

# OSFI ISSUES FINAL GUIDELINE E-4 IMPACTING FOREIGN ENTITY BRANCHES TO BE IMPLEMENTED BY JANUARY, 2022

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On June 28, 2021, the Office of the Superintendent of Financial Institutions (OSFI) issued the final version of Guideline E-4: *Foreign Entities Operating in Canada on a Branch Basis* (“**Guideline E-4**”). However, there is a transition period such that foreign entities operating in Canada on a branch basis have until January, 2022 to comply.

Guideline E-4 replaces existing Guideline E-4A: *Role of the Chief Agent and Record Keeping Requirements* (relating to insurers) and Guideline E-4B: *Role of the Principal Officer and Record Keeping Requirements* (relating to banks) (together, the “**Existing Guidelines**”).

As described in our [prior article](#), a draft of the new guideline was published for comment on October 27, 2020. As a result of the comments received, OSFI made a few modifications to the draft, which are set out in the accompanying [letter from OSFI](#) (the “**Letter**”).

As described in our prior article, Guideline E-4 is distinguishable from, and comparable to, the Existing Guidelines as follows:

- *Overall Focus:* The new Guideline E-4 focuses on OSFI’s expectations with respect to foreign entities operating in Canada on a branch basis. It places greater emphasis on the day-to-day management of the Canadian business by the foreign entity operating in Canada.
- *Branch Management:* Guideline E-4 introduces the concept of “branch management”, consisting of individuals who have the authority and are responsible for overseeing the business in Canada. This includes the chief agent of the foreign insurance branch or the principal officer of a foreign bank branch and senior officers of the foreign entity who are located in or outside Canada. OSFI expects the composition of branch management to be commensurate with the overall size and complexity of the foreign entity’s federally regulated business in Canada. OSFI also notes that branch management will be responsible for the adaptation, implementation and oversight of the foreign entity. In contrast to the Existing Guidelines (which ascribe accountability for the branch’s operations in Canada to the chief agent or principal officer, as the case may be), the new guideline looks to the foreign entity, through its

designated branch management, for overall accountability.

- *Changes to Members of Branch Management:* New reporting obligations will apply in respect of branch management which do not currently exist in respect of the chief agent or principal officer. More specifically, the foreign entity must notify OSFI of any potential changes to the members of branch management and any circumstances that may adversely affect the suitability of any member of branch management. OSFI clarified in the Letter that approval for any such changes is not required.
- *Arrangements with the Foreign Entity's Home Office:* Where a foreign entity's home office performs material functions on behalf of the branch, branch management must document such arrangements. Such documentation should incorporate the contract for services elements outlined in OSFI's Guideline B-10: *Outsourcing of Business Activities, Functions and Processes* ("**Guideline B-10**"). If such arrangements involve the flow of funds between the home office and its branch, the details of such arrangement must be provided to OSFI. In addition, it is expected that branch management will provide 10 business days' advance notice to OSFI before any proposed fund transfer(s) to the foreign entity's home office where such proposed fund transfer(s) deviates materially from the documented process provided to OSFI. In the initial draft of the guideline published in 2020, the notice period was 30 days prior to such fund transfer(s).
- *Record Keeping:* Certain changes have been made to align with recent amendments to the *Bank Act* ("**BA**") and *Insurance Companies Act* ("**ICA**"). OSFI maintains that electronic records must be capable of being reproduced in written form within a reasonable period of time. However, for certain types of information, such as reinsurance arrangements or files related to complex activities, an "executed copy" may need to be available to OSFI at OSFI's request (which can be distinguished from an "original hard copy" which was the requirement in the draft guideline published in 2020). For a bank branch, copies of records must be kept at the principal office in Canada or at another place in Canada that the principal officer deems suitable. For an insurance branch, copies of records must be kept at the chief agency location in Canada. Electronic records must be kept on a computer server that is physically located at the places set out in the BA and ICA, as applicable. Of note, some branches are exempted from these record keeping requirements and must instead provide OSFI with immediate, direct, complete and ongoing access to records stored outside Canada.
- *Currency of Records:* Except for documents that are updated less frequently than daily (which is a new exception based on feedback from the draft published in 2020), records must be updated and accurate as at the end of each business day. Such records must be sufficiently detailed to enable OSFI to conduct an examination and inquiry into the business of the branch, manage the branch's assets prior to the appointment of a liquidator (should the Superintendent take control of the branch's assets in Canada), and to enable a liquidator to conduct an effective liquidation of the branch's assets in Canada, if one is

appointed.

- *Delegation*: Specific references to the delegation of branch responsibilities to branch employees in the Existing Guidelines have not been incorporated. Instead, OSFI expects branch management to be responsible for and have the necessary authority to carry out the overall management of the federally regulated business in Canada.
- *Compliance*: There is a continued emphasis on OSFI's expectation that there be a thorough understanding of and compliance with all applicable Canadian legislation, regulations, guidelines and any other supervisory or regulatory matters related to the foreign entity's federally regulated business in Canada carried on through the branch.

OSFI has indicated that if the requirements and expectations set out in Guideline E-4 are not being satisfied (in OSFI's view), OSFI may apply additional supervisory and regulatory measures to the foreign entity in respect of its branch operations in Canada.

OSFI also notes that it has reissued other guidance documents to remove references to any requirements for chief agents and principal officers. However, the specific guidance documents subject to this change were not listed.

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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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