financial institution that is described in paragraph (d) or (g) of the definition "financial institution" in section 2 or an insurance corporation that is described in paragraph (e) of that definition; or

(c) a Canadian entity in which a bank is permitted to have a substantial investment under any of paragraphs 468(1)(b) to (n) or subsection 468(1.1) or (2) or 469(1).

Exception

(2) Subsections (1) and (1.1) do not apply where the foreign bank acquires control of, or acquires or holds a substantial investment in, a Canadian entity other than a bank only because the control is acquired, or the substantial investment is acquired or held,

(a) as permitted by Part IX, by a foreign bank subsidiary of the foreign bank;

(b) as permitted by Part IX of the Trust and Loan Companies Act, by a trust or loan company incorporated under that Act that is a subsidiary of the foreign bank;

(c) as permitted by Part IX of the Insurance Companies Act, by an insurance company incorporated under that Act that is a subsidiary of the foreign bank; or

(d) as permitted by consent of the Minister under subsection 521(1).

Exception to subsection (1.2)

(2.1) Subsection (1.2) does not apply where the foreign bank acquires control of, or acquires or holds a substantial investment in, a Canadian entity, other than an entity described in any of paragraphs (2.2)(a) to (c), only because the control is acquired, or the substantial investment is acquired or held,

(a) as permitted by Part IX of the Trust and Loan Companies Act, by a trust company incorporated under that Act that is not authorized to take deposits and that is a subsidiary of the foreign bank;

(b) as permitted by Part IX of the Insurance Companies Act, by an insurance company incorporated under that Act that is a subsidiary of the foreign bank; or

(c) as permitted by consent of the Minister under subsection 521(1).

Exception to subsection (2.1)

(2.2) An authorized foreign bank that is subject to the restrictions and requirements referred to in subsection 524(2) and any entity associated with it shall not acquire control of, or acquire or hold a substantial investment in, any of the following Canadian entities notwithstanding that the

control is acquired, or the substantial investment is acquired or held, in a manner described in any of paragraphs (2.1)(a) to (c):

(a) an entity described in any of paragraphs (a), (c) or (f) of the definition "financial institution" in section 2;

(b) a body corporate that is a loan company described in paragraph (b) or (e) of the definition "financial institution" in section 2; or

(c) a body corporate that is a trust company described in paragraph (b) or (e) of the definition "financial institution" in section 2 and that is authorized to take deposits.

Exception (3) A foreign bank to which subsection (1), (1.1) or (1.2) applies, or any entity associated with it, may acquire control of, or acquire or hold a substantial investment in, a Canadian entity if

(a) the principal activity in Canada of the Canadian entity does not consist of

(i) providing any services that a bank is permitted by this Act to provide in Canada,

(ii) providing fiduciary services,

(iii) performing the functions of an investment dealer, stock broker, investment counsellor or portfolio manager,

(iv) the business of insurance, including the function of an insurance agent or broker, or

(v) any combination of activities described in subparagraphs (i) to (iv); and

(b) either

(i) the control existed or substantial investment was held at the time of the making of

(A) the application for the incorporation or acquisition of the foreign bank subsidiary of the foreign bank, or

(B) the application for an order under subsection 524(1), and the application was accompanied by written evidence to that effect, or

(ii) the control or substantial investment was acquired subsequent to

(A) the incorporation or acquisition of the foreign bank subsidiary of the foreign bank, or

(B) the making of an order under subsection 524(1),

and the Minister, by order, approved an application requesting permission for the control or substantial investment to be acquired.

Ministerial approval of more than one entity

(3.1) The Minister may, under subparagraph (3)(b)(ii), approve the acquisition of control of, or of a substantial investment in, more than one Canadian entity, if the activities carried on by the entities are substantially the same.

Exception

(3.2) Subsections (1) to (1.2) and (3) do not apply where

(a) the foreign bank acquires a substantial investment in a Canadian entity only because the substantial investment is acquired, in the course of a distribution to the public of shares or ownership interests of the Canadian entity, by a securities underwriter that is a subsidiary of the foreign bank; and

(b) the securities underwriter holds the substantial investment in the Canadian entity for a period of not more than six months.

Terms and conditions

(4) An order of the Minister made under paragraph (3)(b) may be subject to such terms and conditions as the Minister considers appropriate.

Revocation or variation of order

(5) The Minister may, by further order, revoke or vary an order made under paragraph (3)(b).

Effective date

(5.1) The revocation or variation comes into effect three months after the day the further order is made, except that if the Minister and the entity to which the order relates agree that the revocation or variation is to take effect at some other time, the revocation or variation takes effect at that other time.

Publication

(6) Where the Minister makes an order for the purposes of paragraph (3)(b) or makes an order under subsection (5), the Minister shall publish in the Canada Gazette a notice of the making of the order.

1991, c. 46, s. 518; 1997, c. 15, s. 82; 1999, c. 28, s. 30, c. 31, s. 15(F).

Permission to hold shares

519. (1) Notwithstanding subsection 518(1), where, by reason of an amalgamation of two or more foreign banks or the acquisition of one or more foreign banks by another foreign bank, a foreign bank becomes the owner of shares of more than one foreign bank subsidiary, the foreign bank may continue to own the shares of those foreign bank subsidiaries for a period not exceeding two years and thereafter, subsection 518(1) applies to that foreign bank.

Acquisition of control or substantial investment by loan workout or realization of security

(2) For five years after the day on which a foreign bank acquires control of, or a substantial investment in, a Canadian entity

(a) as a result of a default under an agreement of the type described in subsection 472(1) between the foreign bank and the entity in respect of a loan made by the foreign bank to the entity, or

(b) through the realization of security for any loan or advance made by the foreign bank or any other debt or liability to the foreign bank

and for any additional period or periods that the Minister may, by order, specify, the foreign bank is deemed, for the purposes of subsections 518(1) to (1.2), not to have acquired control of, or to have acquired or held a substantial investment in, the Canadian entity.

1991, c. 46, s. 519; 1997, c. 15, s. 83; 1999, c. 28, s. 31.

Divestiture

520. (1) Where a foreign bank or an entity associated with a foreign bank contravenes subsection 518(1) or fails to comply with any terms and conditions imposed by any order made for the purposes of paragraph 518(3)(b), the Minister may, if the Minister deems it in the public interest to do so, by order, direct the foreign bank to divest itself of the foreign bank subsidiary.

Ceasing to carry on business

(2) Where an authorized foreign bank or an entity associated with an authorized foreign bank contravenes subsection 518(1.1) or (1.2) or fails to comply with any terms and conditions imposed by any order made for the purposes of paragraph 518(3)(b), the Minister may, if the Minister deems it in the public interest to do so, revoke the order made under subsection 524(1).

1991, c. 46, s. 520; 1999, c. 28, s. 32.

Consent required

521. (1) Unless the consent of the Minister, by order, is obtained, a foreign bank shall not directly or indirectly

(a) establish a new Canadian business, within the meaning of the Investment Canada Act, whose principal activity in Canada is an activity referred to in any of subparagraphs 518(3)(a)(i) to (v);

(b) acquire shares of or ownership interests in a Canadian entity whose principal activity in Canada is an activity referred to in any of subparagraphs 518(3)(a)(i) to (v) in such number

(i) as to cause the Canadian entity to become a non-bank affiliate of the foreign bank, or

(ii) where the Canadian entity is already a non-bank affiliate of the foreign bank, as to cause the percentage of the

(A) outstanding shares of any class or series of shares of, or

(B) ownership interests in

the Canadian entity held by the foreign bank after the acquisition to be greater than the percentage held before the acquisition;

(c) acquire or hold all or substantially all of the assets of a Canadian entity whose principal activity in Canada consists of any of the activities referred to in subparagraphs 518(3)(a)(i) to (v);

(c.1) acquire or hold all or substantially all of the assets of another foreign bank that is an authorized foreign bank in relation to the carrying on of business in Canada by that authorized foreign bank;

(d) hold shares of or ownership interests in a Canadian entity whose principal activity in Canada is an activity referred to in any of subparagraphs 518(3)(a)(i) to (v) in such number that the Canadian entity is a non-bank affiliate of the foreign bank, if those shares or ownership interests were acquired by the foreign bank

(i) before the foreign bank became a foreign bank or when the Canadian entity's principal activity in Canada was not an activity described in one of those subparagraphs, and

(ii) after the coming into force of this paragraph; or

(e) acquire control of a Canadian entity whose principal activity in Canada is an activity referred to in any of subparagraphs 518(3)(a)(i) to (v) with the result that the Canadian entity becomes a non-bank affiliate of the foreign bank.

Exception

(1.001) Paragraphs (1)(c) and (c.1) do not apply in respect of a foreign bank where the assets of a Canadian entity or the assets in relation to the carrying on of business in Canada by an authorized foreign bank are acquired or held by a foreign bank subsidiary of the foreign bank.

Exception

(1.002) Paragraphs (1)(c) and (c.1) do not apply in respect of an authorized foreign bank where the assets of a Canadian entity or the assets in relation to the carrying on of business in Canada by another authorized foreign bank are acquired or held by the authorized foreign bank in relation to its business in Canada.

Activity carried out by agent

(1.01) Without limiting the generality of subsection (1), where an activity prohibited by that subsection is carried out by a nominee or agent of a foreign bank or by an entity that is controlled by a foreign bank, the foreign bank is deemed to have indirectly carried out the activity.

Terms and conditions

(1.02) The consent of the Minister under subsection (1) may be subject to any terms and conditions that the Minister may impose in the order.

Where further consent not required

(1.03) Subject to subsection (1.05), after a foreign bank obtains consent under subsection (1) to do something described in any of paragraphs (1)(a) to (e), the foreign bank may do anything described in any of those paragraphs without seeking further consent under that subsection. This subsection applies for the purpose of determining what a foreign bank may do after August 1, 1997 even if the consent under subsection (1) was obtained before that day.

(1.04) [Repealed, 1999, c. 28, s. 33]

Further exception

(1.05) Subsection (1.03) does not apply to a foreign bank designated in an order that was made under subsection (1.06) and that has not been revoked under subsection (1.08).

Designation order

(1.06) The Minister may, by order, designate a foreign bank as a foreign bank to which subsection (1.03) does not apply. That order may be subject to any terms and conditions that the Minister considers appropriate.

Where order may be made

(1.07) That order may be made only if

(a) the Minister is of the opinion, after consulting with the Superintendent, that

(i) the foreign bank's principal activity is the provision of services that would be permitted by this Act if they were provided by a bank in Canada, and

(ii) the foreign bank is regulated as a bank in the jurisdiction under whose laws it was incorporated or in any jurisdiction in which it carries on business; or

(b) the foreign bank is affiliated with a foreign bank to which paragraph (a) applies.

Revocation or variation of order

(1.08) The Minister may, by further order, revoke or vary an order under subsection (1.06).

Effective date

(1.09) The revocation or variation comes into effect three months after the day the further order is made, except that if the Minister and the foreign bank to which the order relates agree that the revocation or variation is to take effect at some other time, the revocation or variation takes effect at that other time.

Publication

(1.1) Where the Minister makes an order under subsection (1.06) or (1.08), the Minister shall publish in the Canada Gazette a notice of the making of the order.

Exception to consent requirement

(2) Subsection (1) does not apply where a foreign bank acquires control of, or acquires or holds a substantial investment in, a Canadian entity only because the control is acquired or the substantial investment is acquired or held

(a) as permitted by Part IX, by a foreign bank subsidiary of the foreign bank;

(b) as permitted by Part IX of the Trust and Loan Companies Act, by a trust or loan company incorporated under that Act that is a subsidiary of the foreign bank; or

(c) as permitted by Part IX of the Insurance Companies Act, by an insurance company incorporated under that Act that is a subsidiary of the foreign bank.

Ministerial approval

(2.1) The Minister may, in consenting to (a) the acquisition of shares of, or ownership interests in, or to the holding of shares of, or ownership interests in, a Canadian entity under the circumstances described in paragraph (1)(b) or (d), respectively, or

(b) the acquisition of control of a Canadian entity under the circumstances described in paragraph (1)(e),

approve the acquisition or holding of shares of, or ownership interests in, or the acquisition of control of, as the case may be, more than one Canadian entity, if the activities carried on by the entities are substantially the same.

Exception

(2.2) Subsection (1) does not apply where

(a) the foreign bank acquires a substantial investment in a Canadian entity only because the substantial investment is acquired, in the course of a distribution to the public of shares or ownership interests of the Canadian entity, by a securities underwriter that is a subsidiary of the foreign bank; and

(b) the securities underwriter holds the substantial investment in the Canadian entity for a period of not more than six months.

Publication

(3) Where the Minister makes an order under subsection (1), the Minister shall publish in the Canada Gazette a notice of the making of the order.

1991, c. 46, s. 521; 1997, c. 15, s. 84; 1999, c. 28, s. 33.

Non-application of Investment Canada Act

522. The provisions of this Act apply in lieu of the provisions of the Investment Canada Act in respect of

(a) the acquisition of control, within the meaning of that Act, of a bank or a foreign bank subsidiary;

(b) the establishment of a new Canadian business, within the meaning of that Act, that is a bank or a foreign bank subsidiary;

(b.1) the establishment of a new Canadian business, within the meaning of that Act, that is the business in Canada of an authorized foreign bank;

(c) the acquisition of control of an entity by a foreign bank, or the establishment, directly or indirectly, of a new Canadian business by a foreign bank, all within the meaning of that Act, whose principal activity in Canada consists of any activity referred to in any of subparagraphs 518(3)(a)(i) to (v);

(d) the acquisition or holding by a foreign bank of all or substantially all of the assets of a Canadian entity whose principal activity in Canada is an activity referred to in any of subparagraphs 518(3)(a)(i) to (v); and

(e) the acquisition or holding by a foreign bank of all or substantially all of the assets in relation to the carrying on of the business in Canada of an authorized foreign bank.

1991, c. 46, s. 522; 1997, c. 15, s. 85; 1999, c. 28, s. 34.

PART XII.1

AUTHORIZED FOREIGN BANKS

Application

Application to authorized foreign banks

523. (1) This Part applies only in respect of the business in Canada of authorized foreign banks.

Assets and liabilities

(2) The assets and liabilities of an authorized foreign bank in respect of its business in Canada, as shown by its books and records, are considered to be the assets and liabilities of the authorized foreign bank in respect of its business in Canada.

1991, c. 46, s. 523; 1997, c. 15, s. 86; 1999, c. 28, s. 35.

Formalities of Authorization

Order permitting carrying on of business in Canada, etc.

524. (1) On application by a foreign bank, the Minister may make an order permitting the foreign bank to establish a branch in Canada to carry on business in Canada under this Part.

Restrictions and requirements

(2) The order may be made subject to the restrictions and requirements referred to in subsections 540(1) and (2), respectively.

Reciprocal treatment

(3) The Minister may make an order only if the Minister is satisfied that

(a) the authorized foreign bank will be capable of making a contribution to the financial system in Canada; and

(b) if the application is made by a non-WTO Member foreign bank, treatment as favourable for banks to which this 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.

Consultation with Superintendent

(4) The Minister may make an order only if the Minister is of the opinion, after consultation with the Superintendent, that

(a) 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

(b) the applicant's principal activity is the provision of services that would be permitted by this Act if they were provided by a bank in Canada.

1991, c. 46, s. 524; 1999, c. 28, s. 35.

Application procedure

525. (1) An application for an order under subsection 524(1) shall be filed with the Superintendent, together with any other information, material and evidence that the Superintendent may require.

Publishing notice of intent

(2) Before filing an application, a foreign bank applicant shall, at least once a week for a period of four consecutive weeks, publish, in a form satisfactory to the Superintendent, a notice of intention to make the application in the Canada Gazette and in a newspaper in general circulation at or near the place where its principal office is to be situated.

Objections

(3) A person who objects to the proposed order may, within thirty days after the date of the last publication under subsection (2), submit the objection in writing to the Superintendent.

Minister to be informed

(4) On receipt of an objection, the Superintendent shall inform the Minister of it.

Inquiry into objection and report

(5) On receipt of an objection, and if the application for the order has been received, the Superintendent shall, if satisfied that it is necessary and in the public interest to do so, hold or cause to be held a public inquiry into the objection as it relates to the application and, on completion of the inquiry, the Superintendent shall report the findings of the inquiry to the Minister.

Report to be made available

(6) Within thirty days after receiving the report, the Minister shall make it available to the public.

Rules governing proceedings

(7) Subject to the approval of the Governor in Council, the Superintendent may make rules governing the proceedings at public inquiries held under this section.

1991, c. 46, s. 525; 1999, c. 28, s. 35.

Factors to be considered by Minister

526. Before making an order under subsection 524(1), 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 particular regard to

(a) 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;

(b) the soundness and feasibility of plans of the foreign bank for the future conduct and development of its business in Canada;

(c) the business record and past performance of the foreign bank;

(d) whether the business in Canada of the proposed authorized foreign bank will be carried on responsibly by persons who are fit as to the character, competence and experience suitable for involvement in its operations; and

(e) the best interests of the financial system in Canada.

1991, c. 46, s. 526; 1999, c. 28, s. 35.

Contents of order

527. (1) An order made under subsection 524(1) shall set out

- (a) the name of the authorized foreign bank and, where applicable, the name under which it is permitted to carry on business in Canada;
- (b) the place in Canada where the principal office of the authorized foreign bank is to be situated;
- (c) whether the authorized foreign bank is subject to any restrictions and requirements referred to in subsection 524(2); and
- (d) the date on which the order becomes effective.

Provisions of order

(2) The Minister may set out in the order any provision not contrary to this Act that the Minister considers advisable in order to take into account the particular circumstances of the proposed authorized foreign bank with respect to the carrying on of business in Canada.

Terms and conditions

(3) The Minister may impose any terms and conditions in respect of the order that the Minister considers appropriate.

Notice of order

(4) The Superintendent shall cause to be published in the Canada Gazette a notice of the making of the order.

1991, c. 46, s. 527; 1999, c. 28, s. 35.

Amended order

528. (1) On application by an authorized foreign bank, the Minister may, by further order,

- (a) change the name under which it is permitted to carry on business in Canada or the place in Canada where its principal office is to be situated as that name or place is set out in the order made under subsection 524(1) or in any other order made under this section;
- (b) add any provision referred to in subsection 527(2) or any term or condition referred to in subsection 527(3) or change or remove any of those provisions, terms or conditions that are included in the order made under subsection 524(1) or in any other order made under this section; or

(c) add or remove the restrictions and requirements referred to in subsection 524(2).

Notice of intention

(2) Before making an application under subsection (1), the authorized foreign bank must publish a notice of intention to make the application at least once a week for a period of four consecutive weeks in the Canada Gazette and in a newspaper of general circulation at or near the place where its principal office is situated.

1991, c. 46, s. 528; 1999, c. 28, s. 35.

Transitional

529. (1) Subject to this section but notwithstanding any other provision of this Act or the regulations, the Minister may, on the recommendation of the Superintendent, by order, grant an authorized foreign bank permission to

(a) engage in a business activity specified in the order that an authorized foreign bank is not otherwise permitted by this Part to engage in;

(b) have liabilities that an authorized foreign bank is not otherwise permitted by this Part to have, if the authorized foreign bank or an affiliate of the authorized foreign bank had those liabilities at the time an application for an order under subsection 524(1) was made;

(c) hold assets that an authorized foreign bank is not otherwise permitted by this Part to hold, if the assets were held, at the time an application for an order under subsection 524(1) was made, by the authorized foreign bank or an affiliate of the authorized foreign bank;

(d) acquire and hold assets that an authorized foreign bank is not otherwise permitted by this Part to acquire or hold if the authorized foreign bank was obliged, at the time an application for an order under subsection 524(1) was made, to acquire those assets;

(e) in the case of an authorized foreign bank that is subject to the restrictions and requirements referred to in subsection 524(2), continue to hold a substantial investment in

(i) a foreign bank subsidiary, where the Minister has approved an application for voluntary liquidation and dissolution made by the foreign bank subsidiary pursuant to section 344, or

(ii) a company to which the Trust and Loan Companies Act applies, where the Minister has approved an application for voluntary liquidation and dissolution made by the company pursuant to section 349 of that Act;

(f) in the case of an authorized foreign bank that is not subject to the restrictions and requirements referred to in subsection 524(2), carry on business in Canada without having to deposit assets having a value of at least ten million dollars, as required by subparagraph

534(3)(a)(ii) and subparagraph 582(1)(b)(i), where the authorized foreign bank continues to hold a substantial investment in

(i) a foreign bank subsidiary and the Minister has approved an application for voluntary liquidation and dissolution made by the foreign bank subsidiary pursuant to section 344, or

(ii) a company to which the Trust and Loan Companies Act applies and the Minister has approved an application for voluntary liquidation and dissolution made by the company pursuant to section 349 of that Act; or

(g) maintain outside Canada any records or registers required by this Act to be maintained in Canada and maintain and process outside Canada information and data relating to the preparation and maintenance of those records or registers.

Restriction

(2) An order under subsection (1) may not be made if the effect of the order would be to permit an authorized foreign bank to

(a) contravene section 545, in the case of an authorized foreign bank that is not subject to the restrictions and requirements referred to in subsection 524(2); or

(b) have deposit liabilities so as to cause the authorized foreign bank to be in contravention of section 540, in the case of an authorized foreign bank that is subject to the restrictions and requirements referred to in subsection 524(2).

Duration

(3) Permission granted under subsection (1) shall be expressed to be granted for a period specified in the order not exceeding

(a) with respect to any activity described in paragraph (1)(a), thirty days after the day on which an order made under subsection 524(1) becomes effective in respect of the authorized foreign bank or, where the activity is conducted pursuant to an agreement existing on that day, on the expiration of the agreement;

(b) with respect to any matter described in paragraph (1)(b), ten years; and

(c) with respect to any matter described in any of paragraphs (1)(c) to (g), two years.

Renewal

(4) Subject to subsection (5), the Minister may, on the recommendation of the Superintendent, by order, renew permission granted under subsection (1) with respect to any matter described in paragraphs (1)(b) to (f) for any further period or periods that the Minister considers necessary.

Limitation

(5) The Minister may not grant to an authorized foreign bank any permission

(a) with respect to matters described in paragraph (1)(b), that purports to be effective more than ten years after the day on which an order made under subsection 534(1) becomes effective in respect of the authorized foreign bank, unless the Minister is satisfied on the basis of evidence on oath provided by an officer of the authorized foreign bank that the authorized foreign bank will not be able at law to redeem or discharge at the end of the ten years any liabilities to which the permission relates;

(b) with respect to matters described in paragraphs (1)(c) and (d), that purports to be effective more than ten years after the day on which an order made under subsection 534(1) becomes effective in respect of the authorized foreign bank; and

(c) with respect to matters described in paragraphs (1)(e) and (f), that purports to be effective more than seven years after the day on which an order made under subsection 534(1) becomes effective in respect of the authorized foreign bank.

1991, c. 46, s. 529; 1999, c. 28, s. 35.

Prohibited names

530. (1) An order made under subsection 524(1) or 528(1) may not provide for the use of a name that is

(a) prohibited by an Act of Parliament;

(b) in the opinion of the Superintendent, deceptively misdescriptive;

(c) the same as or, in the opinion of the Superintendent, substantially the same as or confusingly similar to, any existing trade-mark, trade name or corporate name of a body corporate, except where

(i) the trade-mark or trade name is being changed or the body corporate is being dissolved or is changing its corporate name, and

(ii) consent to the use of the trade-mark, trade name or corporate name is signified to the Superintendent in any manner that the Superintendent may require;

(d) the same as or, in the opinion of the Superintendent, substantially the same as or confusingly similar to, the known name under or by which any other entity carries on business or is identified; or

(e) reserved under section 43 for an existing or proposed bank or for an existing or proposed authorized foreign bank.

Name otherwise prohibited

(2) An order made under subsection 524(1) or 528(1) may provide for the use of a name referred to in section 47 of the Trust and Loan Companies Act.

1991, c. 46, s. 530; 1999, c. 28, s. 35.

Publication of name

531. An authorized foreign bank shall set out its name and, where applicable, any other permitted name, as set out in the order made under subsection 524(1) or 528(1), in legible characters in all contracts, invoices, negotiable instruments and other documents evidencing rights and obligations with respect to other parties that are issued or made by or on behalf of the authorized foreign bank.

1991, c. 46, s. 531; 1996, c. 6, s. 10; 1997, c. 15, s. 87; 1999, c. 28, s. 35.

Directing change of name

532. (1) If through inadvertence or otherwise an order made under subsection 524(1) or 528(1) provides for the use of a name that is prohibited by section 530, the Superintendent may, by order, direct the authorized foreign bank to change the name without delay and the authorized foreign bank shall comply with that direction.

Revoking name

(2) Where an authorized foreign bank does not comply with a direction under subsection (1) within sixty days after the service of the direction, the Superintendent may revoke the name and assign another name and, until changed in accordance with section 528, that other name is the name of the authorized foreign bank.

1991, c. 46, s. 532; 1996, c. 6, s. 11; 1999, c. 28, s. 35.

532.1 to 532.4 [Repealed, 1999, c. 28, s. 35]

Other name

533. (1) Subject to section 531 and subsection (2), an authorized foreign bank may carry on business in Canada under a name other than the name set out in the order made under subsection 524(1) or 528(1).

Directions

(2) Where an authorized foreign bank carries on business in Canada under a name other than the name set out in the order, the Superintendent may, by order, direct the authorized foreign bank not to use that other name if the Superintendent is of the opinion that the other name is a name referred to in any of paragraphs 530(1)(a) to (e).

1991, c. 46, s. 533; 1999, c. 28, s. 35.

Commencement and Carrying on of Business in Canada

Order approving commencement and carrying on of business in Canada

534. (1) On application by an authorized foreign bank, the Superintendent may make an order approving the commencement and carrying on of business in Canada by the authorized foreign bank.

Prohibition

(2) An authorized foreign bank may not commence to carry on business in Canada until it is authorized to do so by an order made under subsection (1).

Conditions for order

(3) The Superintendent may make the order only if the Superintendent is satisfied that the authorized foreign bank has

(a) 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), shall be

(i) in the case of an authorized foreign bank that is subject to the restrictions and requirements referred to in subsection 524(2), one hundred thousand dollars, or

(ii) in any other case, ten million dollars or any greater amount that the Superintendent specifies;

(b) submitted a power of attorney in accordance with subsection 536(2); and

(c) complied with all other relevant requirements of this Act.

Deposit agreement

(4) The assets referred to in paragraph (3)(a) shall be kept with a Canadian financial institution approved by the Superintendent pursuant to a deposit agreement entered into with the prior approval of the Superintendent.

Conditions of order

(5) The order under subsection (1) may contain any conditions or limitations that the Superintendent considers appropriate that are consistent with this Act and that relate to the carrying on of the business in Canada of the authorized foreign bank.

Variations

(6) In respect of an order made under subsection (1), the Superintendent may at any time, by further order,

(a) make the order subject to any conditions or limitations that the Superintendent considers appropriate that are consistent with this Act and that relate to the business in Canada of the authorized foreign bank, or

(b) amend or revoke any authorization contained in the order or any condition or limitation to which the order is subject,

but before making a further order the Superintendent shall provide the authorized foreign bank with an opportunity to make representations regarding that further order.

Public notice

(7) On the making of an order under subsection (1), the authorized foreign bank shall publish a notice of the making of the order in a newspaper in general circulation at or near the place where its principal office is to be situated.

Notice in Canada Gazette

(8) The Superintendent shall cause to be published in the Canada Gazette a notice of the making of an order under subsection (1).

Time limit

(9) The Superintendent shall not make an order under subsection (1) in respect of an authorized foreign bank more than one year after the day on which the order under subsection 524(1) in respect of the authorized foreign bank becomes effective.

Cessation of existence

(10) If an order under subsection (1) is not obtained within one year after the day on which the order under subsection 524(1) in respect of the authorized foreign bank becomes effective, the order made under subsection 524(1) is revoked.

1991, c. 46, s. 534; 1999, c. 28, s. 35.

Principal Office and Principal Officer

Principal office

535. (1) An authorized foreign bank shall at all times have a principal office in the place in Canada set out in the order under subsection 524(1) or 528(1) made with respect to it.

Change of principal office

(2) An authorized foreign bank may change the address of its principal office within the place specified in the order under subsection 524(1) or 528(1) made with respect to it.

Notice of change of address

(3) An authorized foreign bank shall send to the Superintendent, within fifteen days after any change of address of its principal office, a notice of the change of address.

1991, c. 46, s. 535; 1999, c. 28, s. 35.

Principal officer

536. (1) An authorized foreign bank shall appoint an employee who is ordinarily resident in Canada to be its principal officer for the purposes of this Part.

Power of attorney

(2) The authorized foreign bank shall provide the principal officer with a power of attorney expressly authorizing the principal officer to receive all notices under the laws of Canada from the Minister or Superintendent and shall without delay submit a copy of the power of attorney to the Superintendent.

Vacancy

(3) Where a vacancy occurs in the position of principal officer, the authorized foreign bank shall, without delay, fill the vacancy and submit a copy of the new power of attorney to the Superintendent.

1991, c. 46, s. 536; 1996, c. 6, s. 13; 1999, c. 28, s. 35.

Transfer of Liabilities

Transfer of liabilities not permitted

537. (1) Subject to subsection (2), an authorized foreign bank shall not transfer all or substantially all of the liabilities in respect of its business in Canada.

Exception

(2) An authorized foreign bank may, with the approval of the Minister, transfer all or substantially all of the liabilities in respect of its business in Canada to another authorized foreign bank in respect of its business in Canada, to a bank or to a body corporate to which the Trust and Loan Companies Act applies.

Application for approval

(3) An approval may be given under subsection (2) only if

(a) notice of the authorized foreign bank's intention to apply for the approval has been published at least once a week for a period of four consecutive weeks in the Canada Gazette and in a newspaper in general circulation at or near the place where the principal office of the transferring authorized foreign bank is situated; and

(b) the application for approval is supported by evidence satisfactory to the Minister that the requirement of paragraph (a) has been satisfied and that the entity to which the authorized foreign bank intends to make the transfer is an entity referred to in subsection (2).

1991, c. 46, s. 537; 1999, c. 28, s. 35.

537.1 [Repealed, 1999, c. 28, s. 35]

Business and Powers

Main business

538. (1) Subject to this Act, an authorized foreign bank shall not carry on any business in Canada other than the business of banking and any business generally that appertains to the business of banking.

Included activities

(2) For greater certainty, the business of banking includes

(a) providing any financial service;

(b) acting as a financial agent;

(c) providing investment counselling services and portfolio management services; and

(d) issuing payment, credit or charge cards and, in cooperation with others including other financial institutions, operating a payment, credit or charge card plan.

1991, c. 46, s. 538; 1996, c. 6, s. 15; 1997, c. 15, s. 88; 1999, c. 28, s. 35.

Additional powers

539. (1) In addition to exercising the powers that an authorized foreign bank may exercise under section 538, an authorized foreign bank may, in Canada,

- (a) hold, manage and otherwise deal with real property;
- (b) engage, with the prior written approval of the Minister, in the activities in which an information services corporation, within the meaning of subsection 464(1), may engage;
- (c) promote merchandise and services to the holders of any payment, credit or charge card issued by the authorized foreign bank;
- (d) engage in the sale of
 - (i) tickets, including lottery tickets, on a non-profit public service basis in connection with special, temporary and infrequent non-commercial celebrations or projects that are of local, municipal, provincial or national interest,
 - (ii) urban transit tickets, and
 - (iii) tickets in respect of a lottery sponsored by the federal government or a provincial or municipal government or an agency of any of those governments;
- (e) act as a custodian of property; and
- (f) act as receiver, liquidator or sequestrator.

Restriction

(2) Except as authorized by or under this Act, an authorized foreign bank shall not deal in Canada in goods, wares or merchandise or engage in any trade or other business.

Regulations

- (3) The Governor in Council may make regulations
- (a) respecting what an authorized foreign bank may or may not do with respect to the carrying on of the activities referred to in paragraph (1)(b); and
 - (b) imposing terms and conditions in respect of
 - (i) the provision of financial services referred to in paragraph 538(2)(a) that are financial planning services,

- (ii) the provision of services referred to in paragraph 538(2)(c), and
- (iii) the carrying on of the activities referred to in paragraph (1)(b).

1991, c. 46, s. 539; 1996, c. 6, s. 16; 1999, c. 28, s. 35.

Restrictions

540. (1) Where subsection 524(2) applies, the authorized foreign bank shall not, in respect of its business in Canada,

- (a) except as permitted by subsection (4), engage in the business of accepting deposit liabilities, or otherwise borrow money;
- (b) act as an agent for any person in the taking of deposit liabilities; or
- (c) guarantee any securities or accept any bills of exchange that are
 - (i) issued by any person, and
 - (ii) intended by the issuer or any party to be sold or traded.

Requirements

(2) Where subsection 524(2) applies, the authorized foreign bank shall, in accordance with any regulations that may be made,

- (a) post notices in its branches in Canada that it does not accept deposits in Canada and that it is not a member institution of the Canada Deposit Insurance Corporation; and
- (b) include in its advertisements the prescribed information.

Regulations

(3) The Governor in Council may make regulations respecting notices and advertisements for the purpose of subsection (2).

Authorized borrowing

- (4) For the purposes of paragraph (1)(a), an authorized foreign bank may
 - (a) accept deposit liabilities or otherwise borrow money from
 - (i) a financial institution other than a foreign bank, or

(ii) a foreign bank that meets the conditions described in subparagraphs 521(1.07)(a)(i) and (ii),
by means of financial instruments that cannot be subsequently sold or traded; or

(b) accept deposit liabilities or otherwise borrow money, from prescribed classes of entities referred to in subparagraph (a)(i) or (ii), by means of financial instruments that can be sold to or traded with those classes of entities, in accordance with regulations made pursuant to subsection (6).

Non-application of paragraph (1)(c)

(5) Paragraph (1)(c) does not apply in respect of

(a) securities or bills of exchange that are sold to or traded with any entity referred to in subparagraph (4)(a)(i) or (ii) and that cannot be subsequently sold or traded; or

(b) securities or bills of exchange that can be sold to or traded with prescribed classes of entities referred to in subparagraph (4)(a)(i) or (ii), in accordance with regulations made pursuant to subsection (6).

Regulations

(6) The Governor in Council may make regulations

(a) prescribing the class, type or amount of deposit liabilities or borrowings referred to in paragraph (4)(b);

(b) prescribing the class, type or amount of securities or bills of exchange referred to in paragraph (5)(b);

(c) prescribing the classes of entities referred to in paragraph (4)(b) or (5)(b);

(d) prescribing the terms and conditions respecting any sale or trade of financial instruments, securities or bills of exchange; and

(e) respecting such other matters or things as are necessary to carry out the purposes of this section.

1991, c. 46, s. 540; 1996, c. 6, s. 16; 1999, c. 28, s. 35.

Application of certain provisions

541. (1) The provisions of this Act that apply in respect of an authorized foreign bank apply in respect of an authorized foreign bank that is subject to the restrictions and requirements referred

to in subsection 524(2), with any modifications that may be required to take into account those restrictions and requirements.

Non-application of certain provisions

(2) The following provisions do not apply in respect of an authorized foreign bank that is subject to the restrictions and requirements referred to in subsection 524(2):

(a) sections 545 and 546; and

(b) sections 559 to 566.

1991, c. 46, s. 541; 1996, c. 6, s. 16; 1999, c. 28, s. 35.

Guarantees and acceptances

541.1 An authorized foreign bank that is not subject to the restrictions and requirements referred to in subsection 524(2) may, in respect of its business in Canada, guarantee any securities and accept any bills of exchange that are issued by any person and intended by the issuer or any party to be sold or traded.

1999, c. 28, s. 35.

Payment clearing and settlement

542. Subject to section 22.1 of the Payment Clearing and Settlement Act, an authorized foreign bank may be a participant in a designated clearing and settlement system within the meaning of section 3 of that Act.

1991, c. 46, s. 542; 1996, c. 6, s. 17; 1999, c. 28, s. 35.

Networking

543. (1) Subject to sections 540, 546 and 549, an authorized foreign bank may, in Canada,

(a) act as agent for any person in respect of the provision of any service that is provided by a financial institution or by a body corporate in which a bank is permitted to have a substantial investment pursuant to section 468 and may enter into an arrangement with any person in respect of the provision of that service; or

(b) refer any person to that financial institution or body corporate.

Regulations

(2) The Governor in Council may make regulations respecting the disclosure of

(a) the name of the principal for whom an authorized foreign bank is acting as agent pursuant to subsection (1); and

(b) whether any commission is being earned by an authorized foreign bank when acting as agent pursuant to subsection (1).

1991, c. 46, s. 543; 1996, c. 6, s. 17; 1999, c. 28, s. 35.

543.1 [Repealed, 1999, c. 28, s. 35]

Restriction on fiduciary activities

544. No authorized foreign bank shall act in Canada as

(a) an executor, administrator or official guardian or a guardian, tutor, curator, judicial adviser or committee of a mentally incompetent person; or

(b) a trustee for a trust.

1991, c. 46, s. 544; 1996, c. 6, s. 17; 1999, c. 28, s. 35.

Deposits that fall below \$150,000

545. (1) An authorized foreign bank shall, in respect of its business in Canada, ensure that, on each day that is at least thirty days after the date of the order under subsection 534(1) made in respect of it, $A/B \leq 0.01$ where A is the sum of all amounts each of which is the sum of all the deposits held by the authorized foreign bank at the end of a day in the preceding thirty days each of which deposits is less than \$150,000 and payable in Canada; and B is the sum of all amounts each of which is the sum of all deposits held by the authorized foreign bank at the end of a day in those preceding thirty days and payable in Canada.

Exchange rate

(2) For the purpose of subsection (1), the rate of exchange that shall be applied on any day in determining the amount in Canadian dollars of a deposit in a currency of a country other than Canada shall be determined in accordance with any regulations that may be made.

Meaning of "deposit"

(3) For the purpose of subsection (1), "deposit" has the meaning that would be given to it by the schedule to the Canada Deposit Insurance Corporation Act for the purposes of deposit insurance

if that schedule were read without reference to subsections 2(2), (5) and (6) of that schedule, but does not include prescribed deposits.

Notice before opening account

(4) Before an authorized foreign bank opens a deposit account in Canada, the bank shall, in the prescribed manner, give the person requesting the opening of the account

(a) a notice in writing that the deposit will not be insured by the Canada Deposit Insurance Corporation; and

(b) any other information that may be prescribed.

Other notice

(5) An authorized foreign bank shall, in accordance with any regulations that may be made,

(a) post notices in its branches in Canada to inform the public that deposits with the authorized foreign bank are not insured by the Canada Deposit Insurance Corporation; and

(b) include in its advertisements notices to inform the public that deposits with the authorized foreign bank are not insured by the Canada Deposit Insurance Corporation.

Regulations

(6) The Governor in Council may make regulations

(a) respecting the determination of rates of exchange referred to in subsection (2);

(a.1) prescribing the deposits referred to in subsection (3) and the terms and conditions with respect to the acceptance of those deposits;

(b) prescribing the manner in which notices referred to in subsection (4) are to be given and the additional information to be contained in the notices; and

(c) respecting notices referred to in subsection (5).

1991, c. 46, s. 545; 1996, c. 6, s. 17; 1999, c. 28, s. 35.

Deposits less than \$150,000

546. (1) An authorized foreign bank that is not subject to the restrictions and requirements referred to in subsection 524(2) may not, in respect of its business in Canada, act as agent for any person in the taking of a deposit that is less than \$150,000 and payable in Canada.

Meaning of "deposit"

(2) In this section, "deposit" has the meaning assigned to that term by subsection 545(3).

1991, c. 46, s. 546; 1996, c. 6, s. 18; 1999, c. 28, s. 35.

Shared premises

547. (1) No authorized foreign bank shall carry on business in Canada on premises that are shared with those of a member institution, within the meaning of section 2 of the Canada Deposit Insurance Corporation Act, that is affiliated with the authorized foreign bank.

Limitation

(2) Subsection (1) only applies in respect of premises or any portion of premises on which both the authorized foreign bank and the member institution carry on business with the public and to which the public has access.

Adjacent premises

(3) No authorized foreign bank shall carry on business in Canada on premises that are adjacent to a branch or office of a member institution, within the meaning of section 2 of the Canada Deposit Insurance Corporation Act, that is affiliated with the authorized foreign bank, unless the authorized foreign bank clearly indicates to its customers that its business and the premises on which they are carried on are separate and distinct from the business and premises of the affiliated member institution.

1991, c. 46, s. 547; 1996, c. 6, s. 19(E); 1999, c. 28, s. 35.

Restriction on securities activities

548. An authorized foreign bank shall not deal in Canada in securities to the extent prohibited or restricted by any regulations that the Governor in Council may make for the purposes of this section.

1991, c. 46, s. 548; 1999, c. 28, s. 35.

Restriction on insurance business

549. (1) An authorized foreign bank shall not undertake in Canada the business of insurance except to the extent permitted by this Act or the regulations.

Restriction on acting as agent

(2) An authorized foreign bank shall not act in Canada as agent for any person in the placing of insurance and shall not lease or provide space in any branch in Canada of the authorized foreign bank to any person engaged in the placing of insurance.

Regulations

(3) The Governor in Council may make regulations respecting the matters referred to in subsection (1) and regulations respecting relations between authorized foreign banks and

- (a) entities that undertake the business of insurance; or
- (b) insurance agents or insurance brokers.

Saving

(4) Nothing in this section precludes an authorized foreign bank from

- (a) requiring insurance to be placed by a borrower for the security of the authorized foreign bank; or
- (b) obtaining group insurance for its employees.

Annuities

(5) For the purposes of this section, the business of insurance includes the issuance of an annuity where the liability on the insurance is contingent on the death of a person.

1991, c. 46, s. 549; 1999, c. 28, s. 35.

Restriction on leasing

550. An authorized foreign bank shall not engage in Canada in any personal property leasing activity in which a financial leasing corporation within the meaning of subsection 464(1) is not permitted to engage.

1991, c. 46, s. 550; 1999, c. 28, s. 35.

Restriction on residential mortgages

551. (1) An authorized foreign bank shall not make a loan in Canada on the security of residential property in Canada for the purpose of purchasing, renovating or improving that property, or refinance a loan for that purpose, if the amount of the loan, together with the amount

outstanding of any mortgage having an equal or prior claim against the property, would exceed 75 per cent of the value of the property at the time of the loan.

Exception

(2) Subsection (1) does not apply in respect of

(a) a loan made or guaranteed under the National Housing Act or any other Act of Parliament by or under which a different limit on the value of property on the security of which the authorized foreign bank may make a loan is established;

(b) a loan if repayment of the amount of the loan that exceeds the maximum amount set out in subsection (1) is guaranteed or insured by a government agency or a private insurer approved by the Superintendent;

(c) the acquisition by the authorized foreign bank from an entity of securities issued or guaranteed by the entity that are secured on any residential property, whether in favour of a trustee or otherwise, or the making of a loan by the authorized foreign bank to the entity against the issue of those securities; or

(d) a loan secured by a mortgage where

(i) the mortgage is taken back by the authorized foreign bank on a property disposed of by it, including where the disposition is by way of a realization of a security interest, and

(ii) the mortgage secures payment of an amount payable to the authorized foreign bank for the property. 1991, c. 46, s. 551; 1999, c. 28, s. 35.

Restriction on security interests

552. (1) Subject to subsection (3), an authorized foreign bank shall not create a security interest in any of the assets in respect of its business in Canada in order to secure an obligation of the authorized foreign bank, unless

(a) the obligation is to the Bank of Canada; or

(b) the Superintendent has approved in writing the creation of the security interest.

Encumbered property

(2) An authorized foreign bank shall notify the Superintendent in writing of any beneficial interest in real and personal property acquired by it in respect of its business in Canada, other than by way of realization, that is subject to a security interest.

Exceptions

(3) Subsection (1) does not apply in respect of a security interest created on

(a) any class of personal property that the Superintendent may, by order, designate; or

(b) property having an aggregate value that is less than any amount that the Superintendent may, by order, specify.

1991, c. 46, s. 552; 1999, c. 28, s. 35.

Restriction on receivers

553. An authorized foreign bank shall not, in respect of its business in Canada, grant to a person the right to appoint a receiver or a receiver and manager of the property or of the business of the authorized foreign bank.

1991, c. 46, s. 553; 1999, c. 28, s. 35.

Restriction on partnerships

553.1 (1) Except by order of the Superintendent, an authorized foreign bank shall not, in respect of its business in Canada, be a general partner in a limited partnership or a partner in a general partnership.

Meaning of "general partnership"

(2) For the purposes of subsection (1), "general partnership" means any partnership other than a limited partnership.

1999, c. 28, s. 35.

Definition of "non-WTO Member authorized foreign bank"

554. (1) In this section, "non-WTO Member authorized foreign bank" means an authorized foreign bank that is not controlled by a WTO Member resident.

Limitation on branches in Canada of non-WTO Member authorized foreign bank

(2) No non-WTO Member authorized foreign bank shall have any branch in Canada, other than its principal office and one branch, without the approval of the Minister.

1991, c. 46, s. 554; 1999, c. 28, s. 35.

Special security

555. Sections 425 to 436, as they exist from time to time, apply, with any modifications that the circumstances require, in respect of the carrying on of business in Canada by an authorized foreign bank as if a reference to "bank" in any of those provisions were a reference to "authorized foreign bank".

1991, c. 46, s. 555; 1999, c. 28, s. 35.

555.1 [Repealed, 1999, c. 28, s. 35]

Deposit Acceptance Deposit acceptance

556. (1) Subject to this Part, an authorized foreign bank may, without the intervention of any other person,

(a) accept a deposit from any person whether or not the person is qualified by law to enter into contracts; and

(b) pay all or part of the principal of the deposit and all or part of the interest on it to or to the order of that person.

Exception (2) Paragraph (1)(b) does not apply if, before payment, the money deposited in the authorized foreign bank pursuant to paragraph (1)(a) is claimed by some other person

(a) in any action or proceeding to which the authorized foreign bank is a party and in respect of which service of a writ or other process originating that action or proceeding has been made on the authorized foreign bank, or

(b) in any other action or proceeding pursuant to which an injunction or order made by the court requiring the authorized foreign bank not to make payment of that money or make payment of it to some person other than the depositor has been served on the authorized foreign bank,

and, if a claim is made, the deposited money may be paid to the depositor with the consent of the claimant, or to the claimant with the consent of the depositor.

Execution of trust

(3) An authorized foreign bank is not bound to see to the execution of any trust, whether express or arising by operation of law, to which a deposit made under the authority of this Act is subject.

1991, c. 46, s. 556; 1999, c. 28, s. 35.

Unclaimed Balances

Unclaimed balances

557. (1) Where

(a) a deposit has been made in Canada that is payable in Canada in Canadian currency and in respect of which no transaction has taken place and no statement of account has been requested or acknowledged by the creditor during a period of ten years

(i) from the day on which the fixed period terminated, in the case of a deposit made for a fixed period, and

(ii) from the day on which the last transaction took place or a statement of account was last requested or acknowledged by the creditor, whichever is later, in the case of any other deposit, or

(b) a cheque, draft or bill of exchange (including any of those instruments drawn by one branch of an authorized foreign bank on another of its branches but not including one issued in payment of a dividend on the capital of an authorized foreign bank) payable in Canada in Canadian currency has been issued, certified or accepted by an authorized foreign bank in Canada and no payment has been made in respect of it for a period of ten years after the date of issue, certification, acceptance or maturity, whichever is later,

the authorized foreign bank shall pay to the Bank of Canada not later than December 31 in each year an amount equal to the principal amount of the deposit or instrument, plus interest, if any, calculated in accordance with the terms of the deposit or instrument, and payment accordingly discharges the authorized foreign bank from all liability in respect of the deposit or instrument.

Particulars

(2) An authorized foreign bank shall, on making a payment pursuant to subsection (1), provide the Bank of Canada, for each deposit or instrument in respect of which the payment is made, with all the particulars of the deposit or instrument listed in subsection 602(3) or 603(2), as the case may be, current as of the day the payment is made.

Payment to claimant

(3) Subject to section 22 of the Bank of Canada Act, where payment has been made to the Bank of Canada under subsection (1) in respect of any deposit or instrument, and if payment is demanded or the instrument is presented at the Bank of Canada by the person who, but for that section, would be entitled to receive payment of the deposit or instrument, the Bank of Canada is liable to pay, at its agency in the province in which the deposit or instrument was payable, an amount equal to the amount so paid to it together with interest, if interest was payable under the terms of the deposit or instrument,

(a) for a period not exceeding ten years from the day on which the payment was received by the Bank of Canada until the date of payment to the claimant; and

(b) at any rate and computed in any manner that the Minister determines.

Enforcing liability

(4) The liability of the Bank of Canada under subsection (3) may be enforced by action against the Bank of Canada in the court in the province in which the deposit or instrument was payable.

1991, c. 46, s. 557; 1999, c. 28, s. 35.

Notice of unpaid amount

558. (1) An authorized foreign bank shall mail to each person

(a) to whom a deposit referred to in paragraph 557(1)(a) is payable, or

(b) to whom or at whose request an instrument referred to in paragraph 557(1)(b) was issued, certified or accepted,

at the person's recorded address, in so far as is known to the authorized foreign bank, a notice stating that the deposit or instrument remains unpaid.

When notice to be given

(2) The notice shall be given during the month of January next following the end of the first two-year period, and also during the month of January next following the end of the first five-year period,

(a) after the fixed period has terminated, in the case of a deposit made for a fixed period;

(b) in respect of which no transaction has taken place and no statement of account has been requested or acknowledged by the creditor, in the case of any other deposit; and

(c) in respect of which the instrument has remained unpaid, in the case of a cheque, draft or bill of exchange.

1991, c. 46, ss. 558, 580; 1996, c. 6, s. 20; 1999, c. 28, s. 35.

Interest and Charges

Accounts Account charges

559. An authorized foreign bank shall not, directly or indirectly, charge or receive any sum for the keeping of an account unless the charge is made by express agreement between the authorized foreign bank and a customer or by order of a court.

1991, c. 46, s. 559; 1997, c. 15, s. 90; 1999, c. 28, s. 35.

Disclosure on opening account

560. (1) An authorized foreign bank shall not open or maintain an interest-bearing deposit account in Canada in the name of any natural person unless it discloses, in accordance with the regulations, to the person who requests the opening of the account, the rate of interest applicable to the account and how the amount of interest to be paid is to be calculated.

Exception

(2) Subsection (1) does not apply in respect of an interest-bearing deposit account that is opened with a balance in excess of one hundred thousand dollars or any greater amount that is prescribed.

1991, c. 46, s. 560; 1999, c. 28, s. 35.

Disclosure in advertisements

561. No person shall authorize the publication, issue or appearance of any advertisement in Canada that indicates the rate of interest offered by an authorized foreign bank on an interest-bearing deposit or a debt obligation unless the advertisement discloses, in accordance with the regulations, how the amount of interest is to be calculated.

1991, c. 46, s. 561; 1999, c. 28, s. 35.

Disclosure regulations

562. The Governor in Council may make regulations respecting

(a) the manner in which and the time at which disclosure is to be made by an authorized foreign bank of

(i) interest rates applicable to debts of the authorized foreign bank and deposits with it, and

(ii) the manner in which the amount of interest paid is to be calculated; and

(b) any other matters or things that may be necessary to carry out the requirements of sections 560 and 561.

1991, c. 46, s. 562; 1999, c. 28, s. 35.

Definition of "personal deposit account"

563. For the purposes of sections 564 to 566, "personal deposit account" means a deposit account in the name of one or more natural persons that is kept by that person or those persons for a purpose other than that of carrying on business.

1991, c. 46, s. 563; 1999, c. 28, s. 35.

Disclosure required on opening a deposit account

564. (1) Subject to subsection (2), an authorized foreign bank shall not open a deposit account in the name of a customer unless, at or before the time the account is opened, it provides the individual who requests the opening of the account with

- (a) a copy of the account agreement;
- (b) information about all charges applicable to the account;
- (c) information about how the customer will be notified of any increase in those charges and of any new charges applicable to the account;
- (d) information about the authorized foreign bank's procedures relating to complaints about the application of any charge applicable to the account; and
- (e) any other information that may be prescribed.

Exception

(2) Where a deposit account is not a personal deposit account and the amount of a charge applicable to the account cannot be established at or before the time the account is opened, the authorized foreign bank shall, as soon as is practicable after the amount is established, provide the customer in whose name the account is kept with a notice of the amount of the charge.

Manner of providing information

(3) The agreement or information to be provided under subsection (1) or (2) shall be provided in writing or in any manner that may be prescribed.

Information can be obtained in writing

(4) Whether or not the manner of providing the agreement or information is prescribed under subsection (3), the manner of providing the agreement or information to the individual shall be to provide it in writing if, at or before the time the account is opened, the individual requests the authorized foreign bank to provide it in writing.

Individual to be informed

(5) At or before the time the account is opened, the authorized foreign bank shall inform the individual that the agreement and the information will be provided in writing at the individual's request.

1991, c. 46, s. 564; 1999, c. 28, s. 35.

Disclosure of charges

565. An authorized foreign bank shall disclose, in the prescribed manner and at the prescribed time, to its customers and to the public, the charges applicable to deposit accounts with the authorized foreign bank and the usual amount, if any, charged by it for services normally provided to its customers and to the public.

1991, c. 46, s. 565; 1997, c. 15, s. 91; 1999, c. 28, s. 35.

No increase or new charges without disclosure

566. (1) An authorized foreign bank shall not increase any charge applicable to a personal deposit account with the authorized foreign bank or introduce any new charge applicable to a personal deposit account with the authorized foreign bank unless it discloses the charge in the prescribed manner and at the prescribed time to the customer in whose name the account is kept.

Mandatory disclosure

(2) An authorized foreign bank shall not increase any charge for any service that is prescribed in relation to a deposit account, other than a personal deposit account, with the authorized foreign bank, or introduce any new charge for any of those services unless the authorized foreign bank discloses the charge in the prescribed manner and at the prescribed time to the customer in whose name the account is kept.

1991, c. 46, s. 566; 1997, c. 15, s. 92; 1999, c. 28, s. 35.

Borrowing Costs

Definition of "cost of borrowing"

567. For the purposes of this section and sections 568 to 574, "cost of borrowing" means, in respect of a loan made by an authorized foreign bank,

- (a) the interest or discount applicable to the loan; and
- (b) any charges in connection with the loan that are payable by the borrower to the authorized foreign bank or to any person from whom the authorized foreign bank receives any charges directly or indirectly and that are prescribed to be included in the cost of borrowing.

1991, c. 46, s. 567; 1997, c. 15, s. 93; 1999, c. 28, s. 35.

Disclosing borrowing costs

568. (1) An authorized foreign bank shall not make a loan to a natural person that is repayable in Canada unless the cost of borrowing, as calculated and expressed in accordance with section 569, has, in the prescribed manner, been disclosed by the authorized foreign bank or otherwise as prescribed to the borrower at or before the time when the loan is made.

Non-application

(2) Subsection (1) does not apply in respect of

- (a) a loan in excess of two hundred and fifty thousand dollars or any other amount that may be prescribed, where the loan is secured by a mortgage on real property;
- (b) a loan in excess of one hundred thousand dollars or any other amount that may be prescribed, where the loan is not secured by a mortgage on real property; or
- (c) a loan that is one of a prescribed class of loans.

1991, c. 46, s. 568; 1999, c. 28, s. 35.

Calculating borrowing costs

569. The cost of borrowing shall be calculated, in the prescribed manner, on the basis that all obligations of the borrower are duly fulfilled and shall be expressed as a rate per annum and, in prescribed circumstances, as an amount in dollars and cents.

1991, c. 46, s. 569; 1999, c. 28, s. 35.

Additional disclosure

570. (1) Where an authorized foreign bank makes a loan in respect of which the disclosure requirements of section 568 are applicable and the loan is required to be repaid either on a fixed future date or by instalments, the authorized foreign bank shall disclose to the borrower, in accordance with the regulations,

(a) whether the borrower has the right to repay the amount borrowed before the maturity of the loan and, if applicable,

(i) particulars of the circumstances in which the borrower may exercise that right, and

(ii) whether, in the event that the borrower exercises the right, any portion of the cost of borrowing is to be rebated, the manner in which the rebate is to be calculated or, if a charge or penalty will be imposed on the borrower, the manner in which the charge or penalty is to be calculated; and

(b) in the event that an amount borrowed is not repaid at maturity or, if applicable, an instalment is not paid on the day the instalment is due to be paid, particulars of the charges or penalties to be paid by the borrower because of the failure to repay or pay in accordance with the contract governing the loan.

Disclosure re charge cards

(2) In addition to disclosing the costs of borrowing and any charges or penalties described in paragraph (1)(b) in respect of any loan obtained through the use of a payment, credit or charge card, an authorized foreign bank that issues one of those cards in Canada to a natural person shall, in accordance with the regulations, disclose to the person particulars of the person's rights and obligations and any charges for which the person is responsible by reason of accepting or using the card.

1991, c. 46, s. 570; 1999, c. 28, s. 35.

Disclosure in advertising

571. No person shall authorize the publication, issue or appearance of any advertisement in Canada relating to loans offered to natural persons by an authorized foreign bank and purporting to indicate a rate of interest or other charges to be paid by the borrower, unless the advertisement discloses the cost of borrowing in accordance with the regulations.

1991, c. 46, s. 571; 1999, c. 28, s. 35.

Regulations re borrowing costs

572. The Governor in Council may make regulations

- (a) respecting the manner in which and the time at which the cost of borrowing and any rebate of the cost of borrowing are to be disclosed by an authorized foreign bank to a borrower;
- (b) respecting the manner of calculating the cost of borrowing;
- (c) respecting the circumstances under which the cost of borrowing is to be expressed as an amount in dollars and cents;
- (d) specifying any class of loans that are not to be subject to subsection 568(1) or 570(1) or section 571 or the regulations or any specified provisions of the regulations;
- (e) respecting the manner in which and the time at which any rights, obligations, charges or penalties referred to in sections 568 to 571 are to be disclosed;
- (f) prohibiting the imposition of any charge or penalty referred to in sections 570 and 571 or providing that the charge or penalty, if imposed, will not exceed a prescribed amount;
- (g) respecting the method of calculating the amount of rebate of the cost of borrowing, or the portion of the cost of borrowing referred to in subparagraph 570(1)(a)(ii); and
- (h) respecting any other matters or things that are necessary to carry out the purposes of sections 568 to 571.

1991, c. 46, s. 572; 1999, c. 28, s. 35.

Procedures for dealing with complaints

573. (1) An authorized foreign bank shall

- (a) establish procedures for dealing with complaints made by its customers about the application of charges applicable to deposit accounts or payment, credit or charge cards with the authorized foreign bank or the disclosure of or manner of calculating the cost of borrowing in respect of a loan made by the authorized foreign bank;
- (b) designate one of its officers or employees in Canada to be responsible for implementing those procedures; and
- (c) designate one or more of its officers or employees in Canada to receive and deal with those complaints.

Procedures to be filed with Superintendent

(2) An authorized foreign bank shall file with the Superintendent a copy of the procedures it establishes pursuant to subsection (1).

1991, c. 46, s. 573; 1999, c. 28, s. 35.

Contacting Superintendent

574. (1) An authorized foreign bank shall, in the prescribed manner, provide its customers who have complaints with respect to their deposit accounts or payment, credit or charge cards or the disclosure of or manner of calculating the cost of borrowing in respect of a loan with prescribed information on how they may contact the Office of the Superintendent of Financial Institutions.

Report

(2) The Superintendent shall prepare a report, to be included in the report referred to in section 25 of the Office of the Superintendent of Financial Institutions Act, respecting complaints referred to in subsection (1) of customers who have exhausted the complaint procedures established by authorized foreign banks pursuant to paragraph 573(1)(a) and who have contacted the Superintendent with respect to their complaints.

Contents of report

(3) The report shall include information respecting the complaint procedures established by authorized foreign banks under paragraph 573(1)(a), the role of the Superintendent respecting complaints and the number, nature and disposition of the complaints.

1991, c. 46, s. 574; 1999, c. 28, s. 35.

Miscellaneous

Prepayment protected

575. (1) An authorized foreign bank shall not make a loan to a natural person that is repayable in Canada, the terms of which prohibit prepayment of the money advanced or any instalment on the money advanced before its due date.

Minimum balance

(2) Except by express agreement between the authorized foreign bank and the borrower, the making in Canada of a loan or advance by an authorized foreign bank to a borrower shall not be subject to a condition that the borrower maintain a minimum credit balance with the authorized foreign bank.

Non-application of subsection (1)

(3) Subsection (1) does not apply in respect of a loan

(a) that is secured by a mortgage on real property; or

(b) the principal amount of which is in excess of one hundred thousand dollars or any other amount that may be prescribed.

Government cheques

(4) An authorized foreign bank shall not make a charge

(a) for cashing a cheque or other instrument drawn on the Receiver General or on the Receiver General's account in the Bank of Canada, or in any bank or other deposit-taking Canadian financial institution incorporated by or under an Act of Parliament or in any authorized foreign bank that is not subject to the restrictions and requirements referred to in subsection 524(2), in respect of its business in Canada;

(b) for cashing any other instrument issued as authority for the payment of money out of the Consolidated Revenue Fund; or

(c) in respect of any cheque or other instrument that is

(i) drawn in favour of the Receiver General, the Government of Canada or any department of the Government of Canada or any public officer acting in the capacity of a public officer, and

(ii) tendered for deposit to the credit of the Receiver General.

Deposits of Government of Canada

(5) Nothing in subsection (4) precludes any arrangement between the Government of Canada and an authorized foreign bank concerning

(a) compensation for services performed by the authorized foreign bank for the Government of Canada; or

(b) interest to be paid on any or all deposits of the Government of Canada with the authorized foreign bank.

1991, c. 46, s. 575; 1999, c. 28, s. 35.

Regulations re customer information

576. The Governor in Council may make regulations

- (a) requiring an authorized foreign bank to establish procedures regarding the collection, retention, use and disclosure of information about its customers or any class of its customers;
- (b) requiring an authorized foreign bank to establish procedures for dealing with complaints made by a customer about the collection, retention, use or disclosure of information about the customer;
- (c) respecting the disclosure by an authorized foreign bank of information relating to the procedures referred to in paragraphs (a) and (b);
- (d) requiring an authorized foreign bank to designate officers and employees in Canada of the authorized foreign bank who are responsible for
 - (i) implementing the procedures referred to in paragraph (b), and
 - (ii) receiving and dealing with complaints made by a customer of the authorized foreign bank about the collection, retention, use or disclosure of information about the customer;
- (e) requiring an authorized foreign bank to report information relating to
 - (i) complaints made by its customers about the collection, retention, use or disclosure of information, and
 - (ii) the actions taken by the authorized foreign bank to deal with the complaints; and
- (f) defining "information", "collection" and "retention" for the purposes of paragraphs (a) to (e) and the regulations made under those paragraphs.

1991, c. 46, s. 576; 1999, c. 28, s. 35.

Restriction on tied selling

576.1 (1) An authorized foreign bank shall not impose undue pressure on, or coerce, a person to obtain a product or service from a particular person, including the authorized foreign bank and any of its affiliates, as a condition for obtaining a loan from the authorized foreign bank.

Favourable loan tied to other sale

(2) For greater certainty, an authorized foreign bank may offer to make a loan to a person on more favourable terms or conditions than the authorized foreign bank would otherwise offer to a

borrower, where the more favourable terms and conditions are offered on the condition that the person obtain another product or service from any particular person.

Favourable other sale tied to loan

(3) For greater certainty, an authorized foreign bank or one of its affiliates may offer a product or service to a person on more favourable terms or conditions than the authorized foreign bank or affiliate would otherwise offer, where the more favourable terms and conditions are offered on the condition that the person obtain a loan from the authorized foreign bank.

Approval

(4) An authorized foreign bank may require that a product or service obtained by a borrower from a particular person as security for a loan from the authorized foreign bank meet with the authorized foreign bank's approval. The approval shall not be unreasonably withheld.

Regulations

(5) The Governor in Council may make regulations

(a) specifying types of conduct or transactions that shall be considered undue pressure or coercion for the purpose of subsection (1); and

(b) specifying types of conduct or transactions that shall be considered not to be undue pressure or coercion for the purpose of subsection (1).

1999, c. 28, s. 35.

Transmission in case of death

577. (1) Where the transmission of a debt owing by an authorized foreign bank by reason of a deposit, of property held by an authorized foreign bank as security or for safe-keeping or of rights with respect to a safety deposit box and property deposited in it takes place because of the death of a person, the delivery to the authorized foreign bank of the following is sufficient justification and authority for giving effect to the transmission in accordance with the claim:

(a) an affidavit or declaration in writing in form satisfactory to the authorized foreign bank signed by or on behalf of a person claiming by virtue of the transmission stating the nature and effect of the transmission; and

(b) one of the following, namely,

(i) if the claim is based on a will or other testamentary instrument or on a grant of probate of a will or testamentary instrument or on such a grant and letters testamentary or other document of like import or on a grant of letters of administration or other document of like import, purporting

to be issued by any court or authority in Canada or elsewhere, an authenticated copy or certificate of the document under the seal of the court or authority without proof of the authenticity of the seal or other proof, or

(ii) if the claim is based on a notarial will, an authenticated copy of the notarial will.

Evidence of transmission

(2) Nothing in subsection (1) shall be construed to prevent an authorized foreign bank from refusing to give effect to a transmission until there has been delivered to the authorized foreign bank any documentary or other evidence of or in connection with the transmission that it may consider necessary.

1991, c. 46, s. 577; 1999, c. 28, s. 35.

Branch of account with respect to deposits

578. (1) For the purposes of this Act, the branch of account with respect to a deposit account is

(a) the branch the address or name of which appears on the specimen signature card or other signing authority signed by a depositor with respect to the deposit account or that is designated by agreement between the authorized foreign bank and the depositor at the time of opening of the deposit account; or

(b) if no branch has been identified or agreed on as provided in paragraph (a), the branch that is designated as the branch of account with respect to the deposit account by the authorized foreign bank by notice in writing to the depositor.

Where debt payable

(2) The amount of any debt owing by an authorized foreign bank by reason of a deposit in a deposit account in the authorized foreign bank is payable to the person entitled to the amount only at the branch of account and the person is not entitled to demand payment or to be paid at any other branch of the authorized foreign bank.

Exception where authorization

(3) Notwithstanding subsection (2), an authorized foreign bank may permit either occasionally or as a regular practice, the person to whom it is indebted by reason of a deposit in a deposit account in the authorized foreign bank to withdraw money owing by reason of the deposit at a branch of the authorized foreign bank other than the branch of account or to draw cheques or other orders for the payment of the money at a branch other than the branch of account.

Situs of indebtedness

(4) The indebtedness of an authorized foreign bank by reason of a deposit in a deposit account in the authorized foreign bank is deemed for all purposes to be situated at the place where the branch of account is situated.

Non-application of subsection (2)

(5) Subsection (2) does not apply where the business in Canada of the authorized foreign bank is being wound up under the Winding-up and Restructuring Act.

1991, c. 46, s. 578; 1999, c. 28, s. 35.

Effect of writ, etc.

579. (1) A writ or process originating a legal proceeding or issued in, or in pursuance of, a legal proceeding, or an order or injunction made by a court or a notice by any person purporting to assign, perfect or otherwise dispose of an interest in any property or in any deposit account affects and binds only property in the possession of an authorized foreign bank belonging to a person at the branch where the writ, process, order, injunction or notice or notice of any of those documents is served and, in the case of a deposit account in an authorized foreign bank, affects only money owing to a person by reason of the deposit account if the branch on which the writ, process, order, injunction or notice or notice of any of those documents is served is the branch of account in respect of the deposit account.

Notices

(2) Any notification sent to an authorized foreign bank with respect to a customer of the authorized foreign bank, other than a document referred to in subsection (1), constitutes notice to the authorized foreign bank and fixes it with knowledge of the contents of the notification only if sent to and received at the branch of the authorized foreign bank that is the branch of account of an account held by the authorized foreign bank in the name of that customer.

1991, c. 46, s. 579; 1999, c. 28, s. 35.

Deemed loan

580. For the purposes of sections 425 to 436, as incorporated by section 555, where an authorized foreign bank accepts a bill of exchange drawn on it and not payable on demand or pays or makes money available for the payment of such a bill of exchange, or issues a guarantee, or otherwise makes a promise to effect a payment, the authorized foreign bank is deemed to lend money or make an advance.

1991, c. 46, s. 580; 1999, c. 28, s. 35.

Investment standards

581. An authorized foreign bank shall establish and adhere to investment and lending policies, standards and procedures 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.

1991, c. 46, s. 581; 1999, c. 28, s. 35.

Deposit Requirements

Requirement to maintain assets on deposit

582. (1) An authorized foreign bank shall maintain on deposit in Canada with a Canadian financial institution approved by the Superintendent 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) shall equal

(a) in the case of an authorized foreign bank that is subject to the restrictions and requirements referred to in subsection 524(2), one hundred thousand dollars; and

(b) in any other case, the greater of

(i) ten million dollars, and

(ii) five per cent of the liabilities of the authorized foreign bank in respect of its business in Canada.

Deposit agreement

(2) The assets referred to in subsection (1) shall be kept with the Canadian financial institution pursuant to a deposit agreement entered into with the prior approval of the Superintendent.

1991, c. 46, s. 582; 1999, c. 28, s. 35.

Financial Year

Financial year

583. (1) The financial year of an authorized foreign bank in respect of its business in Canada may end on any of March 31, June 30, September 30 or December 31.

First financial year

(2) If the first financial year of an authorized foreign bank would end less than four months after the authorized foreign bank has obtained an order under subsection 534(1) approving the

commencement and carrying on of business in Canada, the first financial year of the authorized foreign bank ends on March 31, June 30, September 30 or December 31, as the case may be, in the next calendar year.

1991, c. 46, s. 583; 1999, c. 28, s. 35.

Auditors

Interpretation

Definitions

584. In sections 585 to 596, the expressions "firm of accountants" and "member" have the meanings assigned to those expressions by section 313.

1991, c. 46, s. 584; 1999, c. 28, s. 35.

Appointment

Appointment of auditor

585. (1) An authorized foreign bank shall appoint a firm of accountants as auditor for its business in Canada and shall notify the Superintendent in writing of the name and address and date of appointment of the auditor without delay after making the appointment.

Qualification of auditor

(2) A firm of accountants is qualified to be an auditor if

(a) two or more of its members are accountants who

(i) are members in good standing of an institute or association of accountants incorporated by or under an Act of the legislature of a province,

(ii) have at least five years experience at a senior level in performing audits of a financial institution,

(iii) are ordinarily resident in Canada, and

(iv) are independent of the authorized foreign bank; and

(b) the member of the firm jointly designated by the firm and the authorized foreign bank to conduct the audit of the authorized foreign bank on behalf of the firm is qualified in accordance with paragraph (a).

Independence

(3) For the purposes of subsection (2),

(a) independence is a question of fact; and

(b) a member of a firm of accountants is deemed not to be independent of an authorized foreign bank if that member, the firm or any other member of the firm

(i) is a director, officer or employee of the authorized foreign bank or of any of its affiliates or is a business partner of any of those directors, officers or employees,

(ii) beneficially owns or controls, directly or indirectly, a material interest in the shares of the authorized foreign bank or of any of its affiliates, or

(iii) has been a liquidator, trustee in bankruptcy, receiver or receiver and manager of any affiliate of the authorized foreign bank within the two years immediately preceding the proposed appointment of the firm of accountants as auditor, other than an affiliate that is a subsidiary of the authorized foreign bank acquired pursuant to subsection 519(2).

Notice of designation

(4) Within fifteen days after the appointment of a firm of accountants as auditor, the authorized foreign bank and the firm shall jointly designate a member of the firm who meets the qualifications described in paragraph (2)(a) to conduct an audit under subsection 592(1) on behalf of the firm and shall without delay notify the Superintendent in writing of the designation.

New designation

(5) Where for any reason the member designated under subsection (4) to conduct an audit ceases to conduct the audit, the authorized foreign bank and the firm of accountants may jointly designate another member of the same firm who meets the qualifications described in paragraph (2)(a) to conduct the audit and the authorized foreign bank shall without delay notify the Superintendent in writing of the designation.

Deemed vacancy

(6) In any case where subsection (5) applies and a designation is not made pursuant to that subsection within thirty days after the designated member ceases to conduct the audit, there shall be deemed to be a vacancy in the office of auditor of the authorized foreign bank.

1991, c. 46, s. 585; 1999, c. 28, s. 35.

Disqualification of auditor

586. (1) An auditor that ceases to be qualified under subsection 585(2) shall resign without delay after any member of the firm of accountants becomes aware that the firm has ceased to be qualified.

Disqualification order

(2) Any interested person may apply to a court for an order declaring that an authorized foreign bank's auditor has ceased to be qualified under subsection 585(2) and declaring the office of auditor to be vacant.

1991, c. 46, s. 586; 1999, c. 28, s. 35.

Revocation of appointment

587. (1) An authorized foreign bank may at any time revoke the appointment of its auditor.

Revocation by Superintendent

(2) The Superintendent may at any time revoke the appointment of an auditor made under subsection 585(1) or 589(1) by notice in writing signed by the Superintendent and sent by registered mail to the auditor and to the principal officer of the authorized foreign bank addressed to the usual place of business of the auditor and to the principal office of the authorized foreign bank, respectively.

1991, c. 46, s. 587; 1999, c. 28, s. 35.

Ceasing to hold office

588. (1) An auditor ceases to hold office when

(a) the auditor resigns; or

(b) the appointment of the auditor is revoked by the authorized foreign bank or the Superintendent.

Effective date of resignation

(2) The resignation of an auditor becomes effective at the time a written resignation is sent to the authorized foreign bank or at the time specified in the resignation, whichever is later.

1991, c. 46, s. 588; 1999, c. 28, s. 35.

Filling vacancy

589. (1) Where a vacancy occurs in the office of auditor of an authorized foreign bank under any of sections 585 to 588, the authorized foreign bank shall without delay fill the vacancy and, where it fails to do so, the Superintendent may fill the vacancy.

Designation of member of firm

(2) Where the Superintendent has appointed a firm of accountants to fill a vacancy, the Superintendent shall designate the member of the firm who is to conduct the audit on behalf of the firm.

1991, c. 46, s. 589; 1999, c. 28, s. 35.

Statement of auditor

590. An auditor of an authorized foreign bank who (a) resigns, or

(b) receives a notice or otherwise learns that another person is to be appointed in the auditor's stead, whether because of the auditor's resignation or revocation of appointment or because the auditor's term of office has expired or is about to expire,

shall submit to the principal officer of the authorized foreign bank and the Superintendent a written statement giving the reasons for the resignation or the reasons why the auditor opposes any proposed action.

1991, c. 46, s. 590; 1999, c. 28, s. 35.

Duty of replacement auditor

591. (1) Where an auditor of an authorized foreign bank has resigned or the appointment of an auditor has been revoked, no firm of accountants shall accept an appointment or consent to be appointed as auditor of the authorized foreign bank until the firm has requested and received from the other auditor a written statement of the circumstances and reasons why the other auditor resigned or why, in the other auditor's opinion, the other auditor's appointment was revoked.

Exception

(2) Notwithstanding subsection (1), a firm of accountants may accept an appointment or consent to be appointed as auditor of an authorized foreign bank if, within fifteen days after a request under that subsection is made, no reply from the other auditor is received.

Effect of non-compliance

(3) Unless subsection (2) applies, an appointment as auditor of an authorized foreign bank is void if subsection (1) has not been complied with.

1991, c. 46, s. 591; 1999, c. 28, s. 35.

Examinations and Reports

Examination of annual return

592. (1) The auditor of an authorized foreign bank shall make any examination that the auditor considers necessary to enable the auditor to report on the annual return.

Auditing standards

(2) The auditor's examination shall, except as otherwise specified by the Superintendent, be conducted in accordance with the auditing standards referred to in subsection 323(2).

Filing

(3) The auditor's report shall be filed with the Superintendent within five months after the end of the financial year of the authorized foreign bank.

Report to Superintendent and extended examination

(4) The Superintendent may, in writing, require that an authorized foreign bank's auditor report to the Superintendent on the extent of the auditor's procedures in the examination of the authorized foreign bank's annual return and may, in writing, require that the auditor enlarge or extend the scope of that examination or direct that any other particular procedure be performed in any particular case, and the auditor shall comply with any requirement of the Superintendent and report to the Superintendent on it.

Special examination

(5) The Superintendent may, in writing, require that the auditor of the authorized foreign bank make a particular examination relating to the adequacy of the procedures adopted by the authorized foreign bank in respect of its business in Canada for the safety of its depositors and creditors, or any other examination that, in the Superintendent's opinion, the public interest may require, and report to the Superintendent on it.

Special audit

(6) The Superintendent may direct that a special audit or report be made if, in the opinion of the Superintendent, it is so required and may appoint for that purpose a firm of accountants qualified under subsection 585(2) to be the auditor.

Expenses payable by authorized foreign bank

(7) The expenses entailed by any examination, audit or report referred to in any of subsections (4) to (6) are payable by the authorized foreign bank on being approved in writing by the Superintendent.

1991, c. 46, s. 592; 1999, c. 28, s. 35.

Right to information

593. (1) On the request of the auditor of an authorized foreign bank, the present or former principal officers, directors, officers, employees or representatives of the authorized foreign bank shall, to the extent that they are reasonably able to do so,

(a) permit access to any records, assets and security held by the authorized foreign bank, or any entity in which the authorized foreign bank has a substantial investment under Part XII, and

(b) provide any information and explanations

that are, in the opinion of the auditor, necessary to enable the auditor to perform the duties of auditor of the authorized foreign bank.

No civil liability

(2) A person who in good faith makes an oral or written communication under subsection (1) shall not be liable in any civil action arising from having made the communication.

1991, c. 46, s. 593; 1999, c. 28, s. 35.

Auditor's report to principal officer

594. (1) The auditor of an authorized foreign bank shall make a report to the principal officer of the authorized foreign bank in writing on the annual return not later than sixty days after the end of the financial year in respect of which the annual return is prepared.

Auditor's opinion

(2) In the report, the auditor shall state whether, in the auditor's opinion, the annual return presents fairly, in accordance with the accounting principles referred to in subsection 308(4), the

financial position of the business in Canada of the authorized foreign bank as at the end of the financial year to which it relates and the results of the operations and changes in the financial position of the business in Canada of the authorized foreign bank for that financial year.

Auditor's remarks

(3) In the report, the auditor shall include any remarks that the auditor considers necessary when

(a) the examination has not been made in accordance with the auditing standards referred to in subsection 592(2);

(b) the annual return has not been prepared on a basis consistent with that of the preceding financial year; or

(c) the annual return does not present fairly, in accordance with the accounting principles referred to in subsection 308(4), the financial position of the business in Canada of the authorized foreign bank as at the end of the financial year to which it relates or the results of the operations or changes in the financial position of the authorized foreign bank for that financial year.

1991, c. 46, s. 594; 1999, c. 28, s. 35.

Additional reports to principal officer

595. (1) It is the duty of the auditor of an authorized foreign bank to report in writing to the principal officer of the authorized foreign bank any transactions or conditions in respect of the business in Canada of the authorized foreign bank that have come to the auditor's attention affecting the well-being of the authorized foreign bank that in the auditor's opinion are not satisfactory and require rectification and, without restricting the generality of the foregoing, the auditor shall, as occasion requires, make a report to the principal officer in respect of transactions in respect of the business in Canada of the authorized foreign bank that have come to the auditor's attention and that in the auditor's opinion have not been within the powers of the authorized foreign bank.

Transmission of report

(2) The auditor shall, at the time of transmitting the report to the principal officer, provide the Superintendent with a copy of it.

1991, c. 46, s. 595; 1999, c. 28, s. 35.

Qualified privilege for statements

596. Any oral or written statement or report made under this Act by the auditor or a former auditor of an authorized foreign bank has qualified privilege.

1991, c. 46, s. 596; 1999, c. 28, s. 35.

Records

Records

597. (1) An authorized foreign bank shall prepare and maintain

(a) records containing copies of all orders of the Minister or the Superintendent in relation to the authorized foreign bank;

(b) original accounting records respecting its business in Canada;

(c) with respect to its business in Canada, records showing, for each of its customers, on a daily basis, particulars of the transactions with that customer and the balance owing to or by the authorized foreign bank in respect of that customer;

(d) records containing information set out in Schedule III, as that information exists from time to time, in relation to the authorized foreign bank; and

(e) records containing the name, address and date of appointment of the authorized foreign bank's auditor.

Place of records

(2) The records described in subsection (1) shall be kept at the principal office of the authorized foreign bank or at any other place in Canada that its principal officer thinks fit.

Notice of place of records

(3) Where any of the records described in subsection (1) are not kept at the principal office of an authorized foreign bank, the authorized foreign bank shall notify the Superintendent of the place where they are kept.

Form of records

(4) Records required by this Act to be prepared and maintained by an authorized foreign bank

(a) may be in a bound or loose-leaf form or in a photographic film form; or

(b) may be entered or recorded by any system of mechanical or electronic data processing or any other information storage device that is capable of reproducing any required information in intelligible written form within a reasonable time.

Conversion of records

(5) Records kept in one form may be converted to any other form and, notwithstanding section 246, an authorized foreign bank may destroy the record at any time after it has been converted.

Access to records

(6) Creditors in respect of the business in Canada of an authorized foreign bank and their personal representatives may examine a record referred to in any of paragraphs (1)(a), (d) or (e) during the usual business hours of the authorized foreign bank, and may take extracts from it, free of charge, or have copies made of it on payment of a reasonable fee.

1991, c. 46, s. 597; 1999, c. 28, s. 35.

Application of sections 244 to 247

598. Section 244, subsections 245(1), (2) and (4) to (7) and sections 246 and 247 apply, with any modifications that the circumstances require, to an authorized foreign bank as if

(a) the reference in subsection 245(1) to "records referred to in section 238" were a reference to "records referred to in section 597"; and

(b) the reference in subsection 246(1) to "records of the bank referred to in subsection 238(1)" were a reference to "records of the authorized foreign bank referred to in subsection 597(1)".

1991, c. 46, s. 598; 1999, c. 28, s. 35.

Termination of Business in Canada

Release of assets in Canada

599. (1) An authorized foreign bank that discontinues its business in Canada may apply in writing to the Superintendent for the release of its assets maintained on deposit under paragraph 534(3)(a) or subsection 582(1).

Conditions of release

(2) Except as otherwise provided in this Act, the assets may not be released unless

(a) the authorized foreign bank discharges, provides for the discharge of, or transfers, all its liabilities in respect of its business in Canada to a bank, to another authorized foreign bank in respect of its business in Canada or to a body corporate to which the Trust and Loan Companies Act applies; and

(b) the authorized foreign bank provides the Superintendent with proof of the publication, for four consecutive weeks, in at least one newspaper of general circulation at or near the place where the principal office of the authorized foreign bank is situated and the Canada Gazette of a notice that it will apply to the Superintendent for the release of its assets on a day specified in the notice, which must be at least six weeks after the date of the notice, and calling on any of its depositors or creditors opposing that release to file their opposition with the Superintendent on or before the day.

Superintendent may release assets

(3) After the day specified in the notice, the Superintendent may authorize the release of the assets if the Superintendent is satisfied that the authorized foreign bank has discharged, provided for the discharge of, or transferred, all of its liabilities in respect of its business in Canada.

Release of assets to liquidator

(4) Notwithstanding subsections (1) to (3), the assets on deposit of an authorized foreign bank that is in liquidation may, on the order of any court having jurisdiction under the Winding-up and Restructuring Act, be released to the liquidator.

Order deemed to be revoked

(5) An order made under subsection 524(1), 528(1) or 534(1) in respect of an authorized foreign bank is deemed to be revoked when the Superintendent authorizes the release of the assets of the authorized foreign bank under subsection (3).

1991, c. 46, s. 599; 1999, c. 28, s. 35.

Supervision Returns Required information

600. An authorized foreign bank shall provide the Superintendent with any information, at the times and in the form, that the Superintendent may require.

1991, c. 46, s. 600; 1999, c. 28, s. 35.

Annual return

601. (1) An authorized foreign bank, in respect of its business in Canada, shall prepare annually a return of the condition and affairs of the authorized foreign bank as at the end of each financial year, showing its assets and liabilities and its income and expenditures during that financial year together with any other information that the Superintendent considers appropriate.

Form and filing of annual return

(2) The annual return shall be in the form that the Superintendent determines and shall be filed with the Superintendent on or before sixty days after the end of the financial year in respect of which it is prepared.

Accounting principles

(3) The annual return shall be prepared in accordance with the accounting principles referred to in subsection 308(4).

1991, c. 46, s. 601; 1999, c. 28, s. 35.

Report of unclaimed deposits

602. (1) An authorized foreign bank shall, within sixty days after the end of each calendar year, provide the Superintendent with a return, in the form that the Superintendent may determine, as of the end of that calendar year, in respect of all deposits made with it in Canada in Canadian currency for which no transaction has taken place and no statement of account has been requested or acknowledged by the depositors during a period of nine years or more.

Period

(2) The period referred to in subsection (1) shall be calculated

(a) in the case of a deposit made for a fixed period, from the day on which the fixed period terminated until the date of the return; and

(b) in the case of any other deposit, from the day on which the last transaction took place or a statement of account was last requested or acknowledged by the depositor, whichever is later, until the date of the return.

Content of return

(3) The return shall show, in so far as is known to the authorized foreign bank,

(a) the name of each depositor in whose name each deposit is held;

(b) the recorded address of each of those depositors;

(c) the outstanding amount of each deposit; and

(d) the branch of the authorized foreign bank at which the last transaction took place in respect of the deposit, and the date of the transaction.

Amounts under one hundred dollars

(4) Where the total outstanding amount of deposits in the name of a depositor is less than one hundred dollars, the authorized foreign bank may omit from the return the particulars in respect of the deposits required by subsection (3).

1991, c. 46, s. 602; 1999, c. 28, s. 35.

Return on unclaimed bills of exchange

603. (1) An authorized foreign bank shall, within sixty days after the end of each calendar year, provide the Superintendent with a return, in the form that the Superintendent may determine, as of the end of that calendar year, in respect of all negotiable instruments (including instruments drawn by one branch of the authorized foreign bank on another of its branches but not including instruments issued in payment of a dividend on the capital of the authorized foreign bank) payable in Canada in Canadian currency that have been issued, certified or accepted by the authorized foreign bank at branches of the authorized foreign bank and for which no payment has been made for a period of nine years or more calculated from the date of issue, certification, acceptance or maturity, whichever is the latest, until the date of the return.

Content of return

(2) The return shall show, in so far as is known to the authorized foreign bank,

- (a) the name of each person to whom or at whose request each instrument was issued, certified or accepted;
- (b) the recorded address of each of those persons;
- (c) the name of the payee of each instrument;
- (d) the amount and date of each instrument;
- (e) the name of the place where each instrument was payable; and
- (f) the branch of the authorized foreign bank at which each instrument was issued, certified or accepted.

Amounts under one hundred dollars

(3) Where the amount of an instrument is less than one hundred dollars, the authorized foreign bank may omit from the return the particulars required by subsection (2) in respect of the instrument.

Money orders

(4) An authorized foreign bank may omit from a return the particulars required by subsection (2) in respect of any money order in respect of which subsection (1) applies.

1991, c. 46, s. 603; 1999, c. 28, s. 35.

Total to be reported

604. Where an authorized foreign bank, pursuant to subsection 602(4) or 603(3) or (4), omits from a return required by subsection 602(1) or 603(1) the particulars of any deposit or instrument, the total of the amounts of all deposits or instruments that have been so omitted shall be reported in the return.

1991, c. 46, s. 604; 1999, c. 28, s. 35.

Production of information and documents

605. (1) The Superintendent may, by order, direct a person who controls an authorized foreign bank or any entity that is affiliated with an authorized foreign bank to provide the Superintendent with any information or documents that may be specified in the order if the Superintendent believes that the production of the information or documents is necessary in order to be satisfied that the provisions of this Act are being duly observed.

Time

(2) A person to whom an order is issued shall provide the information or documents specified in the order within the time specified in the order and, where the order does not specify a time, the person shall provide the information or documents within a reasonable time.

Exemption

(3) Subsection (1) does not apply in respect of an entity that is affiliated with an authorized foreign bank where that entity is a financial institution regulated

(a) by or under an Act of Parliament; or

(b) by or under an Act of the legislature of a province where the Superintendent has entered into an agreement with the appropriate official or public body responsible for the supervision of financial institutions in that province concerning the sharing of information on those financial institutions.

1991, c. 46, s. 605; 1999, c. 28, s. 35.

Confidential information

606. (1) Subject to sections 608 and 609, all information regarding the business or affairs of an authorized foreign bank or persons dealing with an authorized foreign bank that is obtained by the Superintendent, or by any person acting under the direction of the Superintendent, as a result of the administration or enforcement of any Act of Parliament is confidential and shall be treated accordingly.

Disclosure permitted

(2) Nothing in subsection (1) prevents the Superintendent from disclosing any information

(a) to any government agency or body that regulates or supervises financial institutions, for purposes related to that regulation or supervision,

(b) to any other agency or body that regulates or supervises financial institutions, for purposes related to that regulation or supervision,

(c) to the Canada Deposit Insurance Corporation for purposes related to its operation, and

(d) to the Deputy Minister of Finance or any officer of the Department of Finance authorized in writing by the Deputy Minister of Finance or to the Governor of the Bank of Canada or any officer of the Bank of Canada authorized in writing by the Governor of the Bank of Canada, for the purposes of policy analysis related to the regulation of financial institutions,

if the Superintendent is satisfied that the information will be treated as confidential by the agency, body or person to whom it is disclosed.

1999, c. 28, s. 35.

Regulations

607. The Governor in Council may make regulations prohibiting, limiting or restricting the disclosure by authorized foreign banks of prescribed supervisory information.

1999, c. 28, s. 35.

Publication

608. The Superintendent shall cause to be published in the Canada Gazette the information contained in each of the returns made under sections 602 and 603 within sixty days after the expiration of the time provided by this Act for providing the return.

1999, c. 28, s. 35.

Disclosure by Superintendent

609. (1) The Superintendent shall disclose, at the times and in the manner that the Minister may determine, any information obtained by the Superintendent under this Act that the Minister considers ought to be disclosed for the purposes of the analysis of the business in Canada of an authorized foreign bank and that

(a) is contained in returns filed pursuant to the Superintendent's financial regulatory reporting requirements in respect of authorized foreign banks; or

(b) has been obtained as a result of an industry-wide or sectoral survey conducted by the Superintendent in relation to an issue or circumstances that could have an impact on the business in Canada of authorized foreign banks.

Prior consultation required

(2) The Minister shall consult with the Superintendent before making any determination under subsection (1).

1999, c. 28, s. 35.

Disclosure by an authorized foreign bank

610. (1) An authorized foreign bank shall make available to the public any information concerning

(a) the compensation of its executives, as that expression is defined by the regulations, and

(b) its business and affairs for the purposes of the analysis of its business in Canada,

in the form and manner and at the times that may be required by or under regulations that the Governor in Council may make for the purpose.

Exemption by regulation

(2) Paragraph (1)(a) does not apply to an authorized foreign bank that is within any class or classes of authorized foreign banks that may be prescribed.

1999, c. 28, s. 35.

Exceptions to disclosure

611. Subject to any regulations made under section 576, information obtained by an authorized foreign bank regarding any of its customers shall not be disclosed or made available under subsection 609(1) or section 610.

1999, c. 28, s. 35.

Report respecting disclosure

612. The Superintendent shall prepare a report respecting the disclosure of information by authorized foreign banks and describing the state of progress made in enhancing the disclosure of information in the financial services industry. The report is to be included in the report referred to in section 25 of the Office of the Superintendent of Financial Institutions Act.

1999, c. 28, s. 35.

Inspection of Authorized Foreign Banks Examination of authorized foreign banks

613. (1) The Superintendent, from time to time, but, in the case of an authorized foreign bank that is not subject to the restrictions and requirements referred to in subsection 524(2), at least once in each calendar year, shall make or cause to be made any examination and inquiry into the business and affairs of each authorized foreign bank that the Superintendent may deem to be necessary or expedient for the purposes of satisfying the Superintendent that the provisions of this Act are being duly observed and, after the conclusion of each examination and inquiry, shall report on it to the Minister.

Access to records of authorized foreign bank

(2) The Superintendent or a person acting under the Superintendent's direction

(a) has a right of access to any records, cash, assets and security held by an authorized foreign bank; and

(b) may require the directors, officers and the auditor of an authorized foreign bank to provide information and explanations, to the extent that they are reasonably able to do so, in respect of the condition and affairs of the authorized foreign bank or any entity in which it has a substantial investment under Part XII.

1999, c. 28, s. 35.

Power of Superintendent on inquiry

614. The Superintendent has all the powers of a person appointed as a commissioner under Part II of the Inquiries Act for the purpose of obtaining evidence under oath, and may delegate those powers to any person acting under the Superintendent's direction.

1999, c. 28, s. 35.

Remedial Powers

Directions of Compliance Superintendent's directions to authorized foreign bank

615. (1) Where, in the opinion of the Superintendent, an authorized foreign bank, or a person with respect to an authorized foreign bank, is committing, or is about to commit, an act that is an unsafe or unsound practice in relation to the business in Canada of the authorized foreign bank, or is pursuing or is about to pursue any course of conduct that is an unsafe or unsound practice in relation to that business, the Superintendent may direct the authorized foreign bank or person to

(a) cease or refrain from committing the act or pursuing the course of conduct; and

(b) perform any acts that in the opinion of the Superintendent are necessary to remedy the situation.

Opportunity for representations

(2) Subject to subsection (3), no direction shall be issued to an authorized foreign bank or person unless the authorized foreign bank or person is provided with a reasonable opportunity to make representations in respect of the matter.

Temporary direction

(3) Where, in the opinion of the Superintendent, the length of time required for representations to be made might be prejudicial to the public interest, the Superintendent may make a temporary direction with respect to the matters referred to in paragraphs (1)(a) and (b) having effect for a period of not more than fifteen days.

Continuing effect

(4) A temporary direction continues to have effect after the expiration of the fifteen day period referred to in subsection (3) if no representations are made to the Superintendent within that period or, if representations have been made, the Superintendent notifies the authorized foreign bank or person that the Superintendent is not satisfied that there are sufficient grounds for revoking the direction.

1999, c. 28, s. 35.

Court enforcement

616. (1) Where an authorized foreign bank or person

(a) is contravening or has failed to comply with a direction of the Superintendent issued to the authorized foreign bank or person pursuant to subsection 615(1) or (3),

(b) is contravening this Act, or

(c) has omitted to do any thing under this Act that is required to be done by or on the part of the authorized foreign bank or person,

the Superintendent may, in addition to any other action that may be taken under this Act, apply to a court for an order requiring the authorized foreign bank or person to comply with the direction, cease the contravention or do any thing that is required to be done, and on the application the court may so order and make any other order it thinks fit.

Appeal

(2) An appeal from a decision of a court under subsection (1) lies in the same manner, and to the same court, as an appeal from any other order of the court.

1999, c. 28, s. 35.

Asset Maintenance

Order re: asset maintenance

617. Where, in the opinion of the Superintendent, it is necessary for the protection of rights of depositors and creditors of the authorized foreign bank in respect of its business in Canada, the Superintendent may, by order,

(a) subject to any terms and conditions that the Superintendent considers necessary, direct an authorized foreign bank to maintain in Canada assets of any type and in any amount that the Superintendent may specify; and

(b) require that the assets referred to in paragraph (a) be deposited with a Canadian financial institution approved by the Superintendent under a deposit agreement approved by the Superintendent.

1999, c. 28, s. 35.

Supervisory Intervention

Meaning of "assets"

618. For the purposes of sections 619 to 627, "assets", in relation to an authorized foreign bank, means

(a) any asset in respect of its business in Canada, including the assets referred to in subsection 582(1) and section 617 and the assets under its administration; and

(b) any other asset in Canada of the authorized foreign bank.

1999, c. 28, s. 35.

Superintendent may take control

619. (1) Subject to this Act, where any of the circumstances described in subsection (2) exist in respect of an authorized foreign bank or the business in Canada of an authorized foreign bank, the Superintendent may

(a) take control, for a period not exceeding sixteen days, of the assets of the authorized foreign bank; or

(b) unless the Minister advises the Superintendent that the Minister is of the opinion that it is not in the public interest to do so,

(i) take control, for a period exceeding sixteen days, of the assets of the authorized foreign bank, or

(ii) where control of assets has been taken under paragraph (a), continue the control beyond the sixteen days referred to in that paragraph.

Circumstances for taking control

(2) Control by the Superintendent under subsection (1) may be taken in respect of an authorized foreign bank where

(a) the authorized foreign bank has failed to pay its liabilities or, in the opinion of the Superintendent, will not be able to pay its liabilities as they become due and payable;

(b) the authorized foreign bank in respect of its business in Canada has failed to pay its liabilities or, in the opinion of the Superintendent, will not be able to pay its liabilities as they become due and payable;

(c) in the opinion of the Superintendent, a practice or state of affairs exists in respect of the authorized foreign bank or in respect of its business in Canada that may be materially prejudicial to

(i) the interests of the depositors or creditors of the authorized foreign bank in respect of its business in Canada, or

(ii) the owners of any assets under the administration of the authorized foreign bank in respect of its business in Canada;

(d) the assets of the authorized foreign bank in relation to its business in Canada are not, in the opinion of the Superintendent, sufficient to give adequate protection to the depositors and creditors of the authorized foreign bank in respect of its business in Canada;

(e) an asset appearing on the books or records of the authorized foreign bank in respect of its business in Canada or held under its administration is not, in the opinion of the Superintendent, satisfactorily accounted for; or

(f) the authorized foreign bank has failed to comply with an order of the Superintendent under section 617.

Notice of proposed action

(3) The Superintendent shall notify an authorized foreign bank of any action proposed to be taken in respect of it under paragraph (1)(b) and of its right to make written representations to the Superintendent within the time specified in the notice, not exceeding ten days after it receives the notice.

Objectives of Superintendent

(4) Where, pursuant to subsection (1), the Superintendent has control of the assets of an authorized foreign bank, the Superintendent may do all things necessary or expedient to protect the rights and interests of the depositors and creditors of the authorized foreign bank in respect of its business in Canada.

Powers of Superintendent

(5) Where, pursuant to subsection (1), the Superintendent has control of the assets of an authorized foreign bank,

(a) neither the authorized foreign bank nor any person acting on its behalf shall deal in any way with any of the assets without the prior approval of the Superintendent or a representative designated by the Superintendent; and

(b) no person acting on behalf of the authorized foreign bank shall have access to any cash or securities held in Canada by the authorized foreign bank without the prior approval of the Superintendent or a representative designated by the Superintendent.

Persons to assist

(6) Where the Superintendent takes control of the assets of an authorized foreign bank under subparagraph (1)(b)(i) or (ii), the Superintendent may appoint one or more persons to assist in the control of the assets.

1999, c. 28, s. 35.

Expiration of control

620. Control by the Superintendent under subsection 619(1) of the assets of an authorized foreign bank expires on the day on which a notice by the Superintendent is sent to the principal officer of the authorized foreign bank stating that the Superintendent is of the opinion that the circumstances leading to the taking of control of the assets by the Superintendent have been substantially rectified and that the authorized foreign bank can resume control of its assets.

1999, c. 28, s. 35.

Superintendent may request winding-up

621. The Superintendent may, at any time before the receipt of a request under section 622 to relinquish control of the assets of an authorized foreign bank, request the Attorney General of Canada to apply for a winding-up order under section 10.1 of the Winding-up and Restructuring Act in respect of the authorized foreign bank, where the assets of the authorized foreign bank are under the control of the Superintendent pursuant to subparagraph 619(1)(b)(i) or (ii).

1999, c. 28, s. 35.

Requirement to relinquish control

622. Where no action has been taken by the Superintendent under section 621 and, after thirty days following the taking of control by the Superintendent under subsection 619(1) of the assets of an authorized foreign bank, the Superintendent receives from the principal officer of the authorized foreign bank a notice in writing requesting the Superintendent to relinquish control, the Superintendent must, not later than twelve days after receipt of the notice,

(a) comply with the request; or

(b) request the Attorney General of Canada to apply for a winding-up order under section 10.1 of the Winding-up and Restructuring Act in respect of the authorized foreign bank.

1999, c. 28, s. 35.

Advisory committee

623. The Superintendent may appoint a committee of not more than six members to advise the Superintendent in respect of the assets and all other matters pertinent to the duties and responsibilities of the Superintendent in exercising control of the assets. The committee shall be appointed from among the banks and authorized foreign banks that are subject to an assessment under section 23 of the Office of the Superintendent of Financial Institutions Act and required to share in the expenses resulting from the taking of control of the assets of the authorized foreign bank under subsection 619(1).

1999, c. 28, s. 35.

Expenses payable by authorized foreign bank

624. (1) Where control of the assets of an authorized foreign bank has been taken under subparagraph 619(1)(b)(i) or (ii) and the control expires or is relinquished under section 620 or paragraph 622(a), the Superintendent may direct that the authorized foreign bank be liable for repayment of all or part of the expenses resulting from the taking of control of the assets and assessed against and paid by other authorized foreign banks and by banks under section 23 of the Office of the Superintendent of Financial Institutions Act, together with any interest in respect of the expenses at any rate that is specified by the Superintendent.

Debt due to Her Majesty

(2) Where any direction is made under subsection (1), the amount for which the authorized foreign bank is liable is a debt due to Her Majesty in right of Canada payable on demand and is recoverable in the Federal Court or any other court of competent jurisdiction.

1999, c. 28, s. 35.

Priority of claim in liquidation

625. In the case of the winding-up of the business in Canada of an authorized foreign bank, the expenses resulting from the taking of control of the assets of the authorized foreign bank under subsection 619(1) and assessed against and paid by other authorized foreign banks and by banks under section 23 of the Office of the Superintendent of Financial Institutions Act and interest in respect of the expenses at any rate that is specified by the Superintendent, constitute a claim of Her Majesty in right of Canada against the assets of the authorized foreign bank that ranks after any claim referred to in paragraph 627(1)(d).

1999, c. 28, s. 35.

Application of assessment

626. Any amount recovered under section 624 or 625 shall be applied to reduce the total amount of expenses incurred for or in connection with the administration of this Act.

1999, c. 28, s. 35.

Order of priority for payment of claims

627. (1) Subject to sections 72 and 94 of the Winding-up and Restructuring Act, where a winding-up order under that Act is made in respect of an authorized foreign bank,

(a) the payment of any amount due to Her Majesty in right of Canada, in trust or otherwise, in respect of the business in Canada of the authorized foreign bank is a first charge on the assets of the authorized foreign bank;

(b) the payment of any amount due to Her Majesty in right of a province, in trust or otherwise, in respect of the business in Canada of the authorized foreign bank is a second charge on the assets of the authorized foreign bank;

(c) the payment of the deposit liabilities of the authorized foreign bank and all other liabilities of the authorized foreign bank in respect of its business in Canada, except the liabilities referred to in paragraph (d) and section 625, is a third charge on the assets of the authorized foreign bank; and

(d) the payment of any fines and penalties for which the authorized foreign bank is liable in respect of its business in Canada is a last charge on the assets of the authorized foreign bank.

Priority not affected

(2) Nothing in subsection (1) prejudices or affects the priority of any holder of any security interest in any property of an authorized foreign bank that the authorized foreign bank is permitted to create under subsection 552(1).

Priorities

(3) Priorities within each of paragraphs (1)(a) to (d) shall be determined in accordance with the laws governing priorities and, where applicable, by the terms of the liabilities referred to in those paragraphs.

1999, c. 28, s. 35.

PART XIII

REGULATION OF BANKS

Supervision

Returns

Required information

628. (1) A bank shall provide the Superintendent with such information, at such times and in such form as the Superintendent may require.

(2) [Repealed, 1997, c. 15, s. 86]

1999, c. 28, s. 36.

Report of unclaimed deposits

629. (1) A bank shall, within sixty days after the end of each calendar year, provide the Superintendent with a return, in such form as the Superintendent may determine, as of the end of that calendar year, in respect of all deposits made with the bank in Canada in Canadian currency for which no transaction has taken place and no statement of account has been requested or acknowledged by the depositors during a period of nine years or more.

Period

(2) The period referred to in subsection (1) shall be calculated

(a) in the case of a deposit made for a fixed period, from the day on which the fixed period terminated, and

(b) in the case of any other deposit, from the day on which the last transaction took place or a statement of account was last requested or acknowledged by the depositor, whichever is later,

until the date of the return under that subsection.

Content of return

(3) A return made under subsection (1) shall show, in so far as is known to the bank,

(a) the name of each depositor in whose name each deposit is held;

(b) the recorded address of each such depositor;

(c) the outstanding amount of each deposit; and

(d) the branch of the bank at which the last transaction took place in respect of the deposit, and the date thereof.

Amounts under one hundred dollars

(4) Where the total outstanding amount of deposits in the name of a depositor is less than one hundred dollars, the bank may omit the particulars in respect thereof required by subsection (3) from the return required by subsection (1).

1999, c. 28, s. 36.

Return on unclaimed bills of exchange

630. (1) A bank shall, within sixty days after the end of each calendar year, provide the Superintendent with a return, in such form as the Superintendent may determine, as of the end of that calendar year, in respect of all negotiable instruments (including instruments drawn by one branch of the bank on another branch of the bank but not including instruments issued in payment of a dividend on the capital of the bank) payable in Canada in Canadian currency that have been issued, certified or accepted by the bank at branches of the bank in Canada and for which no payment has been made for a period of nine years or more calculated from the date of issue, certification, acceptance or maturity, whichever is the latest, until the date of the return.

Content of return

(2) A return made under subsection (1) shall show, in so far as is known to the bank,

- (a) the name of each person to whom or at whose request each instrument was issued, certified or accepted;
- (b) the recorded address of each such person;
- (c) the name of the payee of each instrument;
- (d) the amount and date of each instrument;
- (e) the name of the place where each instrument was payable; and
- (f) the branch of the bank at which each instrument was issued, certified or accepted.

Amounts under one hundred dollars

(3) Where the amount of an instrument in respect of which subsection (1) applies is less than one hundred dollars, the bank may omit the particulars in respect thereof required by subsection (2) from the return required by subsection (1).

Money orders

(4) A bank may omit from a return required by subsection (1) the particulars required by subsection (2) in respect of any money order in respect of which subsection (1) applies.

1999, c. 28, s. 36.

Total to be reported

631. Where a bank, pursuant to subsection 629(4) or 630(3) or (4), omits from a return required by subsection 629(1) or 630(1) the particulars of any deposit or instrument, the total of the amounts of all deposits or instruments that have been so omitted shall be reported in the return.

1999, c. 28, s. 37.

Names of directors and auditors

632. (1) A bank shall, within thirty days after each annual meeting of the bank, provide the Superintendent with a return showing

(a) the name, residence and citizenship of each director holding office immediately following the meeting;

(b) the mailing address of each director holding office immediately following the meeting;

(c) the bodies corporate of which each director referred to in paragraph (a) is an officer or director and the firms of which each director is a member;

(d) the affiliation, within the meaning of section 162, with the bank of each director referred to in paragraph (a);

(e) the names of the directors referred to in paragraph (a) who are officers or employees of the bank or any affiliate of the bank, and the positions they occupy;

(f) the name of each committee of the bank on which each director referred to in paragraph (a) serves;

(g) the date of expiration of the term of each director referred to in paragraph (a); and

(h) the name, address and date of appointment of the auditor or auditors of the bank.

Changes

(2) Where

(a) any information relating to a director or an auditor of a bank shown in the latest return made to the Superintendent under subsection (1), other than information referred to in paragraph (1)(c) or (d), becomes inaccurate or incomplete,

(b) a vacancy in the office of auditor of the bank occurs or is filled by another person, or

(c) a vacancy on the board of directors of the bank occurs or is filled,

the bank shall forthwith provide the Superintendent with such information as is required to maintain the return in a complete and accurate form.

1999, c. 28, s. 38.

Copy of by-laws

633. A bank shall send to the Superintendent

(a) within six months after the coming into force of this Part, a copy of all by-laws of the bank that are continued in effect by sections 190 and 191; and

(b) within thirty days after the coming into effect of a by-law or an amendment to a by-law, a copy of the by-law or amendment.

1999, c. 28, s. 38.

Register of banks

634. The Superintendent shall, in respect of each bank for which an order approving the commencement and carrying on of business has been made, cause a register to be maintained containing a copy of

(a) the incorporating instrument of the bank,

(b) the information referred to in paragraphs 632(1)(a), (c) and (e) to (h) contained in the latest return sent to the Superintendent pursuant to section 632, and

(c) the by-laws of the bank sent to the Superintendent pursuant to section 633,

and all persons are entitled to examine the register during regular business hours and to make copies of or take extracts from the documents contained therein.

1999, c. 28, s. 39.

Production of information and documents

635. (1) The Superintendent may, by order, direct a person who controls a bank or any entity that is affiliated with a bank to provide the Superintendent with such information or documents as may be specified in the order where the Superintendent believes that the production of the information or documents is necessary in order to be satisfied that the provisions of this Act are being duly observed and that the bank is in a sound financial condition.

Time

(2) Any person to whom a direction has been issued under subsection (1) shall provide the information or documents specified in the order within the time specified in the order and, where the order does not specify a time, the person shall provide the information or documents within a reasonable time.

Exemption

(3) Subsection (1) does not apply in respect of an entity that controls a bank or is affiliated with a bank where that entity is a financial institution regulated

(a) by or under an Act of Parliament; or

(b) by or under an Act of the legislature of a province where the Superintendent has entered into an agreement with the appropriate official or public body responsible for the supervision of financial institutions in that province concerning the sharing of information on such financial institutions.

1999, c. 28, s. 40.

Confidential information

636. (1) Subject to sections 638 and 639, all information regarding the business or affairs of a bank or persons dealing with a bank that is obtained by the Superintendent, or by any person acting under the direction of the Superintendent, as a result of the administration or enforcement of any Act of Parliament is confidential and shall be treated accordingly.

Disclosure permitted

(2) Nothing in subsection (1) prevents the Superintendent from disclosing any information

(a) to any government agency or body that regulates or supervises financial institutions, for purposes related to that regulation or supervision,

(a.01) to any other agency or body that regulates or supervises financial institutions, for purposes related to that regulation or supervision,

(a.1) to the Canada Deposit Insurance Corporation for purposes related to its operation, and

(b) to the Deputy Minister of Finance or any officer of the Department of Finance authorized in writing by the Deputy Minister of Finance or to the Governor of the Bank of Canada or any officer of the Bank of Canada authorized in writing by the Governor of the Bank of Canada, for the purposes of policy analysis related to the regulation of financial institutions,

if the Superintendent is satisfied that the information will be treated as confidential by the agency, body or person to whom it is disclosed.

1999, c. 28, s. 41.

Regulations

637. The Governor in Council may make regulations prohibiting, limiting or restricting the disclosure by banks of prescribed supervisory information.

1999, c. 28, s. 42.

Publication

638. The Superintendent shall cause to be published in the Canada Gazette the information contained in each of the returns made under sections 629 and 630 within sixty days after the expiration of the time provided by this Act for providing the return.

1999, c. 28, s. 43.

Disclosure by Superintendent

639. (1) The Superintendent shall disclose, at such times and in such manner as the Minister may determine, such information obtained by the Superintendent under this Act as the Minister considers ought to be disclosed for the purposes of the analysis of the financial condition of a bank and that

(a) is contained in returns filed pursuant to the Superintendent's financial regulatory reporting requirements in respect of banks; or

(b) has been obtained as a result of an industry-wide or sectoral survey conducted by the Superintendent in relation to an issue or circumstances that could have an impact on the financial condition of banks.

Prior consultation required

(2) The Minister shall consult with the Superintendent before making any determination under subsection (1).

1999, c. 28, s. 44.

Disclosure by a bank

640. (1) A bank shall make available to the public such information concerning

(a) the compensation of its executives, as that expression is defined by the regulations, and

(b) its business and affairs for the purposes of the analysis of its financial condition,

in such form and manner and at such times as may be required by or pursuant to such regulations as the Governor in Council may make for the purpose.

Exemption by regulation

(2) Paragraph (1)(a) does not apply to a bank that is within such class or classes of banks as may be prescribed.

1999, c. 28, s. 44.

Exceptions to disclosure

641. Subject to any regulations made under section 459, no information obtained by a bank regarding any of its customers shall be disclosed or made available under subsection 639(1) or section 640.

1999, c. 28, s. 45.

Report respecting disclosure

642. The Superintendent shall prepare a report, to be included in the report referred to in section 25 of the Office of the Superintendent of Financial Institutions Act, respecting the disclosure of information by banks and describing the state of progress made in enhancing the disclosure of information in the financial services industry.

1999, c. 28, s. 46.

Inspection of Banks

Examination of banks

643. (1) The Superintendent, from time to time, but at least once in each calendar year, shall make or cause to be made such examination and inquiry into the business and affairs of each bank as the Superintendent may deem to be necessary or expedient for the purposes of satisfying the Superintendent that the provisions of this Act are being duly observed and that the bank is in a sound financial condition and, after the conclusion of each examination and inquiry, shall report thereon to the Minister.

Access to records of bank

(2) The Superintendent or a person acting under the Superintendent's direction

(a) has a right of access to any records, cash, assets and security held by a bank; and

(b) may require the directors, officers and the auditor or auditors of a bank to provide information and explanations, to the extent that they are reasonably able to do so, in respect of the condition and affairs of the bank or any entity in which the bank has a substantial investment.

1999, c. 28, s. 46.

Power of Superintendent on inquiry

644. The Superintendent has all the powers of a person appointed as a commissioner under Part II of the Inquiries Act for the purpose of obtaining evidence under oath, and may delegate those powers to any person acting under the Superintendent's direction.

1999, c. 28, s. 46.

Remedial Powers

Directions of Compliance

Superintendent's directions to bank

645. (1) Where, in the opinion of the Superintendent, a bank, or a person with respect to a bank, is committing, or is about to commit, an act that is an unsafe or unsound practice in conducting the business of the bank, or is pursuing or is about to pursue any course of conduct that is an unsafe or unsound practice in conducting the business of the bank, the Superintendent may direct the bank or person to

(a) cease or refrain from committing the act or pursuing the course of conduct; and

(b) perform such acts as in the opinion of the Superintendent are necessary to remedy the situation.

Opportunity for representations

(2) Subject to subsection (3), no direction shall be issued to a bank or person under subsection (1) unless the bank or person is provided with a reasonable opportunity to make representations in respect of the matter.

Temporary direction

(3) Where, in the opinion of the Superintendent, the length of time required for representations to be made under subsection (2) might be prejudicial to the public interest, the Superintendent may make a temporary direction with respect to the matters referred to in paragraphs (1)(a) and (b) having effect for a period of not more than fifteen days.

Continued effect

(4) A temporary direction under subsection (3) continues to have effect after the expiration of the fifteen day period referred to in that subsection if no representations are made to the Superintendent within that period or, if representations have been made, the Superintendent notifies the bank or person that the Superintendent is not satisfied that there are sufficient grounds for revoking the direction.

1999, c. 28, s. 47.

Court enforcement

646. (1) Where a bank or person

(a) is contravening or has failed to comply with a direction of the Superintendent issued to the bank or person pursuant to subsection 645(1) or (3),

(b) is contravening this Act, or

(c) has omitted to do any thing under this Act that is required to be done by or on the part of the bank or person,

the Superintendent may, in addition to any other action that may be taken under this Act, apply to a court for an order requiring the bank or person to comply with the direction, cease the contravention or do any thing that is required to be done, and on such application the court may so order and make any other order it thinks fit.

Appeal

(2) An appeal from a decision of a court under subsection (1) lies in the same manner, and to the same court, as an appeal from any other order of the court.

1999, c. 28, s. 48.

Disqualification from Election or Appointment

Application

647. (1) This section applies only in respect of a bank

(a) that has been notified by the Superintendent that this section so applies where the bank is subject to measures requiring it to maintain or improve its safety and soundness, which measures have been specified by the Superintendent by way of

(i) conditions or limitations in respect of the order approving the commencement and carrying on of the bank's business, or

(ii) a written agreement or undertaking between the bank and the Superintendent; or

(b) that is the subject of

(i) a direction made pursuant to section 645, or

(ii) an order made pursuant to subsection 485(3) requiring the bank to increase its capital.

Information to be provided

(2) A bank shall provide the Superintendent with the name of

(a) each person who has been nominated for election or appointment as a member of its board of directors,

(b) each person who has been selected by the directors of the bank for appointment as chief executive officer, secretary, treasurer, controller, or any other officer reporting directly to the bank's board of directors or chief executive officer, and

(c) each person who is newly elected as a director of the bank at a meeting of shareholders and who was not proposed for election by anyone involved in the management of the bank,

together with such other information about the background, business record and experience of the person as the Superintendent may require.

When information to be provided

(3) The information required by subsection (2) shall be provided to the Superintendent

(a) at least thirty days prior to the date or proposed date of the election or appointment or within such shorter period as the Superintendent may allow; or

(b) in the case of a person referred to in paragraph (2)(c), within fifteen days after the date of the election of the person.

Disqualification

(4) Where, in respect of a bank, the Superintendent is of the opinion that on the basis of the competence, business record, experience or character of a person referred to in

(a) paragraph (2)(a) or (c), the person is not suitable for a position as a member of the board of directors of the bank, or

(b) paragraph (2)(b), the person is not suitable for the discharge of the duties and responsibilities associated with the position referred to in that paragraph,

the Superintendent may, subject to subsection (5), by order, disqualify the person from being elected or appointed to the position or, in the case of a person referred to in paragraph (2)(c), from continuing to hold office as a director.

Representations may be made

(5) The Superintendent must in writing notify the bank and the person concerned of any action that the Superintendent proposes to take under subsection (4) and must afford them an opportunity within fifteen days after the date of the notice to make representations to the Superintendent in relation to the matter.

Prohibition

(6) Where an order has been made under subsection (4) disqualifying a person

(a) from being elected or appointed to a position, the person shall not be, and the bank shall not permit the person to be, elected or appointed to the position; or

(b) from continuing to hold office as a director, the person shall not hold, and the bank shall not permit the person to continue to hold, office as a director.

1999, c. 28, s. 49.

Supervisory Intervention Superintendent may take control

648. (1) Subject to this Act, where any of the circumstances described in subsection (1.1) exist in respect of a bank, the Superintendent may

(a) take control, for a period not exceeding sixteen days, of the assets of the bank and the assets under its administration; or

(b) unless the Minister advises the Superintendent that the Minister is of the opinion that it is not in the public interest to do so,

(i) take control, for a period exceeding sixteen days, of the assets of the bank and the assets under its administration,

(ii) where control of assets has been taken under paragraph (a), continue the control beyond the sixteen days referred to in that paragraph, or

(iii) take control of the bank.

Circumstances for taking control

(1.1) Control by the Superintendent under subsection (1) may be taken in respect of a bank where

(a) the bank has failed to pay its liabilities or, in the opinion of the Superintendent, will not be able to pay its liabilities as they become due and payable;

(b) in the opinion of the Superintendent, a practice or state of affairs exists in respect of the bank that may be materially prejudicial to the interests of the bank's depositors or creditors or the owners of any assets under the bank's administration;

(c) the assets of the bank are not, in the opinion of the Superintendent, sufficient to give adequate protection to the bank's depositors and creditors;

(d) any asset appearing on the books or records of the bank or held under its administration is not, in the opinion of the Superintendent, satisfactorily accounted for;

(e) the regulatory capital of the bank has, in the opinion of the Superintendent, reached a level or is eroding in a manner that may detrimentally affect its depositors or creditors;

(f) the bank has failed to comply with an order of the Superintendent under paragraph 485(3)(a);
or

(g) the bank's deposit insurance has been terminated by the Canada Deposit Insurance Corporation.

Notice of proposed action

(1.2) The Superintendent must notify a bank of any action proposed to be taken in respect of it under paragraph (1)(b) and of its right to make written representations to the Superintendent within the time specified in the notice, not exceeding ten days after it receives the notice.

Objectives of Superintendent

(2) Where, pursuant to subsection (1), the Superintendent has control of the assets of a bank referred to in that subsection, the Superintendent may do all things necessary or expedient to protect the rights and interests of the depositors and creditors of the bank.

Powers of Superintendent

(3) Where, pursuant to subsection (1), the Superintendent has control of the assets of a bank referred to in that subsection,

(a) the bank shall not make, acquire or transfer any loan or make any purchase, sale or exchange of securities or any disbursement or transfer of cash of any kind without the prior approval of the Superintendent or a representative designated by the Superintendent; and

(b) no director, officer or employee of the bank shall have access to any cash or securities held by the bank unless

(i) a representative of the Superintendent accompanies the director, officer or employee, or

(ii) the access is previously authorized by the Superintendent or the Superintendent's representative.

1999, c. 28, s. 50.

Powers of directors and officers suspended

649. (1) Where the Superintendent takes control of a bank pursuant to subparagraph 648(1)(b)(iii), the powers, duties, functions, rights and privileges of the directors of the bank and of the officers of the bank responsible for its management are suspended.

Superintendent to manage bank

(2) Where the Superintendent takes control of a bank pursuant to subparagraph 648(1)(b)(iii), the Superintendent shall manage the business and affairs of the bank and in doing so the Superintendent

(a) may perform any of the duties and functions that the persons referred to in subsection (1) were performing prior to the taking of control; and

(b) has and may exercise any power, right or privilege that any such person had or could have exercised prior to the taking of control.

Persons to assist

(3) Where the Superintendent takes control of a bank pursuant to subparagraph 648(1)(b)(iii), the Superintendent may appoint one or more persons to assist in the management of the bank.

1999, c. 28, s. 51.

Expiration of control

650. Control by the Superintendent under subsection 648(1) of a bank or of the assets of a bank expires on the day on which a notice by the Superintendent is sent to the directors and officers who conducted the business and affairs of the bank stating that the Superintendent is of the opinion that the circumstances leading to the taking of control by the Superintendent have been substantially rectified and that the bank can resume control of its business and affairs.

1999, c. 28, s. 52.

Superintendent may request winding-up

651. The Superintendent may, at any time before the receipt of a request under section 652 to relinquish control of a bank or of the assets of a bank, request the Attorney General of Canada to apply for a winding-up order under section 10.1 of the Winding-up and Restructuring Act in respect of the bank, where

(a) the assets of the bank are under the control of the Superintendent pursuant to subparagraph 648(1)(b)(i) or (ii); or

(b) the bank is under the control of the Superintendent pursuant to subparagraph 648(1)(b)(iii).

1999, c. 28, s. 52.

Requirement to relinquish control

652. Where no action has been taken by the Superintendent under section 651 and, after thirty days following the taking of control by the Superintendent under subsection 648(1) of a bank or of the assets of a bank, the Superintendent receives from its board of directors a notice in writing requesting the Superintendent to relinquish control, the Superintendent must, not later than twelve days after receipt of the notice,

(a) comply with the request; or

(b) request the Attorney General of Canada to apply for a winding-up order under section 10.1 of the Winding-up and Restructuring Act in respect of the bank.

1999, c. 28, s. 53.

Advisory committee

653. The Superintendent may, from among the banks and authorized foreign banks that are subject to an assessment under section 23 of the Office of the Superintendent of Financial Institutions Act and required to share in the expenses resulting from the taking of control of a bank pursuant to subsection 648(1), appoint a committee of not more than six members to advise the Superintendent in respect of assets, management and all other matters pertinent to the duties and responsibilities of the Superintendent in exercising control of the bank.

1999, c. 28, s. 54.

Expenses payable by bank

654. (1) Where the Superintendent has taken control of a bank pursuant to subparagraph 648(1)(b)(iii) and the control expires or is relinquished pursuant to section 650 or paragraph 652(a), the Superintendent may direct that the bank be liable for repayment of all or part of the expenses resulting from the taking of control of the bank and assessed against and paid by other banks and by authorized foreign banks pursuant to section 23 of the Office of the Superintendent of Financial Institutions Act, together with any interest in respect of the expenses at any rate that is specified by the Superintendent.

Debt due to Her Majesty

(2) Where any direction is made under subsection (1), the amount for which the bank is liable is a debt due to Her Majesty in right of Canada payable on demand and is recoverable in the Federal Court or any other court of competent jurisdiction.

1999, c. 28, s. 55.

Priority of claim in liquidation

655. In the case of the winding-up of a bank, the expenses resulting from the taking of control of the bank under subsection 648(1) and assessed against and paid by other banks and by authorized foreign banks pursuant to section 23 of the Office of the Superintendent of Financial Institutions Act, and interest in respect of the expenses at any rate that is specified by the Superintendent, constitute a claim of Her Majesty in right of Canada against the assets of the bank that ranks after all other claims but prior to any claim in respect of the shares of the bank.

1999, c. 28, s. 56.

Application of assessment

656. Any amount recovered pursuant to section 654 or 655 shall be applied to reduce the total amount of expenses incurred for or in connection with the administration of this Act.

1999, c. 28, s. 57.

PART XIV

ADMINISTRATION

Notices and Other Documents

Notice to directors and shareholders

657. A notice or document required by this Act or the regulations or by the incorporating instrument or by-laws of a bank to be sent to a shareholder or director of a bank may be sent by prepaid mail addressed to, or may be delivered personally to,

(a) the shareholder at the shareholder's latest address as shown in the records of the bank or its transfer agent; and

(b) the director at the director's latest address as shown in the records of the bank or in the latest return made under section 632.

1999, c. 28, s. 58.

Presumption from return

658. A director named in the latest return sent by a bank to the Superintendent under section 632 is presumed for the purposes of this Act to be a director of the bank referred to in the return.

1999, c. 28, s. 59.

Presumption of receipt

659. (1) A notice or document sent by mail in accordance with section 657 to a shareholder or director is deemed to be received by the shareholder or director at the time it would be delivered in the ordinary course of mail unless there are reasonable grounds for believing that the shareholder or director did not receive the notice or document at that time or at all.

Undelivered notices

(2) If a bank sends a notice or document to a shareholder in accordance with section 657 and the notice or document is returned on three consecutive occasions because the shareholder cannot be found, the bank is not required to send any further notices or documents to the shareholder until informed in writing of the shareholder's new address.

1999, c. 28, s. 59.

Service on a bank or authorized foreign bank

660. A notice or document required by this Act to be sent to or served on a bank or authorized foreign bank may be sent by registered mail to the head office of the bank or to the principal office of the authorized foreign bank, as the case may be, and, if sent, is deemed to be received or served at the time it would be delivered in the ordinary course of mail unless there are reasonable grounds for believing that the bank or authorized foreign bank did not receive it at that time or at all.

1999, c. 28, s. 60.

Certificate of bank

661. (1) A certificate issued on behalf of a bank stating any fact that is set out in the incorporating instrument, the by-laws, the minutes of the meetings of the directors, a committee of directors or the shareholders, or in a contract to which the bank is a party, may be signed by a director or an officer of the bank.

Proof of certain cases

(2) When introduced as evidence in any civil, criminal or administrative action or proceeding,

(a) a fact stated in a certificate referred to in subsection (1),

(b) a certified extract from a securities register of a bank, or

(c) a certified copy of, or an extract from, minutes of a meeting of shareholders, directors or a committee of directors of a bank

is, in the absence of evidence to the contrary, proof of the facts so certified without proof of the signature or official character of the person appearing to have signed the certificate.

1999, c. 28, s. 61.

Entry in securities register

662. An entry in the securities register of, or on a security certificate issued by, a bank is evidence that the person in whose name the security is registered is the owner of the securities described in the register or in the certificate.

1999, c. 28, s. 61.

Verification of documents or fact

663. (1) The Superintendent may require that a document or a fact stated in a document that is required by or under this Act to be sent to the Superintendent or to the Minister be verified in accordance with subsection (2).

Form of proof

(2) A document or fact required by this Act or by the Superintendent to be verified may be verified by affidavit made under oath or by statutory declaration under the Canada Evidence Act before any commissioner for oaths or for taking affidavits.

1999, c. 28, s. 61.

Alternative means of publication

664. (1) Anything that is required by a provision of this Act to be published in the Canada Gazette or to be published in any other way may, instead of being published in that way, be published in any manner that may be prescribed for the purpose of that provision.

Alternative means of publishing summaries

(2) Anything that is required by a provision of this Act to be summarized in a publication may instead be summarized and published in any manner that may be prescribed for the purpose of that provision.

Publication conditions

(3) Any condition under a provision of this Act that something be published in the Canada Gazette or in any other way is satisfied if that thing is published instead in any manner that may be prescribed for the purpose of that provision.

Other consequences

(4) Where a provision of this Act provides for consequences to follow the publication of something in the Canada Gazette or in any other manner, the same consequences follow the publication of that thing in any other manner that may be prescribed for the purpose of that provision.

1999, c. 28, s. 61.

Orders and Directives

Not statutory instruments

665. An instrument issued or made under this Act and directed to a single bank, authorized foreign bank or person, other than an order referred to in section 499, is not a statutory instrument for the purposes of the Statutory Instruments Act.

1999, c. 28, s. 62.

Form

666. The Superintendent may, by order, establish the form of any application to be made to the Minister or the Superintendent under this Act.

1999, c. 28, s. 63.

Appeals

Appeal to Federal Court

667. (1) An appeal lies to the Federal Court from any direction of the Minister made pursuant to subsection 402(1).

Powers

(2) The Federal Court may, in an appeal under subsection (1),

(a) dismiss the appeal;

(b) set aside the direction or decision; or

(c) set aside the direction or decision and refer the matter back for re-determination.

Certificate

(3) For the purposes of an appeal under subsection (1), the Minister shall, at the request of the bank or person making the appeal, provide the bank or person with a certificate in writing setting out the direction or decision appealed from and the reasons why the direction or decision was made.

1999, c. 28, s. 63.

Regulations

Power to make regulations

668. The Governor in Council may make regulations

- (a) prescribing anything that is required or authorized by this Act to be prescribed;
- (a.1) prescribing the way in which anything that is required or authorized by this Act to be prescribed shall be determined;
- (b) defining words and expressions to be defined for the purposes of this Act;
- (c) requiring the payment of a fee in respect of the filing, examining or issuing of any document or in respect of any action that the Superintendent is required or authorized to take under this Act, and fixing the amount thereof or the manner of determining the amount thereof;
- (d) respecting the regulatory capital and total assets of a bank;
- (e) respecting the retention, in Canada, of assets of a bank;
- (f) respecting the value of assets of a bank to be held in Canada and the manner in which those assets are to be held;
- (g) respecting the protection and maintenance of assets of a bank, including regulations respecting the bonding of directors, officers and employees of a bank;
- (h) respecting the holding of shares and ownership interests for the purposes of sections 70 and 74;
- (i) respecting information, in addition to the information required by section 634, to be maintained in the register referred to in that section; and
- (j) generally for carrying out the purposes and provisions of this Act.

1999, c. 28, s. 64, c. 31, ss. 16(F), 250.

Delegation

Delegation

669. The Minister may delegate any of the Minister's powers, duties and functions under this Act to any Minister of State appointed pursuant to the Ministries and Ministers of State Act to assist the Minister.

1999, c. 28, s. 65.

PART XV
SANCTIONS

Offence

670. Every person who, without reasonable cause, contravenes any provision of this Act or the regulations is guilty of an offence.

1999, c. 28, s. 65.

Undue preference to creditor

671. Every director, officer or employee of a bank or of an authorized foreign bank who wilfully gives or concurs in giving to any creditor of the bank or authorized foreign bank any fraudulent, undue or unfair preference over other creditors, by giving security to the creditor, by changing the nature of the creditor's claim or otherwise, is guilty of an offence.

1999, c. 28, s. 66.

Failure to provide information

672. Every person who, without reasonable cause, refuses or fails to comply with a requirement made under paragraph 643(2)(b) is guilty of an offence.

1999, c. 28, s. 66.

Use of name

673. (1) Except to the extent permitted by the regulations, every person who uses the name of a bank in a prospectus, offering memorandum, takeover bid circular, advertisement for a transaction related to securities or in any other document in connection with a transaction related to securities is guilty of an offence.

Unauthorized use of title "bank", etc.

(2) Subject to subsections (3) and (4), every entity that acquires, adopts or retains a name that, in any language, includes the word "bank", "banker" or "banking", either alone or in combination with other words, or any word or words of import equivalent thereto, and every person who, in any language, uses the word "bank", "banker" or "banking", either alone or in combination with other words, or any word or words of import equivalent thereto, to indicate or describe a business in Canada or any part of a business in Canada, without being authorized to do so by this Act or any other Act of Parliament, is guilty of an offence.

Permitted use

(3) No person commits an offence who uses the word "bank", "banker" or "banking"

(a) in relation to a business that is not engaged in financial activities;

(b) in a description of the corporate relationship of a financial institution controlled by a bank to that bank;

(c) in an advertisement in Canada by or on behalf of a foreign bank in respect of its facilities outside Canada;

(d) in the identification of representative offices of a foreign bank in Canada;

(d.1) in relation to the business in Canada of an authorized foreign bank;

(e) in a description of the corporate relationship of a bank with a foreign bank that controls the bank;

(f) in the identification of a body corporate that was a non-bank affiliate of a foreign bank within the meaning of subsection 303(1) of the Bank Act, being chapter B-1 of the Revised Statutes of Canada, 1985, at any time before June 1, 1981; or

(g) in the identification of a Canadian financial institution that

(i) was controlled by a foreign bank subsidiary before June 15, 1997 but has ceased to be so controlled,

(ii) is controlled by a foreign bank that, before June 15, 1997, controlled the foreign bank subsidiary, and

(iii) used, before June 15, 1997, the word "bank", "banker" or "banking" to identify itself.

Idem

(4) No subsidiary of a bank commits an offence by reason only that it uses the name of the bank of which it is a subsidiary in its corporate name or a name under which it carries on business or by reason only that it uses any identifying mark, logogram or insignia of that bank in carrying on its business.

Deemed use of "bank", etc.

(5) For the purposes of this section,

(a) any statement that a business, other than a foreign bank subsidiary or the business in Canada of an authorized foreign bank, is connected, associated or affiliated with a bank or a foreign bank, and

(b) the use of any identifying mark, logogram, insignia or name of a bank or a foreign bank or a name substantially similar to any such name

shall be deemed to be a use of the word "bank", "banker" or "banking".

1999, c. 28, s. 67.

Making false statements

674. (1) Every person is guilty of an offence who wilfully makes a false statement

(a) in a warehouse receipt or bill of lading given to a bank or authorized foreign bank under the authority of this Act; or

(b) in a document giving or purporting to give security on property to a bank under section 426 or 427 or to an authorized foreign bank under either of those sections as incorporated by section 555.

Wilfully disposing of or withholding goods covered by security

(2) Every person is guilty of an offence who, having possession or control of property mentioned in or covered by a warehouse receipt, bill of lading or any security given to a bank under section 426 or 427 or to an authorized foreign bank under either of those sections as incorporated by section 555, and having knowledge of the receipt, bill of lading or security, without the consent of the bank or authorized foreign bank in writing before the loan, advance, debt or liability secured by it has been fully paid

(a) wilfully alienates or parts with any of the property; or

(b) wilfully withholds from the bank or authorized foreign bank possession of any of the property if demand for its possession is made by the bank or authorized foreign bank after failure to pay the loan, advance, debt or liability.

Non-compliance with requirements for sale

(3) Where any debt or liability to a bank or authorized foreign bank is secured by

(a) a warehouse receipt or bill of lading, or

(b) security on property given to a bank under section 426 or 427 or to an authorized foreign bank under either of those sections as incorporated by section 555,

and is not paid, the bank or authorized foreign bank is guilty of an offence if it sells the property covered by the warehouse receipt, bill of lading or security under the power of sale conferred on it by this Act without complying with the provisions of this Act applicable to the exercise of the power of sale.

Acquisition of warehouse receipts, bills of lading, etc.

(4) Every bank or authorized foreign bank that acquires or holds a warehouse receipt or bill of lading or a document signed and delivered to it giving or purporting to give to the bank security on property under section 426 or 427, or to give the authorized foreign bank security or property under either of those sections as incorporated by section 555, to secure the payment of any debt, liability, loan or advance, is guilty of an offence unless

(a) the debt, liability, loan or advance is contracted or made at the time of the acquisition by the bank or authorized foreign bank of the warehouse receipt, bill of lading or document;

(b) the debt, liability, loan or advance was contracted or made on the written promise or agreement that the warehouse receipt, bill of lading or security would be given to the bank or authorized foreign bank; or

(c) the acquisition or holding by the bank or authorized foreign bank of the warehouse receipt, bill of lading or security is otherwise authorized by an Act of Parliament.

Definitions

(5) For the purposes of this section, the expressions "warehouse receipt" and "bill of lading" have the meaning assigned to those expressions by section 425.

1999, c. 28, s. 68.

Punishment

675. (1) Every person who is guilty of an offence under any of sections 670 to 674 is

(a) in the case of a natural person, liable

(i) on summary conviction, to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding twelve months, or to both, or

(ii) on conviction on indictment, to a fine not exceeding \$500,000 or to imprisonment for a term not exceeding five years, or to both; and

(b) in the case of an entity, liable

(i) on summary conviction, to a fine not exceeding \$500,000, or

(ii) on conviction on indictment, to a fine not exceeding \$5,000,000.

Order to comply

(2) Where a person has been convicted of an offence under this Act, the court may, in addition to any punishment it may otherwise impose, order the person to comply with the provisions of this Act or the regulations in respect of which the person was convicted.

Additional fine

(3) Where a person has been convicted of an offence under this Act, the court may, where it is satisfied that as a result of the commission of the offence the convicted person acquired any monetary benefits or that monetary benefits accrued to the convicted person or to the spouse or other dependant of the convicted person, order the convicted person to pay, notwithstanding the maximum amount of any fine that may otherwise be imposed under this Act, an additional fine in an amount equal to the court's estimation of the amount of those monetary benefits.

1999, c. 28, s. 69.

Liability of officers, directors, etc.

676. Where an entity commits an offence under this Act, any officer, director, agent or principal officer of the entity who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and guilty of the offence and liable on summary conviction or on conviction on indictment to the punishment provided under paragraph 675(1)(a) for the offence, whether or not the entity has been prosecuted or convicted.

1999, c. 28, s. 70.

Effect of offence on contracts

677. Unless otherwise expressly provided in this Act, a contravention of any provision of this Act or the regulations does not invalidate any contract entered into in contravention of the provision.

1999, c. 28, s. 71.

Restraining or compliance order

678. (1) If a bank or any director, officer, employee or agent of a bank does not comply with any provision of this Act, the regulations, the incorporating instrument of the bank or any by-law of the bank, the Superintendent, any complainant or any creditor of the bank may, in addition to any other right that person has, apply to a court for an order directing the bank or the director, officer, employee or agent to comply with, or restraining the bank or the director, officer, employee or agent from acting in breach of, the provision and, on the application, the court may so order and make any further order it thinks fit.

Restraining or compliance order

(2) If an authorized foreign bank or any of its directors, officers, employees or agents does not comply with any provision of this Act or the regulations or an order made under subsection 524(1), 528(1) or 534(1) in respect of the authorized foreign bank, the Superintendent, any complainant or any creditor of the authorized foreign bank may, in addition to any other right that that person has, apply to a court for an order directing the authorized foreign bank, director, officer, employee or agent to comply with, or restraining the authorized foreign bank, director, officer, employee or agent from acting in breach of, the provision and, on the application, the court may so order and make any further order it thinks fit.

1999, c. 28, s. 72.

Appeals

679. Any decision or order of a court under this Act may be appealed to the court of appeal.

1999, c. 28, s. 73.

Recovery and application of fines

680. All fines payable under this Act are recoverable and enforceable, with costs, at the suit of Her Majesty in right of Canada, instituted by the Attorney General of Canada, and, when recovered, belong to Her Majesty in right of Canada.

1999, c. 28, s. 73.

PART XVI

[Repealed, 1999, c. 28, s. 74]

SCHEDULE I

(Section 14)

As at December 31, 1998

Name of Bank	Class	Number of Shares*	Head Office
Bank of Montreal	Common	unlimited	Montreal
	Class A Preferred	unlimited	
	Class B Preferred	unlimited	
The Bank of Nova Scotia	Common	unlimited	Halifax
	Preferred	unlimited	
Canadian Imperial Bank of Commerce	Common	unlimited	Toronto
	Class A Preferred	unlimited	
	Class B Preferred	unlimited	
Canadian Western Bank	Common	unlimited	Edmonton
	First Preferred	25,000,000	
	Class A	30,000,000	
Laurentian Bank of Canada	Common	unlimited	Montreal
	Class A Preferred	unlimited	
National Bank of Canada	Common	unlimited	Montreal
	First Preferred	unlimited	
	Second Preferred	15,000,000	
Royal Bank of Canada	Common	unlimited	Montreal
	First Preferred	unlimited	
	Second Preferred	unlimited	
The Toronto-Dominion Bank	Common	unlimited	Toronto
	Class A First Preferred	unlimited	

* Number of shares that the bank is authorized to issue 1991, c. 46, Sch. I; Canada Gazette Part I, Volume 133, page 393.

SCHEDULE II

(Section 14)

As at December 31, 1998

Name of Bank	Class	Number of Shares[*]	Head Office
ABN AMRO Bank Canada	Common	unlimited	Toronto
Amex Bank of Canada	Common Preferred	350,000 350,000	Markham
Banca Commerciale Italiana of Canada	Common	11,000,000	Toronto
Bank of America Canada	Common	300,000,000	Toronto
Bank of Boston Canada	Common	500,000	Montreal
Bank of China (Canada)	Common	200,000	Toronto
Bank of East Asia (Canada)	Common	400,000	Richmond Hill
Bank of Tokyo- Mitsubishi (Canada)	Common	1,200,000	Toronto
Banque Nationale de Paris (Canada)	Common Preferred	unlimited unlimited	Montreal
BT Bank of Canada	Common	20,000	Toronto
The Chase Manhattan Bank of Canada	Common Preferred	unlimited unlimited	Toronto
Cho Hung Bank of Canada	Common	240,000	Toronto

^{*} Number of shares that the bank is authorized to issue 1991, c. 46, Sch. II; Canada Gazette Part I, Volume 133, page 393.

Name of Bank	Class	Number of Shares*	Head Office
Citibank Canada	Common	135,000,000	Toronto
	Special Shares	315,000,000	
Citizens Bank of Canada	Common	unlimited	Vancouver
	Class A Preferred	unlimited	
Comerica Bank-Canada	Common	unlimited	Toronto
	Preferred	unlimited	
Crédit Lyonnais Canada	Common	20,000,000	Montreal
Credit Suisse First Boston Canada	Common	2,500,000	Toronto
Dai-Ichi Kangyo Bank (Canada)	Common	unlimited	Toronto
Deutsche Bank Canada	Common	unlimited	Toronto
Dresdner Bank Canada	Common	unlimited	Toronto
First Chicago NBD Bank, Canada	Common	unlimited	Toronto
First Nations Bank of Canada	Common	unlimited	Saskatoon
	Class A Preferred	unlimited	
	Class B Preferred	unlimited	
	Class C Preferred	unlimited	
Fuji Bank Canada	Common	1,000,000	Toronto
Hanil Bank Canada	Common	200,000	Toronto
Hongkong Bank of Canada	Common	993,667,000	Vancouver
	Special Shares	475,000	
The Industrial Bank of Japan (Canada)	Common	1,200,000	Toronto
ING Bank of Canada	Common	unlimited	Toronto

Name of Bank	Class	Number of Shares*	Head Office
International Commercial Bank of Cathay (Canada)	Common	unlimited	Toronto
J.P. Morgan Canada	Common	1,000,000	Toronto
Korea Exchange Bank of Canada	Common	400,000	Toronto
Manulife Bank of Canada	Common Preferred	unlimited 500,000	Orillia
MBNA Canada Bank	Common Preferred	unlimited unlimited	Gloucester
Mellon Bank Canada	Common	800,000	Toronto
National Bank of Greece (Canada)	Common	unlimited	Montreal
Paribas Bank of Canada	Common Preferred	398,000 2,000	Toronto
Rabobank Canada	Common	212,036	Toronto
Republic National Bank of New York (Canada)	Common Class B Preferred	unlimited 2,000	Montreal
Sakura Bank (Canada)	Common	800,000	Toronto
Sanwa Bank Canada	Common	2,000,000	Toronto
Société Générale (Canada)	Common Preferred	1,600,000 200,000	Montreal
Sottomayor Bank Canada	Common	unlimited	Toronto
State Bank of India (Canada)	Common	50,000	Toronto
The Sumitomo Bank of Canada	Common	1,000,000	Toronto
Tokai Bank Canada	Common	unlimited	Toronto

UBS Bank (Canada)	Common	unlimited	Toronto
United Overseas Bank (Canada)	Common	20,000,000	Vancouver

SCHEDULE III

(Section 14.1)

As at (Date)

PART 1

AUTHORIZED FOREIGN BANKS NOT SUBJECT TO RESTRICTIONS AND REQUIREMENTS IN SUBSECTION 524(2)

Name of Authorized Foreign Bank	Other Permitted Name(s)	Principal Office
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PART 2

AUTHORIZED FOREIGN BANKS SUBJECT TO RESTRICTIONS AND REQUIREMENTS IN SUBSECTION 524(2)

Name of Authorized Foreign Bank	Other Permitted Name(s)	Principal Office
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1999, c. 28, s. 75.

RELATED PROVISIONS

1992, c. 51, s. 67(1):

Transitional: proceedings

67. (1) Every proceeding commenced before the coming into force of this subsection and in respect of which any provision amended by this Act applies shall be taken up and continued under and in conformity with that amended provision without any further formality.

1992, c. 51, s. 68:

Transitional: salary

68. (1) Notwithstanding the Judges Act, a person who holds the office of Chief Judge of the County Court of Nova Scotia immediately before the coming into force of section 6 shall

continue to be paid the salary then annexed to that office until the salary annexed to the office of judge of the Supreme Court of Nova Scotia exceeds that salary, at which time that person shall be paid the salary annexed to the last-mentioned office.

Transitional: annuity

(2) Notwithstanding the Judges Act, the Chief Judge of the County Court of Nova Scotia shall, on the coming into force of this subsection, be deemed to have made an election in accordance with section 32 of that Act for the purposes of subsection 43(2) of that Act, and if, at the time of resignation, removal or attaining the age of retirement, is holding office as a puisne judge of the Supreme Court of Nova Scotia or the Nova Scotia Court of Appeal, the annuity payable under section 42 of that Act shall be an annuity equal to two thirds of the result obtained by subtracting five thousand dollars from the salary annexed at that time to the office of Chief Justice of the Supreme Court of Nova Scotia.

Idem

(3) Where, before the coming into force of this subsection, an annuity has been granted to or in respect of a judge of a county or district court of any province pursuant to sections 42, 43, 44 and 47 of the Judges Act, payment of that annuity shall continue in accordance with those sections, as they read immediately before the coming into force of this subsection.

1998, c. 30, s. 10:

Transitional - proceedings

10. Every proceeding commenced before the coming into force of this section and in respect of which any provision amended by sections 12 to 16 applies shall be taken up and continued under and in conformity with that amended provision without any further formality.

AMENDMENTS NOT IN FORCE

1997, c. 15, s. 13:

13. Subsection 163(2) of the Act is replaced by the following:

Exception

(2) Subsection (1) does not apply in prescribed circumstances where all the voting shares of a bank are beneficially owned by a prescribed type of financial institution.

1997, c. 15, s. 43:

43. Section 413 of the Act is replaced by the following:

Restriction on deposit taking

413. (1) A bank shall not accept deposits in Canada unless

- (a) it is a member institution, as defined in section 2 of the Canada Deposit Insurance Corporation Act; or
- (b) it has been authorized under subsection 26.03(1) of that Act to accept deposits without being a member institution, as defined in section 2 of that Act.

Restriction on affiliation

(2) A bank to which paragraph (1)(b) applies shall not be affiliated with any member institution, as defined in section 2 of the Canada Deposit Insurance Corporation Act.

Deposits that fall below \$150,000

(3) A bank to which paragraph (1)(b) applies shall ensure that, on each day that is at least thirty days after the bank receives the authorization referred to in that paragraph, $A/B < 0.01$ where A is the sum of all amounts each of which is the sum of all the deposits held by the bank at the end of a day in the preceding thirty days each of which deposits is less than \$150,000 and payable in Canada; and B is the sum of all amounts each of which is the sum of all deposits held by the bank at the end of a day in those preceding thirty days and payable in Canada.

Exchange rate

(4) For the purpose of subsection (3), the rate of exchange that shall be applied on any day in determining the amount in Canadian dollars of a deposit in a currency of a country other than Canada shall be determined in accordance with rules prescribed under subsection 26.03(2) of the Canada Deposit Insurance Corporation Act.

Definition of "deposit"

(5) For the purpose of subsection (3), "deposit" has the meaning that would be given to it by the schedule to the Canada Deposit Insurance Corporation Act for the purposes of deposit insurance if that schedule were read without reference to subsections 2(2), (5) and (6) of that schedule.

Notice before opening account

413.1 (1) Before a bank to which paragraph 413(1)(b) applies opens a deposit account in Canada, the bank shall give the person requesting the opening of the account

- (a) a notice in writing that the deposit will not be insured by the Canada Deposit Insurance Corporation; and

(b) such other information as may be prescribed.

Other notice

(2) A bank to which paragraph 413(1)(b) applies shall, in accordance with such regulations as may be made,

(a) post notices in its branches in Canada to inform the public that deposits with the bank are not insured by the Canada Deposit Insurance Corporation; and

(b) include in its advertisements notices to inform the public that deposits with the bank are not insured by the Canada Deposit Insurance Corporation.

Regulations

(3) The Governor in Council may make regulations respecting notices for the purpose of subsection (2).

1997, c. 15, s. 47:

47. (1) Subparagraph 427(7)(b)(ii) of the Act is replaced by the following:

(ii) the prescribed amount

(2) Subsection 427(8) of the Act is repealed.

1997, c. 15, ss. 49 to 54:

49. Sections 449 and 450 of the Act are replaced by the following:

Definition of "cost of borrowing"

449. For the purposes of this section and sections 449.1 to 456, "cost of borrowing" means, in respect of a loan made by a bank,

(a) the interest or discount applicable to the loan; and

(b) such charges in connection with the loan as are payable by the borrower to the bank, or to any person from whom the bank receives any charges directly or indirectly, and as are prescribed to be included in the cost of borrowing.

For those purposes, however, "cost of borrowing" does not include prescribed charges.

Rebate of borrowing costs 449.1

(1) Where a bank makes a loan in respect of which the disclosure requirements of section 450 apply, and the loan is not secured by a mortgage on real property and is required to be repaid either on a fixed future date or by instalments, the bank shall, if there is a prepayment of the loan, rebate to the borrower a portion of the charges included in the cost of borrowing in respect of the loan.

Exception

(2) The charges to be rebated do not include the interest or discount applicable to the loan.

Regulations

(3) The Governor in Council may make regulations governing the rebate of charges under subsection (1). The rebate shall be made in accordance with those regulations.

Disclosing borrowing costs

450. (1) A bank shall not make a loan to a natural person that is repayable in Canada unless the cost of borrowing, as calculated and expressed in accordance with section 451, and other prescribed information have, in the prescribed manner and at the prescribed time, been disclosed by the bank to the borrower.

Non-application

(2) Subsection (1) does not apply in respect of a loan that is of a prescribed class of loans.

50. (1) Subparagraph 452(1)(a)(i) of the Act is replaced by the following:

(i) any terms and conditions relating to that right, including the particulars of the circumstances in which the borrower may exercise that right, and

(2) Subsection 452(1) of the Act is amended by striking out the word "and" at the end of paragraph (a) and by adding the following after paragraph (b):

(c) at such time and in such manner as may be prescribed, any changes respecting the cost of borrowing or the loan agreement as may be prescribed;

(d) particulars of any other rights and obligations of the borrower; and

(e) any other prescribed information, at such time and in such form and manner as may be prescribed.

(3) Subsection 452(2) of the Act is replaced by the following:

Disclosure in credit card applications

(1.1) A bank shall, in accordance with the regulations, at such time and in such manner as may be prescribed, provide prescribed information in any application forms or related documents that it prepares for the issuance of credit, payment or charge cards and provide prescribed information to any person applying to it for a credit, payment or charge card.

Disclosure re credit cards

(2) Where a bank issues or has issued a credit, payment or charge card to a natural person, the bank shall, in addition to disclosing the costs of borrowing in respect of any loan obtained through the use of the card, disclose to the person, in accordance with the regulations,

(a) any charges or penalties described in paragraph (1)(b);

(b) particulars of the person's rights and obligations;

(c) any charges for which the person becomes responsible by accepting or using the card;

(d) at such time and in such manner as may be prescribed, such changes respecting the cost of borrowing or the loan agreement as may be prescribed; and

(e) any other prescribed information, at such time and in such form and manner as may be prescribed.

Additional disclosure re other loans

(3) Where a bank enters into or has entered into an arrangement, including a line of credit, for the making of a loan in respect of which the disclosure requirements of section 450 apply and the loan is not a loan in respect of which subsection (1) or (2) applies, the bank shall, in addition to disclosing the costs of borrowing, disclose to the person to whom the loan is made, in accordance with the regulations,

(a) any charges or penalties described in paragraph (1)(b);

(b) particulars of the person's rights and obligations;

(c) any charges for which the person is responsible under the arrangement;

(d) at such time and in such manner as may be prescribed, such changes respecting the cost of borrowing under the arrangement as may be prescribed; and

(e) any other prescribed information, at such time and in such form and manner as may be prescribed.

51. Sections 453 and 454 of the Act are replaced by the following:

Renewal statement

452.1 Where a bank makes a loan in respect of which the disclosure requirements of section 450 apply and the loan is secured by a mortgage on real property, the bank shall disclose to the borrower, at such time and in such manner as may be prescribed, such information as may be prescribed respecting the renewal of the loan.

Disclosure in advertising

453. No person shall authorize the publication, issue or appearance of any advertisement in Canada relating to arrangements referred to in subsection 452(3), loans, credit cards, payment cards or charge cards, offered to natural persons by a bank, and purporting to disclose prescribed information about the cost of borrowing or about any other matter unless the advertisement contains such information as may be required by the regulations, in such form and manner as may be prescribed.

Regulations re borrowing costs

454. The Governor in Council may make regulations

(a) respecting the manner in which, and the time at which, a bank shall disclose to a borrower

(i) the cost of borrowing,

(ii) any rebate of the cost of borrowing, and

(iii) any other information relating to a loan, arrangement, credit card, payment card or charge card referred to in section 452;

(b) respecting the contents of any statement disclosing the cost of borrowing and other information required to be disclosed by a bank to a borrower;

(c) respecting the manner of calculating the cost of borrowing;

(d) respecting the circumstances under which the cost of borrowing is to be expressed as an amount in dollars and cents;

(e) specifying any class of loans that are not to be subject to section 449.1 or subsection 450(1) or 452(1) or (3) or section 452.1 or 453 or the regulations or any specified provisions of the regulations;

(f) respecting the manner in which and the time at which any rights, obligations, charges or penalties referred to in sections 449.1 to 453 are to be disclosed;

(g) prohibiting the imposition of any charge or penalty referred to in section 452 or providing that the charge or penalty, if imposed, will not exceed a prescribed amount;

(h) respecting the nature or amount of any charge or penalty referred to in paragraph 452(1)(b), (2)(a) or (3)(a) and the costs of the bank that may be included or excluded in the determination of the charge or penalty;

(i) respecting the method of calculating the amount of rebate of the cost of borrowing, or the portion of the cost of borrowing referred to in subparagraph 452(1)(a)(ii);

(j) respecting advertisements made by a bank regarding arrangements referred to in subsection 452(3), loans, credit cards, payment cards or charge cards;

(k) respecting the renewal of loans; and

(l) respecting such other matters or things as are necessary to carry out the purposes of sections 449.1 to 453.

52. Paragraph 455(1)(a) of the Act is replaced by the following:

(a) establish procedures for dealing with complaints made by customers of the bank about

(i) the application of charges applicable to deposit accounts, arrangements referred to in subsection 452(3) or payment, credit or charge cards with the bank, or

(ii) the disclosure of or manner of calculating the cost of borrowing in respect of a loan made by the bank;

53. Subsection 456(1) of the Act is replaced by the following:

Contacting Superintendent

456. (1) If a customer of a bank has a complaint about a deposit account, an arrangement referred to in subsection 452(3), a payment, credit or charge card or the disclosure of or manner of calculating the cost of borrowing in respect of a loan, the bank shall, in the prescribed manner, provide the customer with prescribed information on how to contact the Office of the Superintendent of Financial Institutions.

54. Paragraph 458(3)(b) of the Act is replaced by the following:

(b) that is made for business purposes and the principal amount of which is more than \$100,000 or such other amount as may be prescribed.

1999, c. 28, s. 21.1:

21.1 Subsection 413(5) of the Act, as enacted by section 43 of An Act to amend certain laws relating to financial institutions, being chapter 15 of the Statutes of Canada, 1997, is replaced by the following:

Definition of deposit

(5) For the purpose of subsection (3), "deposit" has the meaning that would be given to it by the schedule to the Canada Deposit Insurance Corporation Act for the purposes of deposit insurance if that schedule were read without reference to subsections 2(2), (5) and (6) of that schedule, but does not include prescribed deposits.

Regulations

(6) The Governor in Council may make regulations

(a) prescribing the deposits referred to in subsection (5); and

(b) prescribing terms and conditions with respect to the acceptance of those deposits.

1999, c. 28, ss. 35(4) to (11):

(4) On the later of the coming into force of section 49 of An Act to amend certain laws relating to financial institutions, being chapter 15 of the Statutes of Canada, 1997, and the coming into force of sections 567 and 568 of the Bank Act, as enacted by subsection (1), those sections 567 and 568 are replaced by the following:

Definition of "cost of borrowing"

567. For the purposes of this section and sections 567.1 to 574, "cost of borrowing" in respect of a loan made by an authorized foreign bank means

(a) the interest or discount applicable to the loan; and

(b) any charges in connection with the loan that are payable by the borrower to the authorized foreign bank or to any person from whom the authorized foreign bank receives any charges directly or indirectly and that are prescribed to be included in the cost of borrowing.

For those purposes, however, "cost of borrowing" does not include prescribed charges.

Rebate of borrowing costs

567.1 (1) Where an authorized foreign bank makes a loan in respect of which the disclosure requirements of section 568 apply, and the loan is not secured by a mortgage on real property and is required to be repaid either on a fixed future date or by instalments, the authorized foreign bank shall, if there is a prepayment of the loan, rebate to the borrower a portion of the charges included in the cost of borrowing in respect of the loan.

Exception

(2) The charges to be rebated do not include the interest or discount applicable to the loan.

Regulations

(3) The Governor in Council may make regulations governing the rebate of charges under subsection (1). The rebate shall be made in accordance with those regulations.

Disclosing borrowing costs

568. (1) An authorized foreign bank shall not make a loan to a natural person that is repayable in Canada unless the cost of borrowing, as calculated and expressed in accordance with section 569, and other prescribed information have, in the prescribed manner and at the prescribed time, been disclosed by the authorized foreign bank to the borrower.

Non-application

(2) Subsection (1) does not apply in respect of a loan that is of a prescribed class of loans.

(5) On the later of the coming into force of subsection 50(1) of An Act to amend certain laws relating to financial institutions, being chapter 15 of the Statutes of Canada, 1997, and the coming into force of subparagraph 570(1)(a)(i) of the Bank Act, as enacted by subsection (1), that subparagraph 570(1)(a)(i) is replaced by the following:

(i) any terms and conditions relating to that right, including the particulars of the circumstances in which the borrower may exercise that right, and

(6) On the later of the coming into force of subsection 50(2) of An Act to amend certain laws relating to financial institutions, being chapter 15 of the Statutes of Canada, 1997, and the coming into force of subsection 570(1) of the Bank Act, as enacted by subsection (1), that subsection 570(1) is amended by striking out the word "and" at the end of paragraph (a) and by adding the following after paragraph (b):

(c) at the time and in the manner that may be prescribed, any changes respecting the cost of borrowing or the loan agreement that may be prescribed;

(d) particulars of any other rights and obligations of the borrower; and

(e) any other prescribed information, at the time and in the form and manner that may be prescribed.

(7) On the later of the coming into force of subsection 50(3) of An Act to amend certain laws relating to financial institutions, being chapter 15 of the Statutes of Canada, 1997, and the coming into force of subsection 570(2) of the Bank Act, as enacted by subsection (1), that subsection 570(2) is replaced by the following:

Disclosure in credit card applications

(1.1) An authorized foreign bank shall, in accordance with the regulations, at the time and in the manner that may be prescribed, provide prescribed information in any application form or related document that it prepares for the issuance of credit, payment or charge cards and provide prescribed information to any person applying to it for a credit, payment or charge card.

Disclosure re credit cards

(2) Where an authorized foreign bank issues or has issued a credit, payment or charge card to a natural person, the authorized foreign bank shall, in addition to disclosing the costs of borrowing in respect of any loan obtained through the use of the card, disclose to the person, in accordance with the regulations,

(a) the charges or penalties described in paragraph (1)(b);

(b) particulars of the person's rights and obligations;

(c) the charges for which the person becomes responsible by accepting or using the card;

(d) at the time and in the manner that may be prescribed, the changes respecting the cost of borrowing or the loan agreement that may be prescribed; and

(e) any other prescribed information, at the time and in the form and manner that may be prescribed.

Additional disclosure re other loans

(3) Where an authorized foreign bank enters into or has entered into an arrangement, including a line of credit, for the making of a loan in respect of which the disclosure requirements of section 568 apply and the loan is not a loan in respect of which subsection (1) or (2) applies, the authorized foreign bank shall, in addition to disclosing the costs of borrowing, disclose to the person to whom the loan is made, in accordance with the regulations,

(a) the charges or penalties described in paragraph (1)(b);

- (b) particulars of the person's rights and obligations;
- (c) the charges for which the person is responsible under the arrangement;
- (d) at the time and in the manner that may be prescribed, the changes respecting the cost of borrowing under the arrangement that may be prescribed; and
- (e) any other prescribed information, at the time and in the form and manner that may be prescribed.

(8) On the later of the coming into force of section 51 of An Act to amend certain laws relating to financial institutions, being chapter 15 of the Statutes of Canada, 1997, and the coming into force of sections 571 and 572 of the Bank Act, as enacted by subsection (1), those sections 571 and 572 are replaced by the following:

Renewal statement

570.1 Where an authorized foreign bank makes a loan in respect of which the disclosure requirements of section 568 apply and the loan is secured by a mortgage on real property, the authorized foreign bank shall disclose to the borrower, at the time and in the manner that may be prescribed, the information that may be prescribed respecting the renewal of the loan.

Disclosure in advertising

571. No person shall authorize the publication, issue or appearance of any advertisement in Canada relating to arrangements referred to in subsection 570(3), loans, credit cards, payment cards or charge cards, offered to natural persons by an authorized foreign bank, and purporting to disclose prescribed information about the cost of borrowing or about any other matter unless the advertisement contains any information that may be required by the regulations, in the form and manner that may be prescribed.

Regulations re borrowing costs

572. The Governor in Council may make regulations

- (a) respecting the manner in which, and the time at which, an authorized foreign bank shall disclose to a borrower
 - (i) the cost of borrowing,
 - (ii) any rebate of the cost of borrowing, and
 - (iii) any other information relating to a loan, arrangement, credit card, payment card or charge card referred to in section 570;

(b) respecting the contents of any statement disclosing the cost of borrowing and other information required to be disclosed by an authorized foreign bank to a borrower;

(c) respecting the manner of calculating the cost of borrowing;

(d) respecting the circumstances under which the cost of borrowing is to be expressed as an amount in dollars and cents;

(e) specifying any class of loans that are not to be subject to section 567.1, subsection 568(1) or 570(1) or (3) or section 570.1 or 571 or the regulations or any specified provisions of the regulations;

(f) respecting the manner in which and the time at which any rights, obligations, charges or penalties referred to in sections 567.1 to 571 are to be disclosed;

(g) prohibiting the imposition of any charge or penalty referred to in section 570 or providing that the charge or penalty, if imposed, will not exceed a prescribed amount;

(h) respecting the nature or amount of any charge or penalty referred to in paragraph 570(1)(b), (2)(a) or (3)(a) and the costs of the authorized foreign bank that may be included or excluded in the determination of the charge or penalty;

(i) respecting the method of calculating the amount of rebate of the cost of borrowing, or the portion of the cost of borrowing referred to in subparagraph 570(1)(a)(ii);

(j) respecting advertisements made by an authorized foreign bank regarding arrangements referred to in subsection 570(3), loans, credit cards, payment cards or charge cards;

(k) respecting the renewal of loans; and

(l) respecting any other matters or things that are necessary to carry out the purposes of sections 567.1 to 571.

(9) On the later of the coming into force of section 52 of An Act to amend certain laws relating to financial institutions, being chapter 15 of the Statutes of Canada, 1997, and the coming into force of paragraph 573(1)(a) of the Bank Act, as enacted by subsection (1), that paragraph 573(1)(a) is replaced by the following:

(a) establish procedures for dealing with complaints made by customers of the authorized foreign bank about

(i) the application of charges applicable to deposit accounts, arrangements referred to in subsection 570(3) or payment, credit or charge cards with the authorized foreign bank, or

(ii) the disclosure of or manner of calculating the cost of borrowing in respect of a loan made by the authorized foreign bank;

(10) On the later of the coming into force of section 53 of An Act to amend certain laws relating to financial institutions, being chapter 15 of the Statutes of Canada, 1997, and the coming into force of subsection 574(1) of the Bank Act, as enacted by subsection (1), that subsection 574(1) is replaced by the following:

Contacting Superintendent

574. (1) If a customer of an authorized foreign bank has a complaint about a deposit account, an arrangement referred to in subsection 570(3), a payment, credit or charge card or the disclosure of or manner of calculating the cost of borrowing in respect of a loan, the authorized foreign bank shall, in the prescribed manner, provide the customer with prescribed information on how to contact the Office of the Superintendent of Financial Institutions.

(11) On the later of the coming into force of section 54 of An Act to amend certain laws relating to financial institutions, being chapter 15 of the Statutes of Canada, 1997, and the coming into force of paragraph 575(3)(b) of the Bank Act, as enacted by subsection (1), that paragraph 575(3)(b) is replaced by the following:

(b) that is made for business purposes and the principal amount of which is more than \$100,000 or any other amount that may be prescribed.