

OSFI ANNOUNCES PROPOSED AMENDMENTS TO THE VESTED ASSET REGIME FOR FOREIGN INSURANCE COMPANIES OPERATING IN CANADA ON A BRANCH BASIS

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On March 29, 2021, the Office of the Superintendent of Financial Institutions (“**OSFI**”) [announced](#) three proposed amendments to the vested asset regime for foreign insurance companies with branch operations in Canada (“**FIBs**”).

Under the *Insurance Companies Act*, FIBs must hold a sufficient margin of assets in a trust account with a Canadian financial institution to ensure that they will be able to satisfy their obligations to their Canadian policyholders. The value of such assets held in trust is reported by the trustee to OSFI on a monthly basis. FIBs are required to use a Standard Form Trust Agreement ([OSFI Form No. 541](#)) to establish such trust accounts. The Standard Form Trust Agreement, and its accompanying terms and conditions listed in [OSFI Form No. 542](#), establish the contractual basis for OSFI to obtain information about an FIB’s vested assets from the Canadian trustee of its trust account.

Schedule A to OSFI Form No. 542 sets out a list of preapproved assets that FIBs can vest in Canadian trust accounts without having to seek approval from OSFI. Currently, these assets consist of cash and guaranteed investment certificates held in Canadian dollars, bonds and debentures of Canadian governments and corporations and common or preferred shares of Canadian entities.

Under the first of the proposed amendments, OSFI proposes to expand the list of preapproved assets to include investment grade bonds and notes from the United States, equities and preferred shares of United States corporations listed on the S&P 500 Index or the Nasdaq Composite Index, as well as cash denominated in United States dollars. The expanded list reflects OSFI’s increased risk tolerance for such assets. OSFI expects that FIBs will only request approval to vest assets not included in the new proposed Schedule A in exceptional circumstances, which should decrease administrative burden.

Any request by an FIB to vest non-preapproved assets in trust accounts or to release any assets from its trust account must be submitted using [OSFI Form 298](#) and approved by OSFI prior to completing the related transaction. OSFI’s second amendment proposes to revise the information required under OSFI Form 298 so

that information can be collected more efficiently and effectively. In accordance with the expansion of permitted assets described above, the proposed form also allows for different currencies and adds a column for CAD exchange rate.

With respect to the third proposed amendment, Canadian trustees that hold vested assets in trust for FIBs are required to file a statement of assets and disclose the assets' market values each month to OSFI. In an effort to streamline this process, OSFI plans to require all filings to be completed and submitted through OSFI's Regulatory Reporting System (RRS). However, this proposal is still under development and will not be implemented until later in 2021.

In sum, OSFI has introduced three proposals to amend the vested asset regime for FIBs, including expanding the list of assets that can be vested in trust without preapproval from OSFI, amending the information requirements under OSFI Form 298, and introducing a standardized filing system for required monthly statements of trust assets. The proposed amendments are designed to (a) provide FIBs with greater flexibility in selecting assets for their trust accounts, (b) ease administrative burden and (c) allow OSFI to collect information in a more efficient manner. OSFI is soliciting comments on the proposals ahead of publishing its final amendments and implementation schedule in Spring 2021. Comments are invited until April 23, 2021.

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A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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