

行政院及所屬各機關出國報告

(出國類別：考察)

加拿大早期干預措施運作情形考察報告

服務機關：中央存款保險公司

出國人：職 稱：業務委員

姓 名：侯如美

出國地點：加拿大

出國期間：民國 92 年 11 月 6 日至 11 月 14 日

報告日期：民國 93 年 2 月 10 日

D1/c09204704

## 內容摘要

加拿大自 1987 年開始進行金融監理制度改革成立單一的金融監理與檢查機關——金融監理局，並擴大存款保險機制功能，將加拿大存款保險公司由 pay-box 轉型為 risk-minimizer，其後實施風險聚焦的監理方法，針對金融機構整體風險予以持續性監控，並採行及早干預改正措施，在金融監理局與存款保險公司攜手合作之下，已有效降低金融機構之風險，使整個金融體系穩健發展，加拿大自 1996 年迄今，沒有金融機構倒閉案件發生，目前金融體系健全，金融機構獲利情形良好，我國自 93 年 7 月 1 日起亦將成立統合銀行、證券、保險之單一監理與檢查單位——行政院金融監督管理委員會，將來金融安全網成員之間如何建立良好的溝通協調與合作機制，共同完成監理任務，使金融體系健全，協助促進國家經濟繼續成長，加拿大的經驗頗值得我國借鏡。爰建議(一)儘速實施風險聚焦的金融監理並採行早期干預處置措施(二)加強監理機關間之協調與合作並以法律明確規定(三)儘速處理問題金融機構，追究違法者責任(四)我國存保機制應儘速由賠付者轉型為風險控管者(五)農業體系應另行成立存款保險組織。

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# 加拿大早期干預措施運作情形考察報告

## 壹、前言

職侯如美奉派於九十二年十一月六日至十四日共九日赴加拿大金融監理局( Office of the Superintendent of Financial Institutions, OSFI ) 及加拿大存款保險公司( Canada Deposit Insurance Corporation, CDIC )考察該國實施成效頗佳之早期干預措施( Early Detection, Intervention and Resolution Regime ) 之運作現況，加拿大自 1987 年開始進行金融監理制度改革，成立單一的金融監理與檢查機關，同時擴大存款保險機制功能，將加拿大存款保險公司由 pay-box 轉變為 risk-minimizer，其後並實施風險聚焦的監理方法，採行及早干預處置措施，在 OSFI 與 CDIC 攜手合作之下，已有效降低金融機構之風險，使整個金融體系穩健發展，加拿大自 1996 年迄今，沒有金融機構倒閉案件發生，目前加拿大金融體系健全，金融機構獲利情形良好，在全球經濟不景氣的情況下，2002 年全體金融機構之淨值報酬率(ROE)仍高達 10%，尤其加拿大已實施金檢一元化多年，OSFI 與 CDIC 及其他金融安全網成員如財政部、中央銀行合作無間，運作績效良好，我國自 93 年 7 月 1 日起亦將成立統合銀行、證券、保險之單一監理與檢查單位----行政院金融監督管理委員會，其將來應如何與中央銀行、存款保險公司、行政院農業委員會等金融安全網成員之間有良好的溝通協調與通力合作，共同完成良好的監理任務，使金融機構穩健經營，

金融體系健全，並協助促進國家經濟繼續成長，加拿大的經驗頗值得我國借鏡。

本報告共分為七部分，第一部分為前言，第二部分簡述加拿大之金融體系與監理環境( Financial System and Regulatory Environment )，第三部分說明實施風險聚焦金融監理( Risk-Focused Approach to Supervision ) 之必要性，第四部分介紹加拿大新的風險控管架構與早期干預措施運作情形( New Supervisory Framework and Intervention Regime)，第五部分說明加拿大之金檢一元化與金融監理機關間之協調合作機制，第六部分介紹 OSFI 與 CDIC 之策略聯盟合約( CDIC/OSFI Strategic Alliance Agreement )，第七部分則為結論與建議。

## **貳、 加拿大之金融體系與監理環境**

### **一、金融體系**

加拿大的金融機構有銀行、信託與貸款公司、信用組合、人壽保險公司、產物保險公司、證券商、互助會、共同基金、投資顧問公司等，如以收受存款的金融機構而言，則主要為銀行、信託與貸款公司、信用組合。

加拿大之銀行係採分行制，均為聯邦立案，可於全國各省廣設分行，分支機構遍佈全國，故規模均相當大，16 家本國銀行的總資產超逾 1.6 兆加幣（約 40 兆台幣），雇用員工 235,600 人，支付薪資總額達 162 億加幣，持有之國內資產占金融服務業全體國內資產之 70%，其中規模最大的有六大銀行，六大銀行包括皇家銀行(Royal Bank of Canada)、多倫

多道明銀行(Toronto-Dominion Bank)、帝國商業銀行(Canadian Imperial Bank of Commerce)、豐業銀行(Bank of Nova Scotia)、蒙特婁銀行(Bank of Montreal)、加拿大國家銀行(National Bank of Canada)，這六大銀行擁有八千多家分行，一萬八千多台自動銀行業務機 (Automated Banking Machines, ABM)，遍佈全國各省及世界各國，總資產超逾全體銀行資產總額之 90%，經營績效良好，1999 年的總淨利為 91 億加幣，2000 年為 96 億加幣，2001 年達 97 億加幣，主要來自投資銀行業務、零售銀行業務及資產管理服務。

加拿大金融機構之設立，有聯邦立案與省立案二種，銀行則均為聯邦立案，由聯邦政府直接管理，此與美國有聯邦立案銀行與州立案銀行之雙軌銀行制度不盡相同。依據加拿大憲法，聯邦政府擁有某些職權以對全國作統一的規定，其中之一的職權即是核准銀行及其他種類存款機構之設立，並在全國各地營業。加拿大憲法亦賦予省級政府某些職權而獨立於聯邦政府之外，因而省級政府亦有核准銀行以外的存款機構設立之權，但僅適用於該省。

歸納言之，加拿大之金融體系主要有四大類金融機構：

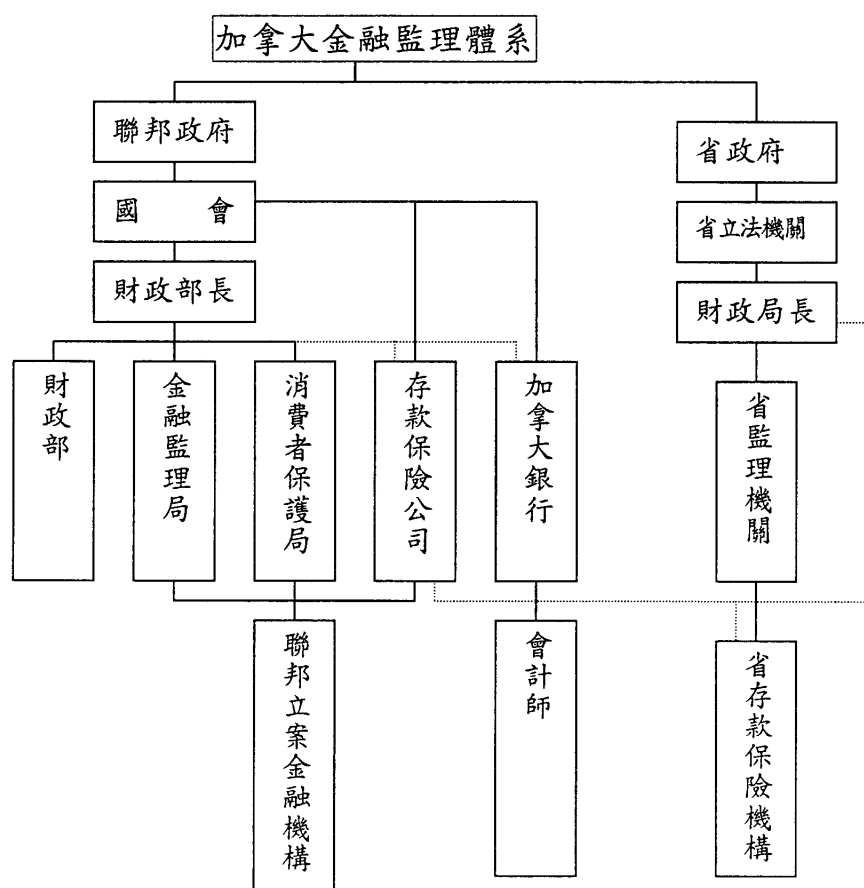
- (一) 金融中介 (financial intermediaries)，包括銀行、信託與貸款公司、信用組合(credit unions)。
- (二) 信託機構 (fiduciary industry)，此僅限於信託公司。
- (三) 保險機構 (insurance industry)，包括人壽保險公司、產物保險公司。

(四) 證券機構 (securities industry)，包括證券交易商、相互基金。

這四類機構稱為金融體系的四大支柱 (financial pillars)，加拿大存款保險公司僅保障銀行、信託公司、貸款公司等收受存款機構之存款。OSFI 為聯邦金融機構之監理機關 (primary regulator of federal financial institutions)，其監理對象則包括銀行、聯邦立案之信託公司、貸款公司、保險公司及退休基金。

## 二、監理環境

加拿大金融監理架構圖如下：



加拿大金融監理體系分為二個層級，由聯邦政府及各省政府分別監理。加拿大商業銀行均係聯邦立案，故由聯邦政府直接管轄，由金融監理局、加拿大存款保險公司、消費者保護局分別管理其安全健全經營業務、保障存款人、教育與保護消費者等事宜，而信託與貸款公司、信用組合及其他金融機構等，則因聯邦立案與省立案之不同而分由聯邦政府或各省政府管理，惟聯邦立案金融機構若於各省設立分支機構經營業務，則必須先經各省政府之核准。

至於證券交易業務，則均由各省政府管理，例如聯邦立案銀行依銀行法係由聯邦政府管理，惟如涉及證券交易業務，則仍須由各省政府管理。目前加拿大聯邦立案之金融機構，其检查工作係由聯邦政府之金融監理局負責，至於各省政府管轄之金融機構則由其自行負責檢查，惟有部分省政府因缺乏人力或避免監理資源重複等因素，而委託金融監理局辦理。目前加拿大存款保險公司對要保機構並未辦理一般性之金融檢查，而僅辦理專案檢查及準備處理問題要保機構之前置作業檢查。

加拿大聯邦層級的監理體系包括財政部 (Department of Finance)、加拿大銀行 (亦即中央銀行)、金融監理局 (OSFI)、加拿大存款保險公司 (CDIC) 及金融消費者保護局 (Financial Consumer Agency of Canada, FCAC)，雖然各單位有不同職權，但是整個金融監理體系的設計係以緊密的協調合作為前提，使監理功能夠充分發揮。依其功能分



述如下：

- (一) 公共政策與法規制定 (public policy and legislation)：由財政部負責，有關之法案有：
  - 1、銀行法。
  - 2、信託與貸款公司法。
  - 3、保險公司法。
  - 4、加拿大存款保險公司法。
  - 5、OSFI 法。
  - 6、加拿大銀行法。
  - 7、加拿大支付協會法(Canadian Payments Association Act)
- (二) 金融機構之監督、檢查 (financial institution regulation)：由 OSFI 負責。
- (三) 存款保險：由加拿大存款保險公司負責。
- (四) 貨幣政策、支付系統、最後融通者(Lender of Last Resort, LOLR)：由加拿大銀行負責。
- (五) 消費者教育與保護：由金融消費者保護局(Financial Consumer Agency of Canada, FCAC)負責教育與保護消費者。

簡而言之，加拿大之監理環境有三大特色：

- (一) 金融體系集中度很高 (Concentrated nature of the Canadian financial system)。
- (二) 監理相當嚴格，監理機關間充分密切協調合作，監理機制健全 (Good supervision)。

(三)金融機構與政府監理機關通力合作解決金融問題  
(Industry/government participation in resolving the rare problems)。

### 參、 風險聚焦(Risk-Focused)金融監理之必要性

金融機構吸收大眾存款，提供金融中介服務，肩負提升資金配置效率，促進國家經濟發展之重大使命。金融機構雖為營利事業，但其本質深具公共性、社會性與公益性；而且金融機構的資本比率都很低，不到 10%，具有高度財務槓桿，風險很高，因此，金融業為受管制產業，世界各國對於金融機構均予以嚴格的監督與管理，我國憲法第一四九條亦明文規定：「金融機構應依法受國家之管理」，從金融機構之設立、營業、發生問題以至停業結束都要接受金融監理機關之監督管理以及檢查，以保障存款人財產權益，維護金融秩序。

自一九八〇年代以來，金融自由化、國際化已蔚為世界潮流，各國紛紛解除或放寬金融管制(de-regulation)，並允許銀行、證券、保險綜合經營，在海外廣設據點，跨國營業，適逢財務工程(Financial Engineering)盛行，金融衍生性商品期貨、選擇權、遠期契約、SWAP 等如雨後春筍般開發出來，且不斷推陳出新，交易金額快速成長，金融機構業務發展空間擴增，風險種類隨著增加，有信用風險、利率風險、流動性風險、價格風險、外幣兌換風險、交易風險、法規遵循風險、策略風險、聲譽風險等。

近年來，金融機構間競爭愈來愈激烈，交易亦愈來愈複

雜，以美國恩隆公司(Enron)為例，金融機構為其設計之 Structured Finance 係包含十幾筆交易，其結構非常複雜，風險非常高，金融檢查人員以業務為導向的檢查方式是無法查出的。金融創新更使得風險提高，銀行部位(position)瞬息萬變，稍一不慎，即遭致重大損失，我國華僑銀行、英國霸菱銀行、美國 LTCM 均是在一夕之間破產的最好案例。

此外，金融機構之經營深受國內外經濟景氣與工商企業經營良窳之影響，而金融問題之發生又往往落後於經濟景氣與產業發展之循環，金融監理機關應結合會計師界與信用評等機構力量，事先深入研究經濟景氣之變動與各項產業未來發展之前景，加強金融機構之風險控管，以協助金融機構穩健與健全經營業務，因此，金融監理機關必須改變過去業務導向的金融監理方式，改採風險聚焦的金融監理方式，將有限的人力資源與時間，投注於風險最高的金融機構以及風險最大的業務項目上，提高監理效率與效果。加拿大自 1999 年 8 月開始實施迄今，已能有效降低金融機構的整體風險，美國及英國亦已先後採行風險聚焦的監理方式，我國將在 93 年 7 月 1 日成立金融監督管理委員會，統合執行銀行、證券、保險之監理與檢查工作，在目前已有 14 家金融控股公司成立，金融機構規模已愈來愈大，營業項目愈來愈多且複雜之情況下，欲有效管理，必須及早實施風險聚焦的金融監理並採行及早干預措施，在金融機構開始顯現問題時及早予以導正，及早改善，避免問題擴大後一發不可收拾。

## 肆、加拿大新的風險控管架構與早期干預措施運作情形 ( New Supervisory Framework and Intervention Regime )

加拿大新的風險控管架構與早期干預機制主要由金融監理局(OSFI)與加拿大存款保險公司(CDIC)負責執行，茲先簡介此二單位，再說明風險控管與早期干預機制如何運作。

### 一、金融機構監理局(OSFI)

一九八〇年代，加拿大由於推行金融自由化的結果，使得金融機構業務競爭益趨激烈，銀行、證券、保險之業務區隔逐漸模糊，再加上經濟不景氣，自 1983 年起，問題金融機構逐漸增加，1984 年至 1985 年相繼有 Western Capital Trust, Pioneer Trust, London Loan, Northguard Mortgage 等多家信託公司與貸款公司倒閉，1985 年 9 月再度爆發 Canada Commercial Bank 與 Northland Bank 兩家本國銀行的倒閉事件，其所衍生的金融危機與市場衝擊相當大，讓加拿大政府意識到，在金融生態快速變遷的環境下，亟需有獨立運作之金融監理機構，以執行政府之金融監理政策，並應儘速建立一套健全的風險管理機制，以防範金融危機之擴大，國會乃於 1987 年 7 月通過「金融機構監理局法案」(Act of the Office of the Superintendent of Financial Institutions)，將當時負責金融檢查的兩個單位：銀行檢查局(Inspector General of Banks) 與保險局(Department of Insurance)合併，設立直屬聯邦政府的金融機構監理局(Office of the Superintendent of Financial Institutions, OSFI)，統籌監督管理所有的聯邦立案金融機構，包括銀行、聯邦立案之信託公司、

貸款公司、保險公司及聯邦退休基金，負責執行 Bank Act, Trust and Loan Companies Act, Cooperative Credit Associations Act, Insurance Companies Act, Pension Benefits Standards Act, 1985 等法規。

OSFI 之設立，並不在保證金融機構不會倒閉，而是明白宣示金融監理機關應該善盡之職責，OSFI 設立宗旨如下：

- (一) 監督管理金融機構，以確保其財務狀況健全並遵守法律與監理規定。
- (二) 迅速通知金融機構管理階層和董事會其財務狀況不健全、未遵守法律或未遵守監理規定，並命令其迅速採取必要的改正措施。
- (三) 督促金融機構管理階層和董事會採取政策與程序以控制及管理風險。
- (四) 監控與評估可能對金融機構財務狀況產生負面影響的金融體系或金融業問題。

OSFI 總部設於渥太華，局長由內閣(Governor in Council 註)指派，任期 7 年，經由財政部長對國會負責，有三位副局長(Assistant Superintendent)，分別負責監理部(Supervision Sector)、法規部(Regulation Sector)、公司服務部(Corporate Services Sector)等三大部門，目前有職員 450 人，以金檢收入自給自足，截至 2003 年 3 月 31 日，OSFI 共監理 1,205 個退休基金，451 家金融機構，其中本國銀行 16 家，其資產總額即占全體資產之 65.9% (請詳下表)。

OSFI 監理之金融機構與退休基金一覽表

2003 年 3 月 31 日

種類	家數	資產總額 (百萬加幣)	百分比 (%)
<b>銀行</b>			
本國銀行	16	1,645,618	<b>65.9</b>
外國銀行子公司	32	85,425	3.4
外國銀行分行	21	25,916	1.1
<b>信託與貸款公司</b>			
銀行持有	30	197,912	7.9
其他	34	9,720	0.4
<b>信用合作協會</b>	7	11,983	0.5
<b>人壽保險公司</b>			
本國	42	325,091	13.0
外國分公司	55	27,986	1.1
<b>互助會</b>			
本國	13	6,201	0.2
外國分支機構	10	1,035	0.1
<b>產物保險公司</b>			
本國	89	48,068	1.9
外國	102	21,163	0.9
<b>退休基金</b>	1,205	90,656	3.6
合計	1,656	2,496,774	100.0

## 二、加拿大存款保險公司(CDIC)

CDIC 係於 1967 年依據 CDIC 法及 Financial Administration Act 設立之聯邦機關，經由財政部長對國會負責，以保障存款人在銀行、信託公司、貸款公司等收受存款機構之存款。董事長由內閣(Governor in Council)任命，任期 5 年，董事會成員共 11 人，其中 5 位為財政部次長、中央銀行總裁、金融監理局局長、副局長、金融消費者保護局主席，為加強決策品質，其餘 5 位董事係來自私人部門，故其董事會之決策，如會員機構之核准、干預措施之採行或問題機構之清算，均為金融安全網所有成員與私人部門代表之共同決定。

總經理兼 CEO 亦由 Governor in Council 任命並經董事會通過，任期 5 年，本屆至 2006 年 6 月 1 日。CDIC 在 2003 年 4 月 1 日進行組織架構調整，一位副總經理為執行副總兼 COO，其餘三位副總經理分別督導財務與管理、保險與風險評估、公司事務。13 位處長(Director)分別掌管稽核與諮詢服務、公司策略與報告、公司風險、人力資源管理、資訊系統、風險評估、保險與遵循、準則與保險、資訊與方法(Information and Methodology)、風險評估與干預、溝通與公共事務、政策與國際、法律服務(Legal Services)。CDIC 提供員工不錯的待遇(competitive salary)及訓練發展之機會，故員工流動率相當低。CDIC 與 OSFI 支持並鼓勵彼此間之員工交流。

目前 CDIC 對會員機構並未辦理一般性之金融檢查，而僅辦理專案檢查及準備處理問題機構之前置作業檢查。CDIC 法規定會員機構每年應接受檢查，對於聯邦立案會員機構，

CDIC 法指派 OSFI 代表 CDIC 辦理檢查，至於省立案會員機構，CDIC 可自行辦理年度檢查或指派其他單位代其檢查，一般而言，CDIC 並不執行省立案會員機構之檢查工作，而是依賴省級監理機關或指派 OSFI 辦理檢查。

加拿大存款保險公司成立迄今共計處理 43 家倒閉金融機構，總共花費 47 億加幣(約台幣 1,175 億元)，保障超過二百萬存款人的 234 億元存款，截至 2003 年 4 月 30 日止，保額內存款為 3,630 億元(約台幣 9 兆元)。

因應一九八 0 年代的金融機構倒閉風潮，1987 年加拿大進行金融監理制度改革，加拿大政府認為有必要賦予 CDIC 更多職權，加強風險之控管，以預防金融危機之再度發生。CDIC 在成立 20 年後，由 Pay-box 轉型為 Risk- minimizer 或稱 Loss-minimizer，採行持續性風險評估與管理制度，1993 年制定金融機構業務財務健全經營準則(簡稱健全經營準則)，嚴格督促會員機構遵行，由金融機構管理階層與董事會負責督導執行，並由金融機構定期自我評估遵循情形，再由 OSFI 檢查，配合實施早期干預處置措施，在 CDIC 與 OSFI 充分協調與合作之下，已能有效控管會員機構之風險，使存保基金之損失降至最低，同時使整個金融體系的風險降至最低，達到保障存款人權益之目標。CDIC 處理問題金融機構之成本由 1987 年以前的 52%，下降至 17%，目前加拿大金融機構穩健經營，獲利良好，金融體系健全，存保基金充足，不致延誤處理問題金融機構之時機。自 1996 年 6 月迄今，沒有金融機構倒閉事件發生。



CDIC 在成功處理國內金融問題後，將其經驗推展世界各國，協助許多國家建立或改革存款保險制度，1997 年亞洲金融風暴後，存款保險穩定金融之功能再度受到重視，IMF 對於其援助國家均規定應儘速建立或改進其存款保險制度(如韓國)，加強控管風險，以穩定金融體系。國際清算銀行(BIS)金融穩定論壇(Financial Stability Forum, FSF)在 2000 年成立存款保險研究小組，敦聘加拿大存款保險公司總經理 Mr. Jean Pierre Sabourin 為主席，領導世界同業制定準則，以供各國建立或改進存款保險制度。2001 年 9 月 FSF 公布「有效存款保險制度之國際準則(Guidance for Developing Effective Deposit Insurance Systems 如附錄)」；2002 年 5 月在加拿大存款保險公司總經理 Mr. Jean Pierre Sabourin 號召下，於國際清算銀行下正式成立一個世界性組織---「國際存款保險機構協會(International Association of Deposit Insurers, IADI)」，藉由國際合作與資訊交流，提升存款保險機制功能，促進金融體系之安定，Mr. Jean Pierre Sabourin 亦眾望所歸的獲選為首任主席，目前 IADI 已有 52 個參與機構，包括存保組織、中央銀行、其他監理機關、國際貨幣基金、世界銀行、亞洲開發銀行等。目前加拿大存款保險公司已成為存保制度之領導者。

CDIC 轉型為 Risk- minimizer 後，其設立宗旨如下：

- (一) 提供存款保險以避免存款的部分或全部遭受損失。
- (二) 督促會員機構遵守健全業務財務經營準則。
- (三) 促進金融體系的安定。
- (四) 達成上述目標以保障存款人權益，並使 CDIC 的損失降

至最低。

### 三、加拿大新風險控管架構與早期干預機制

#### (一)1999 年以前

加拿大舊有的金融監理制度係將實地檢查與場外監控分開，檢查處人員負責實地檢查工作，場外監控人員負責追蹤考核工作，執行以業務為導向之金融監理，與我國現行作法類似，檢查人員在接獲檢查通知後即與場外監控人員聯繫，取得受檢單位之相關資訊後即進行檢查，由於檢查工作係以業務為導向，係針對金融機構各項業務之作業、內部控制、管理進行檢查，檢查人員在有限的時間內，為完成所有業務之查核，無法深入掌握金融機構之風險所在並及早解決問題。

#### (二)1999 年以後迄今

加拿大財政部在 1996 年 12 月成立一個工作小組，針對金融業之未來發展進行研究，研究報告於 1998 年 9 月送交國會同意，其主要內容包括四大方向：

- 1.促進競爭並加強競爭力
- 2.加強保護消費者
- 3.加強金融機構自律
- 4.改進監理架構，避免監理重複

財政部並發布政策白皮書 *Reforming Canada's Financial Services Sector: A Framework for the Future* 逐步修法予以落實。為加強保護消費者，加拿大於 2001 年設立一個新的聯邦監理機關---金融消費者保護局(Financial Consumer Agency of Canada, FCAC)負責教育與保護消費者；此外，為加強民眾對

金融機構財務報表之信心，2002 年 7 月，加拿大聯邦與省之金融證券監理機關會同會計師協會，共同設立「會計師監督委員會(Canadian Public Accountability Board, CPAB)」，由前任中央銀行總裁擔任主席，以加強會計師之監督管理，確保社會大眾對於財務報表之信心。為加強金融機構自律，CDIC 於 2000 年著手修正 1993 年訂定之金融機構健全經營準則(Standards of Sound Business and Financial Practices)，歷經 2 年諮詢各界才告完成，修正後準則要求金融機構更加重視良好的公司治理(good corporate governance)、有效的策略管理、積極主動的風險管理與內部控制，並加重金融機構管理階層與董事會之責任；OSFI 亦自 1997 年開始著手規劃新的監理架構，調整內部組織，亦大幅調整監理人員的工作，自 1999 年 8 月起開始採行以風險為重心之監理方法(Risk Focused/Based Supervision)。

新監理方法之重要原則如下：

- 1、對金融機構採行合併監理(consolidated basis)，其國內、國外之子公司、分行、合資企業(Joint Ventures)均納入風險評估。
- 2、運用專業判斷(exercise of sound judgement) 以辨識風險、評估風險，且動態性的評估風險，此為有效監理之重心。
- 3、金融檢查之範圍與次數，乃依據對金融機構整體之風險評估結果，風險管理好的金融機構受到較少的監督管理。
- 4、監督管理包括複核金融機構重要的風險管理控制功能，如

財務分析、遵循法令、內部稽核、風險管理、高階主管與董事會之監督。執行監理工作，於必要時，亦採用金融機構所做的內部管理與控制功能，並建立專責管理人(Relationship Manager, RM)制度。

- 5、及早溝通發現之問題與建議，干預程度乃視金融機構之風險狀況(risk profile)，依據 OSFI 與 CDIC 共同發布的「對金融機構之早期干預措施(Guide to Intervention for Federal Financial Institutions)」處理。
- 6、評等結果在實地檢查後將通知各金融機構並應保密。
- 7、OSFI 繼續依賴會計師查核之財務報表並使用會計師的工作，以避免工作重複。
- 8、OSFI 進行標竿研究(benchmark study)找出控制各種不同水準風險之最佳實務方法，OSFI 並將研究結果告知金融機構之高階主管與董事會，使其確信其風險管理程序是足夠的。

新監理架構之優點如下：

- 1、透過分別評估固有風險與風險管理之過程，更佳地衡量出風險的高低。
- 2、更加強調早期辨識出潛在風險與金融體系潛在問題。
- 3、將重心集中在風險上，有效運用監理資源。
- 4、將風險評估結果通知各金融機構，促其及早改善。

加拿大新的監理方式著重對金融機構持續性的監控，將有限的人力資源與時間，投注在風險最高的金融機構及風險最高的重要作業(Significant Activity)。執行監理工作時繼續採用

外部稽核(會計師)之財務報表與內部稽核之業務查核報告，金融機構財務報表與內部稽核報告之正確性由其管理階層與董事會負責，監理機關只進行抽查，而將監理重心放在掌控金融機構整體的風險上。加拿大金融監理機關向來相當倚重會計師的外部稽核任務，認為會計師的外部稽核工作增加金融監理的品質，並且也減少工作的重複及監理成本。

監理機關在對金融機構之整體風險予以評估並考量資本、盈餘等因素後，給予綜合風險評等(Composite Risk Rating)，並根據綜合風險評等之結果為低、中或高，將金融機構分為五個等級(無問題 Stage 0，第一級至第四級 Stage 1~4)，並對不同等級的金融機構採行不同程度的立即干預措施，俾使其及早改正缺失。OSFI 自 2002 年起將綜合風險評等結果通知各金融機構，讓其檢討改進，並要求其保密。

目前問題金融機構(staged institution)約 40 多家，大部分為 Stage 1。所有 staged institutions 都必須向 OSFI 局長、副局長報告，對於 Stage 2~ Stage 4 機構，必須向財政部長報告。

綜合風險評等 (Composite Risk Rating)	干預階段 (Intervention Stage)
低	Stage 0
中	Stage 0, 1
高	Stage 2, 3, 4

第一級為警告(Early warning)，第二級為財務狀況與償債能力有問題(Risk to financial viability or solvency)，第三級為未來財務狀況有嚴重問題(Future financial viability in serious doubt)，第四級為即將無償債能力(Nonviability /insolvency imminent)。

為使監理政策透明化，讓金融機構有所遵循，並養成金融機構自動自發的自我管理，OSFI 與 CDIC 依據其設立宗旨共同發布「對金融機構之早期干預措施」(Guide to Intervention for Federal Financial Institutions)(中英文內容請詳附錄)，通函各金融機構，詳細說明在正常情況(No problems/Normal activities)之監理措施，以及對於列入第一級至第四級之問題機構，OSFI 與 CDIC 個別或聯合將採取之干預行動，促使金融機構及早自行改正。

OSFI 與 CDIC 共同對金融機構發布 Guide，亦表明政府監理行動之透明化(Transparency)、公信力(Accountability)、可預測(Predictability)、協調合作(Coordination)。

茲簡述 stage 1 ~ stage 4 各級之干預行動如下：

1、第一級警告：

- (1) OSFI 正式通知金融機構的管理階層及董事會要求改正缺失，提供更多資訊或執行追蹤檢查，要求會計師擴大檢查範圍。
- (2) CDIC 要求改正，提高費率，未改正者再徵收附加保費。
- (3) OSFI 與 CDIC 開會討論，共同要求提出改正方案與時間表。

## 2、第二級財務狀況與償債能力有問題：

- (1) OSFI 擴大實地檢查範圍與次數，限制業務。
- (2) CDIC 依據存保條例 30 條處理，若對金融機構之改善進度不滿意，經財政部長同意可終止存保契約。
- (4) OSFI 與 CDIC 開始規劃緊急應變措施，OSFI 至少每月編製一份觀察名單進度報告給 CDIC 及財政部長，並在與財政部長的定期會議上討論。

## 3、第三級未來財務狀況有嚴重問題：

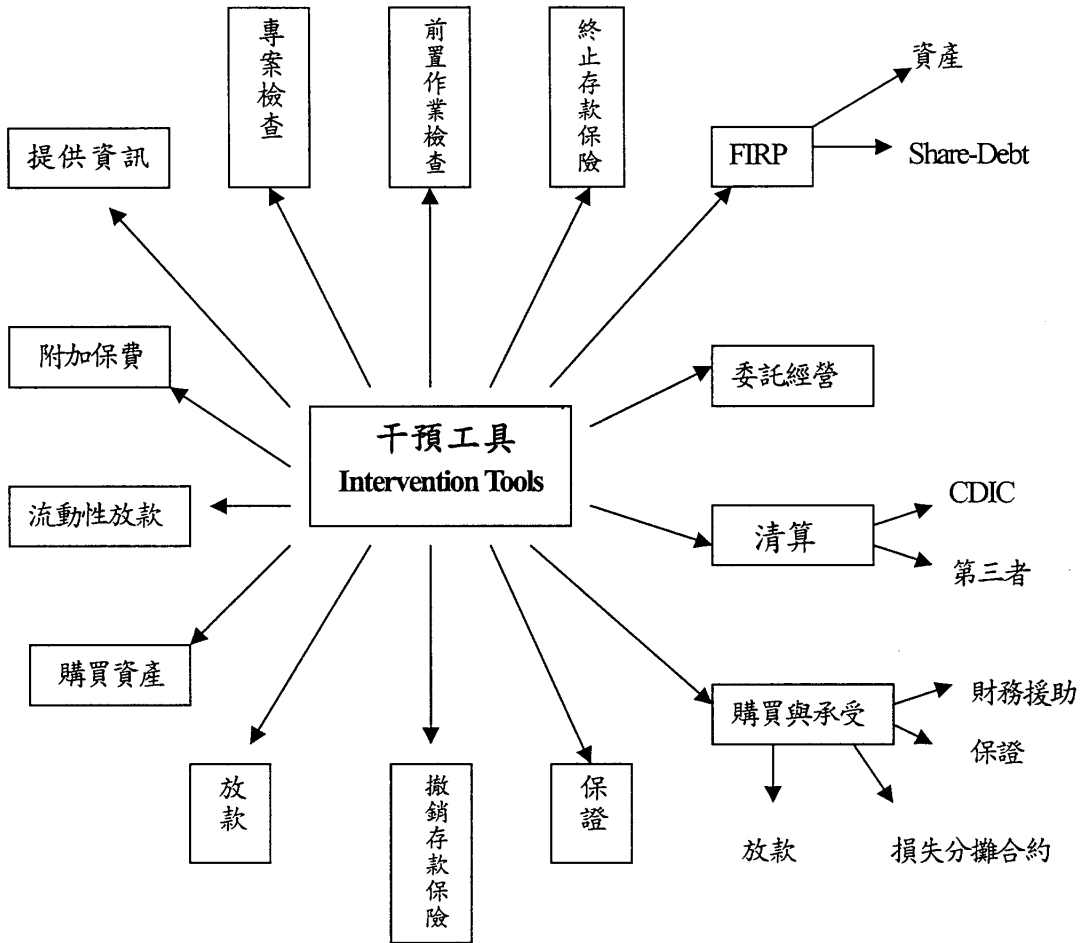
- (1) OSFI 強制金融機構的管理階層及董事會進行重整或尋求可能買主。
- (2) CDIC 經財政部長同意後終止存保契約，提供暫時性財務援助，請求財政部長建請 Governor in Council 發布 FIRP 命令，辦理機構重整。
- (3) OSFI 與 CDIC 討論專案檢查、會計師擴大檢查及加強場外監控的結果與資料。

## 4、第四級即將無償債能力：

- (1) OSFI 增加業務限制及範圍，若危及存款的安全將暫時接管金融機構的資產，若未能增加資本將繼續控制資產或接管該機構。
- (2) CDIC 若認為該機構已經或即將喪失償債能力，經財政部長同意可撤銷存保契約。
- (3) OSFI 與 CDIC 通知國內外監理機關將對該機構採取的監理干預措施，該機構若符合條件可申請進行清算，OSFI 或 CDIC 亦可請求發布清算命令。

### (三) 干預工具(Intervention Tools)

茲將加拿大採行之干預工具繪圖如下：





#### (四)對金融機構之風險評估程序

監理機關執行金融檢查，實地評估金融機構之整體風險，最後給予綜合風險評等，並編製風險評估彙總表(Risk Assessment Summary, RAS)及干預報告(Intervention Report)，茲將風險評估程序簡介如下：

##### 1、辨識金融機構之重要作業(Significant Activity)

所謂重要作業係指重要的營業項目、重要的營業單位或重要的程序，例如商業抵押放款、資產證券化、資訊科技、財務管理、策略規劃等。

##### 2、評估每一重要作業之固有風險(Inherent Risk)

固有風險(先天性風險)包括信用風險、市場風險、作業風險、流動性風險、法律風險、策略風險等，評估每一重要作業之固有風險並給予低、中、高之等級。

##### 3、評估每一重要作業之風險管理品質

金融機構之風險控制功能，除了日常的作業管理外，尚有財務分析、法令遵循、內部稽核(自我評估)、風險管理、高階主管與董事會之監督。評估每一重要作業各項控制功能之管理品質，並給予強、可、弱之等級。

##### 4、評估每一重要作業之淨風險

作業之先天性風險因管理得當而抵銷，其方程式如下：

固有風險-風險管理品質=淨風險

每一重要作業之淨風險分為低、中、高，如下表。

重要作業之 風險管理品質	重要作業之固有風險水準		
	低	中	高
	淨風險評估		
強	低	低	中
可	低	中	高
弱	中	高	高

### 5、編製風險矩陣(Risk Matrix)

風險矩陣包括綜合風險評等(Composite Risk Rating)以及風險方向(Direction of Composite Risk)，綜合風險評等分為低、中、高。風險方向分為增加、穩定、減少。根據綜合風險評等之結果為低、中或高，將金融機構分為五個等級(無問題 Stage 0，第一級至第四級 Stage 1~4)，並對不同等級的金融機構採行不同的立即干預措施，俾使其及早改正缺失。風險矩陣如下表：

## 風險矩陣

重要作業	重要性	固有風險								風險管理品質						淨風險	風險方向	
		信用風險	市場風險	流動性風險	保險風險	作業風險	法律風險	策略風險	作業管理	財務分析	遵循法令	內部稽核	風險管理	高級主管	董事會			
作業 1																		
作業 2																		
作業 3																		
總評等																		
資本															盈餘			
綜合風險評等															風險方向			

## 6、編製風險評估彙總表(Risk Assessment Summary, RAS)與干預報告(Intervention Report)

監理機關對每一家金融機構都指定專責管理人(Relationship Manager, RM)負責，大型銀行則由專責管理小組負責，統籌監理程序，實地檢查最後做出的風險評估彙總表與干預報告，必須經過專責管理人簽字負責。

### (1)風險評估彙總表

主要彙總金融機構之目前財務狀況、預期的風險程度、重要問題、過去監理情形等，其內容包括：

- 1)風險矩陣
- 2)綜合風險評等
- 3)列入之等級及其歷史紀錄
- 4)概述重要作業及其風險
- 5)重要的風險管理控制功能之有效性評估
- 6)資本適足性、獲利性之評估
- 7)母公司所在國監理制度之評估
- 8)過去 12 個月之重要事件
- 9)重要財務比率
- 10)重要作業風險評估之歷史紀錄

### (2)干預報告(Intervention Report)

對於列入 stage1~4 之機構，應另行編製一份干預報告，而且至少每季應再作一次風險評估，並提出報告。干預報告之內容包括三部分：

- 1)問題摘要(Issues Summary)，如 stage 變動情形及原因、

背景分析、重要財務比率、上次干預行動及其結果、成功的機率等。

- 2) 干預措施有效性分析(Effectiveness Measures)及建議。
- 3) 干預行動彙總表(Chronology of Intervention Activities)。

(五)OSFI 執行實地檢查，尚包括檢查 CDIC 會員機構保費之計算是否正確以及是否遵守 CDIC 訂定的健全經營準則。依據 CDIC 法，OSFI 應將 CDIC 會員機構之檢查結果以書面報告 CDIC，包括：

- 1) 風險評估彙總表(RAS)
- 2) 管理信函(Management Letter)與管理報告
- 3) 干預報告(Intervention Report)
- 4) 與會員機構健全經營、財務狀況或營運有關之資訊

(六)CDIC 根據 OSFI 之報告編製風險評估狀況表(Risk Assessment Profile, RAP)，CDIC 與 OSFI 每年至少開會一次，檢討 OSFI 監理之結果與報告之內容，開會之前，雙方互相交換評估資訊，包括 OSFI 之風險評估彙總表(RAS)與 CDIC 之風險評估狀況表(RAP)。自 2003 年起，CDIC 對於大型銀行執行「每季評估風險制度」，以有效降低風險。

(七)監理程序(Supervisory Process)

茲將 OSFI 執行之監理程序簡單歸納如下表。監理程序包括分析、規劃、執行、製作文件、提出報告、追蹤，但在每一

程序中都要不斷地作風險評估並予更新。對於列入第一級與第0級的金融機構每三個月至少分析一次，列入第二級至第四級的金融機構每一個月至少分析一次。

### 監理程序(Supervisory Process)

步驟 (Steps)	產出 (Output)
1.分析： 瞭解金融機構並評估風險狀況	1.風險矩陣(Risk Matrix) 2.風險評估彙總表(RAS)
2.規劃： 規劃監理期間之作業	3.提出監理計畫
3.執行： 執行實地檢查與持續監控	4.要求提供資訊
4.製作文件： 準備檢查意見之有關資料並製作檔案	5.附註 6.工作底稿
5.提出報告： 對金融機構提出檢查意見與建議	7.管理報告 8.修正 RAS 9.干預報告
6.追蹤： 追蹤檢查意見及建議	10.持續修正 RAS

## 伍、加拿大金檢一元化與金融監理機關間之協調合作機制

加拿大自 1987 年將當時負責金融檢查的兩個單位：銀行檢查局與保險局合併，設立金融機構監理局(OSFI)，開始實施金檢一元化，統籌監理聯邦立案金融機構。在 1987 年至 1995 年間，OSFI 並無明確具體的目標與任務，1996 年 6 月經國會要求，OSFI 始確立其主要任務，在藉由施行有效的金融監理，促進社會大眾對金融體系的信心，以降低存款人及被保險人之損失。

加拿大由於金融安全網成員財政部、中央銀行、金融監理局、加拿大存款保險公司、金融消費者保護局已建立良好的溝通協調機制，尤其是 OSFI 與 CDIC 能夠充分協調合作，才能達成有效的金融監理任務。

茲將金融安全網成員間之溝通協調機制分述如下：

### 一、高級諮詢委員會(Senior Advisory Committee, SAC)

主席為財政部次長，其他成員為金融監理局局長、存款保險公司董事長、中央銀行總裁、金融消費者保護局主席，設立目的主要在開會討論有關金融市場及金融業之政策問題(policy issues)，並向財政部長作建議。

## 二、金融機構監理委員會(Financial Institutions Supervisory Committee, FISC)

依據 OSFI 法第 18 條設立，由金融監理局局長擔任主席，成員尚包括中央銀行總裁、金融消費者保護局主席、存保公司董事長、財政部次長。設立目的，主要在讓委員們對於監理金融機構直接有關的各種問題互相交換資訊。

## 三、存保公司董事會

存保公司董事會目前有成員 11 人，董事長由內閣(Governor in Council)任命，任期 5 年，其他成員包括財政部次長、中央銀行總裁、金融監理局局長、副局長、金融消費者保護局主席，CDIC 董事會之決策，如會員機構之核准、干預措施之採行或問題機構之清算，為金融安全網所有成員之共同決定。董事會下設有四個常設委員會，由董事組成，先行討論董事會重要議案。

## 四、存保公司/金融監理局聯繫委員會(CDIC/OSFI Liaison Committee)

由存保公司董事長及金融監理局局長共同擔任主席，成員包括金融監理局副局長、處長，存保公司總經理、副總經理、處長等，目的在避免重複監理，降低監理成本，加強雙方密切合作與有效率的工作關係。



五、存保公司/金融監理局資訊科技委員會(CDIC/OSFI Systems Technology Committee)

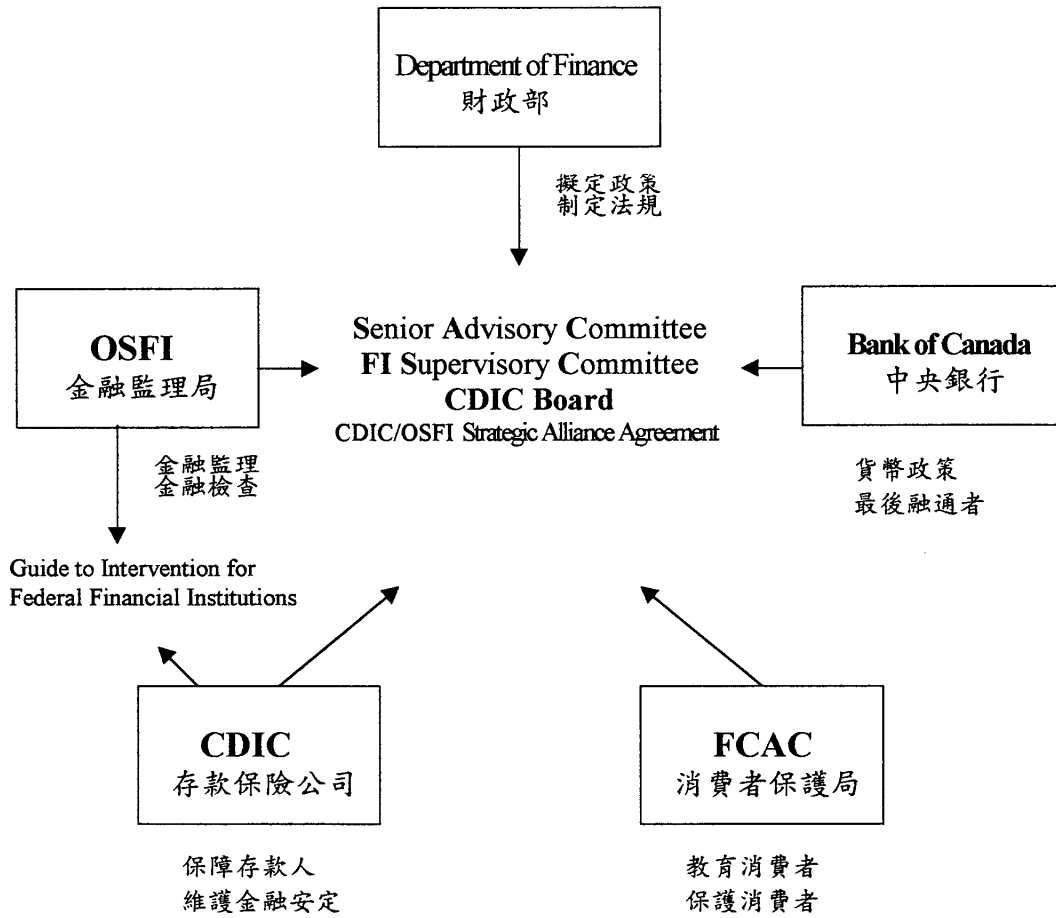
為整合資訊科技策略與發展，CDIC/OSFI 於 2002 年新設一個資訊科技委員會。該委員會提供雙方發展資訊分享之電子化，確認雙方系統科技共同使用的機會及其基本設施費用之分攤與成本節省，以提高效率，並負責議案之執行。

六、存保公司/金融監理局策略聯盟合約(CDIC/OSFI Strategic Alliance Agreement)

OSFI 和 CDIC 為加強彼此間之溝通協調，增進金融監理效率，避免監理工作重複及資源浪費，訂立策略聯盟合約，內容主要包括申請立案、核發執照與申請存款保險之溝通協調，風險評估與風險管理之合作，對問題機構採取干預措施之協調機制等，詳細內容請詳第陸部分。

加拿大金融監理機關間之協調合作圖如下：

加拿大金融監理機關間之協調合作圖



## 陸、 CDIC /OSFI 策略聯盟合約

加拿大金融監理機關間非常注重彼此的溝通協調與合作，加拿大經常強調其金融監理做得好係金融監理機關間，尤其是 OSFI 和 CDIC 密切合作的結果，在 CDIC/OSFI 策略聯盟合約中即明白揭示：聯邦層級監理體系包括財政部、金融消費者保護局、加拿大銀行、OSFI 和 CDIC，雖然各單位有不同職權，但是整個金融監理體系的設計係以緊密的協調合作為前提，俾充分發揮監理功能。

OSFI 和 CDIC 為加強彼此間之溝通協調，增進金融監理效率，避免監理工作重複及資源浪費，自 1992 年開始即訂立策略聯盟合約，並經常視環境變遷而作增刪修正，2003 年 3 月 7 日新版合約主要包括風險評估與風險管理之合作，對問題機構採取干預措施之協調機制等，合約內容前三項為前言、目的、範圍，四為申請立案、核發營業執照與申請存款保險，五為風險評估，六為風險管理，七為終止存保契約、撤銷資格、清算，八為存款保險與監理政策提案，九為向部長、國會報告，十為人員訓練與發展，十一為保密，十二為 CDIC/OSFI 聯繫委員會，茲分述如下：

### 一、前言

OSFI 係依據 OSFI 法設立，其設立宗旨如下：

- (1) 監理金融機構以確保其財務狀況健全並遵守法律與監理規定。
- (2) 迅速通知金融機構管理階層和董事會其財務狀況不健全，未遵守法律或未遵守監理規定，並命令其迅速採取必要的

改正措施。

- (3)督促金融機構管理階層和董事會採取政策與程序以控制及管理風險。
- (4)監控與評估可能對金融機構財務狀況產生負面影響的金融體系或金融業問題。

CDIC 係依據 CDIC 法設立，其設立宗旨如下：

- (1) 提供存款保險以避免存款的部分或全部遭受損失。
- (2) 督促會員機構遵守健全業務財務經營準則，以維護金融體系的安定。
- (3) 達成前述目標以保障存款人權益並使 CDIC 的損失降至最低。

除了 OSFI 和 CDIC 外，聯邦層級監理體系尚包括財政部、金融消費者保護局與加拿大銀行。雖然各單位有不同職權，但是整個金融監理體系之設計係以緊密的協調合作為前提，以使監理功能充分發揮。因此，CDIC 與 OSFI 最重要的是應該努力強化監理機關間具有效率的工作關係。

## 二、目的

本合約之目的在加強 CDIC 與 OSFI 以有效率、有效果的方式執行職權之能力。本合約提供 OSFI 與 CDIC 協調其作業活動之架構，以促進互相諮詢與資訊交換。

## 三、範圍

本合約之適用範圍包括：

1. 聯邦立案的 CDIC 會員機構。
2. 省立案的 CDIC 會員機構，其與聯邦立案且由 OSFI 監理的

- 金融機構（稱為 FRFI）有關或由 OSFI 代 CDIC 檢查者。
3. FRFI 與聯邦會員機構或省會員機構有關者。
  4. 計劃申請聯邦立案並申請加入 CDIC 會員者。
  5. 申請核准在加拿大收受存款但不加入 CDIC 會員者。
  6. 外國銀行申請在加拿大設立分行且將成為 CDIC 會員者。
  7. 申請省立案並申請加入 CDIC 會員且與 FRFI 有關者。

本合約所提及 OSFI 與 CDIC 人員間之會議、通知、資訊交換或其他資訊分享，應以實務上最快的速度執行之。

#### 四、申請立案、核發營業執照、申請存款保險

1. 申請設立銀行或設立聯邦立案信託公司或貸款公司，必須向財政部長申請，由 OSFI 評估其申請並向財政部長作建議。
2. 銀行或聯邦立案信託公司或貸款公司不能開始營業，除非獲得 OSFI 局長同意並發給營業執照。
3. 欲收受存款者亦需獲得 CDIC 會員資格，申請者應向 CDIC 提出並經其評估，由 CDIC 董事會作准駁之決定。
4. OSFI 與 CDIC 以最大的可能同時一起處理申請立案與參加存款保險，OSFI 與 CDIC 相互合作以加速申請案件之處理，減少不同意見的可能性，同時對申請者有相同的答覆，減少財政部長核准設立而 CDIC 董事會不准其參加存款保險之情形。
5. 有關人士經常會向 OSFI 或 CDIC 打聽申請核准的可能性，OSFI 與 CDIC 應相互通知相關事情。
6. 對於申請案件，OSFI 與 CDIC 應遵守下列原則：

- (1) OSFI 應通知 CDIC 每一個申請聯邦立案且收受要保存款之案件，並告知申請者應儘速與 CDIC 聯絡。
- (2) CDIC 應通知 OSFI 每一個申請參加存款保險的聯邦立案機構或與 FRFI 有關的省立案機構，並請其儘速與 OSFI 聯絡。
- (3) CDIC 與 OSFI 應互相告知申請案件之重大發展，CDIC 與 OSFI 人員應每月開會一次檢討申請案件處理情形，討論與申請、處理程序或其他雙方相關議題。
- (4) OSFI 與 CDIC 應互相分享申請案件之資訊，互相提供相關資料。
- (5) 與 OSFI 及 CDIC 有關之重大議題，雙方應與申請者的代表一起開會，OSFI 與 CDIC 並應互相通知將討論的主題，如果一方不能或不願參加會議，另一方應聽取不參加一方的報告。
- (6) OSFI 與 CDIC 之經辦人員，應互相通知申請案件之意向、建議或其他問題。
- (7) 若 OSFI 經辦人員認為財政部長應會核准設立而 CDIC 經辦人員認為 CDIC 董事會不一定會核准，CDIC 與 OSFI 高階主管應開會討論。
- (8) OSFI 經辦人員應通知 CDIC 經辦人員有關部長對於申請案件之所有決定。
- (9) CDIC 經辦人員應通知 OSFI 經辦人員有關 CDIC 董事會對於申請案件之所有決定。

#### **申請不参加存款保險**

1. 銀行法、CDIC 法允許會員銀行及新設立銀行向 CDIC 申請在加拿大收受存款但不參加存款保險（稱為 opt-out）。
2. CDIC 應通知 OSFI 每一個申請 opt-out 之案件。
3. CDIC 應通知 OSFI 其打算同意 opt-out 申請案件（但財政部長得以公共利益因素而加以拒絕）。
4. CDIC 應提供 OSFI 其核准申請者在加拿大收受存款但不參加存款保險之核准函。

#### **外國銀行申請設立分行**

1. 依據銀行法，外國銀行得向財政部長申請在加拿大設立分行並營業。
2. 受核准之外國銀行並無資格參加存款保險，但是一家受核准之外國銀行可同時設立一家分行或多家分行營業且擁有或控制一家或多家 FRFI，該 FRFI 可能為 CDIC 之會員，也可能不是。
3. 當一家外國銀行欲參加存款保險或通知 OSFI 打算設立一家或多家分行並營業，OSFI 應該
  - (1) 通知 CDIC 該外國銀行打算申請存款保險，並且
  - (2) 提供 CDIC 申請案件之最新狀況。

#### **銀行控股公司**

1. 依據銀行法，一個人或數個人可向財政部長申請核准設立銀行控股公司。
2. 若該銀行控股公司與 CDIC 會員有聯屬關係，OSFI 應通知 CDIC 任何申請設立銀行控股公司之案件。

## 五、風險評估

### 1. CDIC 會員機構之年度檢查

- (1) CDIC 法規定會員機構每年應接受檢查。對於聯邦立案會員機構，CDIC 法指派 OSFI 代表 CDIC 辦理檢查，至於省立案會員機構，CDIC 可自行辦理年度檢查或指派其他單位代其檢查。一般而言，CDIC 並不執行省立案會員機構之檢查工作，而是依賴省級監理機關或指派 OSFI 辦理。
- (2) CDIC 主要依賴 OSFI 的檢查。OSFI 提供的檢查報告作為 CDIC 評估個別會員與全體會員對 CDIC 產生的風險，以及會員機構是否遵循健全經營準則之依據。
- (3) OSFI 與 CDIC 每年至少開會一次，讓 CDIC 了解 OSFI 檢查理念、檢查程序、檢查規畫之改變或加強之處，以確保這些改變或加強與 CDIC 的要求相符，並且考慮到 CDIC 的健全經營準則。
- (4) OSFI 與 CDIC 應開會複核未來的檢查計畫並討論執行檢查時 CDIC 希望特別注意的風險。
- (5) OSFI 與 CDIC 每年至少開會一次，討論 OSFI 監理結果，在開會之前，CDIC 和 OSFI 應交換資訊有關於每個單位對會員機構之評估。
- (6) 若 CDIC 打算請求 OSFI 執行省立案會員機構之年度檢查：
  - a. OSFI 與 CDIC 應開會訂定年度檢查之目的、範圍、人力資源、預算及時程。



- b. OSFI 應使用一般監理程序執行檢查工作。
- c. CDIC 應支付 OSFI 執行檢查產生的合理費用。

## 2. 年度檢查報告

- (1) CDIC 法要求執行年度檢查的機關應立即提供書面報告給 CDIC，包括：
  - a. 會員機構安全與健全經營之評估與評等，包括財務狀況。
  - b. 對會員機構之營運提出評論，並應考慮 CDIC 所訂的健全經營準則。
  - c. 若為省立案會員機構，應評估其是否遵循有關法令。
- (2) 此外，執行年度檢查之機關應立即通知 CDIC 有關會員機構重大影響 CDIC 之任何變化情形。
- (3) CDIC 相當依賴 OSFI 的檢查報告，這些報告供 CDIC 評估風險，包括會員機構是否遵循 CDIC 的健全經營準則以及準則自我評估報告是否可靠。
- (4) 依據 CDIC 法，OSFI 應提供 CDIC：
  - a. 風險評估彙總表(RAS)；按照個別會員機構或會員機構之集團而編製。
  - b. 管理信函與管理報告；寄送給會員機構或任何子公司或其他關係企業。
  - c. 干預報告；對於問題金融機構至少每季提供一次。
  - d. 其他資訊；OSFI 認為與會員機構安全與健全經營、財務狀況及營運有關者（如報告、信函、OSFI 對整體體系的評估、附註、遵循法令報告、電話紀錄或備忘資料）。
- (5) 對於省立案會員機構，OSFI 提供之報告、評等、情況

變化之資訊可能受到限制，由於 OSFI 通常不負責持續性監理，也可能未完全按照監理架構辦理。

- (6) OSFI 之監理架構、檢查方法、檢查程序、檢查計畫與 CDIC 之健全經營準則一致，因此，CDIC 用以決定會員機構是否遵守健全經營準則及定期準則報告是否可信之相關資訊，OSFI 應依 CDIC 法規定，於風險評估彙總表及其他提供給 CDIC 的報告中詳細說明。
- (7) 有關於健全經營準則問題應在 CDIC/OSFI 資訊分享會議上討論，OSFI 與 CDIC 應準備討論議案並交換意見。
- (8) 若聯邦會員機構被認為未遵守 CDIC 健全經營準則，CDIC 應依據準則施行細則，送給 OSFI 一份行動計畫，說明其缺失及將採取的糾正措施及完成時程。若 OSFI 收到會員機構的行動計畫，應提供 CDIC 一份副本。若會員機構直接向 CDIC 確認缺失，CDIC 應通知 OSFI。
- (9) 依據 CDIC 準則施行細則，會員機構應提出定期的準則報告，自我評估其遵行健全經營準則之情形，準則報告提出的次數係依據會員機構差別費率的等級。
- (10) 會員機構在檢查當年提出準則報告，OSFI 應對 CDIC 提出評論，依據其檢查工作，準則報告的內容是否與 OSFI 的了解相一致，以及有任何資訊顯示會員機構的準則報告是不可靠的。
- (11) 若 CDIC 認為會員機構未遵守健全經營準則，CDIC 在通知會員機構前應與 OSFI 討論此事。
- (12) 若 CDIC 認為會員機構未遵守健全經營準則，或其不能

信賴會員機構的準則報告，CDIC 可請求 OSFI 提供更多的資訊。

(13) CDIC 應提供 OSFI 每一個聯邦會員機構以及與 FRFI 有關的省會員機構之風險評估狀況表(RAP)。

### 3. 複核保費有關的申報表

- (1) CDIC 的資金來源主要是會員機構每年繳交的保費，保費係依據會員機構每年 4 月 30 日之保額內存款來計算。CDIC 法要求每一個會員機構每年應使用保額內存款申報表，向 CDIC 申報保額內存款。
- (2) CDIC 差別費率施行細則規定某些會員機構應每年使用差別費率報告表提供相關資訊，以決定會員機構之費率等級。
- (3) 依據 CDIC 法，CDIC 可以要求 OSFI 複核保費申報表之正確性。
- (4) 當 OSFI 被要求複核會員機構之保額內存款申報表或差別費率報告表，複核工作應依據 CDIC 與 OSFI 訂定的複核計畫辦理。
- (5) 每年 9 月 30 日以前，CDIC 應通知 OSFI 當年度要複核的會員機構保費申報表、複核完成時間與報告提出時間。
- (6) CDIC 差別費率施行細則亦要求 OSFI 提供資訊，以便計算會員機構之分數，決定差別費率之分類，OSFI 在接到 CDIC 的書面請求後，應立即提供。
- (7) 依據 CDIC 差別費率施行細則，會員機構可以書面敘明理由，要求複核其分數。若會員機構對檢查評等有疑問，CDIC 不應與會員機構討論此事，應告知會員機構直接向 OSFI 詢

問或召開三方會議討論。未經 OSFI 同意，CDIC 不應與會員機構討論檢查評等。

#### 4. 改變公司結構、所有權、管轄權之核准

(1) 依據 FRFI 管理法，財政部長或 OSFI 局長可核准 FRFI 公司結構、所有權或管轄權之變更

(2) OSFI 與 CDIC 應互相通知下列事情：

- a. OSFI 局長打算改變 CDIC 會員機構或與 CDIC 會員有關的 FRFI 之開始營業命令。
- b. 向財政部長申請核准併購、出售全部或大部分資產之案件。
- c. 向財政部長申請核准對於聯邦會員機構或與 CDIC 會員有關的 FRFI 獲得相當利益之案件。
- d. 省會員機構申請改為聯邦會員機構之案件。
- e. 銀行申請改為聯邦立案信託貸款公司，聯邦立案信託貸款公司申請改為銀行之案件。
- f. 依據國會法設立的 body corporate 申請成立銀行控股公司之營業執照，若該 body corporate 是 CDIC 會員或與 CDIC 會員有關。

#### 5. 電子資訊分享與系統科技之協調合作

(1) OSFI 與 CDIC 設立 CDIC/OSFI 系統科技委員會，以利：

- a. 開發資訊分享之電子化。
- b. 確認系統科技共同使用的機會及其基本設施費用之分攤與降低，以提高效率與效果。
- c. 負責相關提案之執行。

- (2) CDIC/OSFI 系統科技委員會每季應開會一次，或應 OSFI 或 CDIC 之請求而開會。討論範圍應包括下列事項：
- a. 整合雙方資訊科技策略之可能性。
  - b. 科技發展之合作機會。
  - c. 資訊安全之設計與分類。
  - d. 業務開始之規劃。
  - e. 電子資訊交換。
  - f. 安全規定。
  - g. 為促進科技資源有效利用之其他議題。
- (3) CDIC/OSFI 系統科技委員會應記錄會議決定之執行方案，並應每年向聯繫委員會報告當年度之執行結果。

## 六、風險管理

### 1. 對聯邦金融機構之干預措施

- (1) OSFI 與 CDIC 已訂定對聯邦金融機構之干預措施，說明 OSFI 與 CDIC 個別或聯合對於問題金融機構之處理。
- (2) OSFI 與 CDIC 必要時應開會檢討該措施，以繼續確保干預行動的可行性與有效性。
- (3) OSFI 應通知 CDIC，若其打算對聯邦會員銀行或與 CDIC 會員有關的 FRFI 採取干預行動。
- (4) CDIC 應通知 OSFI，若其打算對聯邦會員機構或與 FRFI 有關的省會員機構採取干預行動。

### 2. 列入觀察名單之金融機構

- (1) OSFI 根據對聯邦金融機構干預措施設定之標準將 FRFI 列入觀察名單。

- (2) CDIC 應保存一份會員機構之觀察名單。CDIC 將會員機構列入觀察名單時應考慮各種品質的、數量的因素，包括檢查人員的評估。CDIC 應通知會員機構其被列入觀察名單之理由以及相關影響。
- (3) 最重要的是 CDIC 與 OSFI 對於列入觀察名單的金融機構應快速及充分的溝通，以確保充分了解潛在問題。早期確認問題與採取立即改正行動是解決問題的最好方法。
- (4) 若 CDIC 考慮將聯邦會員機構或與 FRFI 有關的省會員機構列入觀察名單，CDIC 應通知 OSFI 下列事情：
  - a. 列入觀察名單之事實。
  - b. 列入觀察名單之理由。
  - c. 其打算採取的干預行動。
- (5) 若 OSFI 考慮將聯邦會員機構或與 CDIC 會員有關的 FRFI 列入觀察名單，OSFI 應該通知 CDIC 下列事情：
  - a. 打算將其列入觀察名單之事實。
  - b. 列入觀察名單之理由。
  - c. 打算採取的干預行動。

### 3. 獲取資訊

- (1) 依據存保契約，CDIC 可要求會員機構或其會計師或前任會計師提供資訊，以供其監控或評估會員機構是否遵守 CDIC 施行細則。
- (2) CDIC 應通知 OSFI，若其打算向聯邦會員或與 FRFI 有關的省會員要求提供資訊。
- (3) 根據 FRFI 管理法，OSFI 可要求控制 FRFI 之機構或個人，

或與 FRFI 有關的單位提供資訊或文件，以供其查核是否遵循法令以及是否處於健全財務狀況。

(4) OSFI 應通知 CDIC，若 OSFI 打算要求聯邦會員或與 CDIC 會員有關的 FRFI 提供資訊。

#### 4. 與列入觀察名單之金融機構董事會開會

(1) OSFI 或 CDIC 認為必要時應與列入觀察名單金融機構之董事會開會討論列入觀察名單之原因以及應該採取的改正措施。

(2) CDIC 應通知 OSFI，若其打算與聯邦會員或與 FRFI 有關的省會員之董事會開會。

(3) OSFI 應通知 CDIC，若其打算與聯邦會員或與 CDIC 會員有關的 FRFI 之董事會開會。

#### 5. 專案檢查

(1) CDIC 法授權 CDIC 必要時可對會員機構執行專案檢查。

(2) 當金融機構財務狀況惡化，對存保基金有較高的損失風險，CDIC 的權益可能受到損害，CDIC 即執行專案檢查。藉由專案檢查，CDIC 更為徹底了解會員機構之實際情況、實務狀況並評估問題的嚴重程度。

(3) 若 CDIC 打算對聯邦會員或與 FRFI 有關之省會員進行專案檢查，CDIC 應與 OSFI 開會討論其理由，檢查之目的與範圍。

(4) 若 CDIC 不指派 OSFI 對於聯邦會員或與 FRFI 有關的省會員進行專案檢查，CDIC 應通知 OSFI 專案檢查的進度、發現與結論並提供 OSFI 有關的工作底稿和報告。

- (5)若 CDIC 指派 OSFI 執行專案檢查，專案檢查之目的、範圍、人力資源、預算與時程應明白規定於合約信函，CDIC 應補償 OSFI 執行專案檢查的合理費用。

#### 6.擴大會計師的檢查範圍

- (1)依據 FRFI 管理法，OSFI 可要求金融機構的會計師擴大查核範圍。
- (2)為了獲取金融機構是否健全經營或遵守法令之資訊，若 OSFI 打算要求聯邦會員或與 CDIC 會員有關的 FRFI 的會計師擴大檢查範圍，或要求其他人員對於聯邦會員或與 CDIC 會員有關的 FRFI 進行檢查工作，OSFI 應通知 CDIC 並應提供 CDIC 一份會計師或其他人員的檢查報告。

#### 7.其他風險管理行動

- (1)根據 FRFI 管理法，OSFI 可以對金融機構採取其他行動，包括獲取確認函、發布指令、請求法院發布命令以及否決金融機構的決策。
- (2)OSFI 應通知 CDIC，若 OSFI 打算對於聯邦會員或與 CDIC 會員有關的 FRFI 採取行動，以決定其是否安全與健全經營或遵守法令，OSFI 應提供 CDIC 對 FRFI 採取行動的進展報告。
- (3)根據 CDIC 法，CDIC 可請求法院發布命令，命令會員機構應遵守 CDIC 法、CDIC 施行細則或存保契約。
- (4)CDIC 應通知 OSFI，若其打算對聯邦會員或與 FRFI 有關之省會員發布遵循命令，CDIC 並應提供 OSFI 最新之進展情形。

#### 8.附加保費



- (1) 依據 CDIC 法，若 CDIC 認為會員機構違反施行細則之規定，經諮詢 OSFI 局長並給會員機構公聽的機會，CDIC 可以徵收附加保費。
- (2) CDIC 應通知 OSFI，若 CDIC 管理階層打算建議董事會對聯邦會員或與 FRFI 有關之省會員徵收附加保費。

#### 9. 前置作業檢查

- (1) 若 CDIC 認為即將辦理存款保險賠付，依據 CDIC 法，CDIC 可以對該機構執行前置作業檢查，若為聯邦會員，應與 OSFI 共同辦理。前置作業檢查之主要目的在評估分析問題金融機構之存款負債，了解其資訊與會計系統並作成文件，並規劃賠付作業之時程與成本估計。執行前置作業檢查大幅加速賠付作業並降低處理成本。
- (2) 若 CDIC 認為應對與 FRFI 有關的省會員機構進行前置作業檢查，CDIC 應事先通知 OSFI 有關的檢查計畫。
- (3) 對於任一聯邦立案會員機構之前置作業檢查，CDIC 應通知 OSFI 前置作業檢查之進度、提供 OSFI 一份檢查報告並與 OSFI 討論檢查的結果與結論。

#### 10. CDIC 的財務援助

- (1) CDIC 有權對會員機構購買資產、放款或提供放款保證、存款或提供存款保證，以提供財務援助。除非受到其他法律的限制，CDIC 基本上能夠進行任何形式的財務援助，以減少損失或降低損失的風險。
- (2) CDIC 應通知 OSFI，若 CDIC 打算對聯邦會員機構或與 FRFI 有關之省會員機構提供財務援助。

## 11. 應變計畫

- (1) 應變計畫提供集中資源採取行動以應付緊急情況，OSFI 與 CDIC 各自應訂定應變計畫，以應付 FRFI 與 CDIC 會員機構之緊急情況。
- (2) CDIC 與 OSFI 應經常互相通知應變計畫處理人員的姓名，若牽涉到聯邦會員，與 CDIC 會員有關的 FRFI 或與 FRFI 有關的省會員機構。

## 七、終止存保契約、撤銷資格、清算

### 1. 終止存保契約

- (1) 依據 CDIC 法，CDIC 可以終止會員機構的存款保險，若 CDIC 認為會員機構未能遵守 CDIC 的健全經營準則或違反 CDIC 法、CDIC 施行細則或存保契約的條款。
- (2) CDIC 應通知 OSFI，若 CDIC 管理階層打算建議董事會終止聯邦會員或與 FRFI 有關的省會員機構之存保契約，CDIC 應提供 OSFI 此事之最新進展情形。

### 2. 撤銷存款保險

- (1) 依據 CDIC 法，CDIC 可撤銷會員機構的存款保險，若 CDIC 認為會員機構已經或即將變成無償債能力，或會員機構停止收受存款。此時 CDIC 董事會應儘速撤銷存款保險契約。
- (2) CDIC 應通知 OSFI，若 CDIC 管理階層打算建議董事會對聯邦會員或與 FRFI 有關之省會員撤銷其存保契約。
- (3) OSFI 應通知 CDIC，若 OSFI 獲知任何 CDIC 會員有停止收受存款之計畫(如清算、解散、可能出售資產或由第三者承受負債)。

### 3. 接管

- (1) 依據 FRFI 管理法，在特殊情況下，OSFI 可以接管金融機構。若其認為接管的原因已經改善，OSFI 可以終止接管。
- (2) OSFI 應通知 CDIC，若 OSFI 打算接管 CDIC 的會員機構或與 CDIC 會員有關的 FRFI，或 OSFI 打算終止接管。

### 4. 清算

- (1) 在 OSFI 已經接管 CDIC 的會員機構或與 CDIC 有關的 FRFI 之情況下，若 OSFI 打算要求檢查長(Attorney General of Canada)對該金融機構申請進行清算，OSFI 應通知 CDIC。
- (2) CDIC 應通知 OSFI，若 CDIC 打算對聯邦會員或與 FRFI 有關的省會員申請進行清算。
- (3) CDIC 與 OSFI 應合作與協調，共同申請對聯邦會員機構進行清算，使該行動有效的執行。

### 5. 選擇清理人(Liquidator)

- (1) FRFI 的自願性清算應先由 OSFI 進行接管一段期間並指定清理人。
- (2) 若 CDIC 會員進行自願性清算，CDIC 通常是最大的債權人。
- (3) 若 OSFI 打算指派專業機構接管 CDIC 的會員機構，OSFI 應事先通知 CDIC 並與 CDIC 討論，以確保該專業機構可被 CDIC 接受作為清理人。
- (4) 若 CDIC 打算提名清理人執行聯邦會員機構的清算，若該機構尚未被 OSFI 接管，或該機構為與 FRFI 有關的省立案會員機構，CDIC 應給予 OSFI 表達意見之機會。
- (5) 在選擇清理人時，OSFI 或 CDIC 應確保；

- a. 該專業機構未與金融機構的會計師有關聯。
- b. 該專業機構與金融機構無利益衝突之情形。
- c. 該專業機構有充足的人力資源去執行指定的工作，且能配置足夠的適任人員去控制與管理分行的營運，並能良好運作，包括快速與正確的計算出保額內存款與保額外存款。
- d. 該專業機構係屬合法並且有能力執行清理人的角色。
- e. 簽訂合約不應集中於一家專業機構。

#### 八、存款保險與監理政策提案

1. OSFI 局長為「金融機構監理委員會(FISC)」之主席，CDIC 董事長為委員。金融機構監理委員會設立目的，在使委員間對於金融機構監理直接有關的各項問題互相交換資訊。
2. CDIC 應通知 OSFI 在金融機構監理委員會會議上，CDIC 董事長希望討論的主題或議題。
3. OSFI 局長與 CDIC 董事長均為「高級諮詢委員會(SAC)」之委員，該委員會對財政部長提供有關金融政策之建議。
4. 為確保在聯邦層級對政策的協調，CDIC 與 OSFI 應：
  - (1) 彼此互相通知有關聯邦立案會員機構或其有關團體或與省立案會員機構有關的 FRFI 之政策提案。
  - (2) 對於雙方職權與運作有關之提案，雙方應互相提供發表意見之機會，在提案發展的適當階段、在對金融機構及利害團體提出正式諮詢前或正式定案之前。

#### 九、向部長、國會報告

OSFI 局長、CDIC 董事長或 OSFI 與 CDIC 其他人員須

經常向財政部長、其他部長、國會、眾議院委員會、參議員或其他公共團體提供其負責金融機構有關資訊。

此時，CDIC 與 OSFI 必須：

1. 彼此互相通知所收到的請求，以及
2. 在適合的情況下，共同協調如何回應。

#### 十、人員訓練與發展

1. OSFI 與 CDIC 必須吸引適任人員並透過訓練與發展提供其成長機會，在許多情況下，OSFI 與 CDIC 對人員的要求、訓練、發展是類似的。
2. 在適當的情況下，CDIC 與 OSFI 將：
  - (1) 合作辦理訓練課程、研討會、座談會及提供其他訓練發展機會，並
  - (2) 這些訓練發展若在室內舉行，應邀請 CDIC 與 OSFI 的人員參加。
3. OSFI 與 CDIC 支持與鼓勵兩機關間人員的交流。若 OSFI 或 CDIC 打算提供工作機會給對方員工，CDIC 總經理兼 CEO 或 OSFI 局長應將此事通知對方。

#### 十一、保密

1. 依據 OSFI 法及 FRFI 管理法，OSFI 所獲得的資料均是機密，必須予以保密。
2. 依據 CDIC 法，CDIC 所獲得的會員資料均是機密，必須予以保密。
3. CDIC 與 OSFI 必須將雙方資訊以機密文件處理，並且同意，除了法律規定外，任何一方未經對方同意不得對

第三者提供對方的資訊。

4. 若法律規定應提供對方的資訊，CDIC 或 OSFI 在提供前應通知對方。

## 十二、CDIC/OSFI 聯繫委員會

OSFI 與 CDIC 應設立 CDIC/OSFI 聯繫委員會以協調雙方作業，避免工作重複，以降低成本，並加強雙方密切合作與有效率的工作關係。OSFI 局長與 CDIC 董事長共同擔任該委員會主席。該委員會應 OSFI 局長或 CDIC 董事長之請求而召開。

## 柒、 結論與建議

此行在 OSFI 承蒙陳總經理好友 Mr. Kim Norris, Managing Director of International Advisory Group 熱忱接待並提供許多寶貴資訊，謹此致謝，同時並感謝 Mr. Ralph Lewars, IAG Advisor 與 Ms. Janet Dubeau 之協助。在 CDIC 參加 International Open-House Seminar 期間，承蒙總經理 Mr. Jean Pierre Sabourin，秘書處長 Mr. John Raymond LaBrosse，政策與國際處處長 Mr. David K. Walker，Ms. Kyla Denault 之熱忱接待及指導，併此致謝，此行對於加拿大人的誠懇與友善，留下深刻印象。OSFI 在其監理制度完善後，於 2001 年成立 International Advisory Group，協助新興市場經濟體強化金融監理制度，以實際行動期冀對全球金融安定有所貢獻，除提供諮詢服務外，並經常舉辦監理人員教育訓練課程。目前主要對加勒比海、亞洲、拉丁美洲等新興市場經濟體提供協助。

筆者於民國 84 年至 85 年在本公司檢查處從事金融檢查

工作，跑遍大江南北，檢查銀行、信用合作社、農漁會信用部之業務，第一天大清早還得早些到受檢單位突擊檢查庫存現金和有價證券，查看是否有人謀不臧的情事發生，緊接著檢查金融機構每一項業務，包括存款、放款、外匯、信託、內部管理等，甚且還要編製金融機構的財務報表，直到現在還是如此做法。當時深覺一般檢查耗用許多人力資源及時間，卻未能切中問題所在掌控風險，因此在民國 85 年之碩士論文中主張以專案檢查取代全查方式的一般檢查，其理念即是將有限的人力與時間，投注在風險最高的地方，也就是必須以風險為重心。

大家都知道，金融機構穩健經營是管理階層與董事會的責任，透過內部稽核不斷檢討改進。同時，編製允當表達財務狀況與經營成果之財務報表，是金融機構管理階層之責任，會計師接受金融機構委託，依據一般公認審計準則(Generally Accepted Audit Standards, GAAS)執行財務報表查核簽證，以其專業及公信力，讓社會大眾信任財務報表係依照一般公認會計原則(Generally Accepted Accounting Principles, GAAP)編製，能允當表達其財務狀況與經營成果。會計師若有違法失職，其管理機關及相關法律應給予嚴厲的制裁。加拿大金融監理機關一方面加強會計師管理，一方面倚重會計師查核簽證的財務報表，作為風險評估與控管之依據，藉由會計師的外部稽核工作，增加金融監理的品質，也減少工作的重複及監理成本。

茲建議如下：

(一)儘速實施風險聚焦的金融監理並採行早期干預處置措施

美國金融管理局(OCC)在 1995 年 12 月發布 Large Bank Supervision, Comptroller's Handbook，將監理重心放在銀行經營風險最大的業務，採行風險聚焦的金融監理，聯邦準備(FRB)在 1997 年 8 月發布 Framework for Risk-focused Supervision of Large Complex Institutions。英國 FSA 於 1998 年 6 月發布 Risk-based Approach to Supervision of Banks。加拿大於 1999 年 8 月實施 Risk-focused Supervisory Framework 訂定風險評估標準(Composite Risk Rating Assessment Criteria 如附錄)，風險聚焦的金融監理已為世界趨勢。

我國在 93 年 7 月 1 日即將成立行政院金融監督管理委員會，統合銀行、證券、期貨、保險之監理與檢查工作，目前已有 14 家金融控股公司，其規模相當大，營業項目甚多且複雜，利用此金融監理制度改革之時機，儘速實施風險聚焦的金融監理及合併監理，並結合會計師的外部稽核功能與金融機構的內部稽核功能，隨時掌控金融機構以及金融業整體的風險，並實施早期干預處置措施。

由業務導向之監理方式改為以風險為導向之監理方式需要完善的規劃與準備，必要時可借重 OSFI International Advisory Group 之協助。

## (二) 我國存保機制應由賠付者轉型為風險控管者

存保機制功能主要在穩定金融體系，處理問題金融機構包括賠付只是手段，風險控管者藉由降低金融機構之風險，進而降低整體金融體系之風險，以達到安定金融之目標。風險控管者需要具備能控制會員機構之加入與退出、



能隨時掌控會員機構之風險、實施及早干預措施等權限。加拿大存保公司在成立 20 年後，由賠付者轉型為風險控管者，存款保險損失率由 52% 下降至 17%，並使金融體系更加健全。我國存保機制運作迄今 18 載，制度尚未健全，應儘速修法轉型為風險控管者，並訂定金融機構健全經營準則，規定會員機構確實遵行，嚴格控管風險。

### (三) 農業體系應另行成立存款保險組織

農業金融法於 92 年 7 月 23 日經總統公布實施後，我國農業金融體系已自成另一系統，由行政院農業委員會負責監督管理，目前存款保險仍由本公司辦理。截至 92 年 9 月為止，全體農漁會信用部的存款總額 1 兆 2 千萬多元，僅占全體金融機構存款總額 20 兆 6 千萬多元之 6%，尚不及一家中華郵政儲匯處存款之一半，世界各國的存保制度如美國、加拿大、日本、韓國都不涵蓋基層金融或農漁會在內，如前所述，存保機制主要在穩定金融體系，而不是賠付，為使存保公司能將有限的人力與時間，投注在風險最高的地方，盡全力於達成穩定金融體系之目標，農業體系應仿日本之例另行成立存款保險組織，集中監督管理與存款保險事宜。

### (四) 加強監理機關間之協調與合作並以法律明確規定

CDIC 與 OSFI 一再強調，加拿大監理做得好係金融安全網成員包括中央銀行、財政部、消費者保護局在內，充分溝通協調合作之結果。93 年 7 月 1 日以後，我國金檢工作統一由金融監督管理委員會執行，存保公司沒有一般金融檢查

權，情況與加拿大類似，存保公司為控管風險，應於法律明定具有專案檢查及處理問題金融機構前之前置作業檢查，金融監督管理委員會並應將檢查報告及存保公司為控管風險所需的所有資料提供給存保公司，並加強監理機關間包括中央銀行、財政部、金融監督管理委員會、存保公司、農委會之協調合作、資訊分享、資訊保密與人員交流，以法律保障監理機關人員免於遭受訴訟，及早干預措施才能落實，讓監理政策透明化(Transparency)，法規之制定係屬國家公共政策(Public Policy)議題，制定過程應讓各界及其他監理機關表達意見，法規之制定與法規之執行應由不同單位負責，才能提高監理品質，有效完成監理任務。

#### (五) 儘速處理問題金融機構，追究違法者責任

我國自民國八十年底十六家新銀行陸續開業營運以後，金融業務大餅遭到瓜分，金融機構的營運情況逆轉，資產報酬率與淨值報酬率均呈下降趨勢，逾放比率不斷攀升，民國八十四年八月間爆發彰化四信案件後，金融弊案與擠兌事件層出不窮，問題金融機構乃逐漸浮現。我國在民國九十年通過行政院金融重建基金設置及管理條例，籌措一千四百億財源讓四十四家經營不善之基層金融機構平和退出市場，目前已提出擴大重建基金規模之條例修正案，以處理中興銀行、高雄企銀等淨值已呈負數之金融機構，並協助正常營運金融機構處理不良資產，改善體質，條例修正案應早日通過，以免延誤處理時機，徒增處理成本。對於掏空資產之金融犯罪行為，則應加重處罰並修改相關法制，以求速審速決，並收嚇阻之效。

註：Governor in Council：依據加拿大存款保險公司政策與國際處處長 Mr. David Walker 之說明，Governor in Council or GIC is the head of state of Canada (the Queen and her representative) acting by and with the advice and consent of the Queen's Privy Council for Canada (i.e. Prime Minister and Cabinet ). Essentially this is a fancy way of saying by order of the Prime Minister and Cabinet and sanctioned by the official head of state which in Canada's case is still the Queen.

主要參考資料：

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6. Annual Report of Canada Deposit Insurance Corporation
7. Annual Report of OSFI
8. [www.fin.gc.ca](http://www.fin.gc.ca)
9. [www.bankofcanada.ca](http://www.bankofcanada.ca)
10. [www.osfi-bsif.gc.ca](http://www.osfi-bsif.gc.ca)
11. [www.fcac.gc.ca](http://www.fcac.gc.ca)
12. 侯如美，我國金融檢查制度與檢查實務之研究—兼論選擇權訂價理論之應用，85年國立臺灣大學碩士論文。

附錄一

Guide to Intervention for Federal  
Financial Institutions

(中文)

## 附錄一 OSFI 與 CDIC 對金融機構之早期干預處置措施

OSFI 與 CDIC 依據 OSFI 法及 CDIC 法所賦予權限，在金融機構發生問題時可採取立即干預措施，以減少存款人及其他債權人之損失。干預程度共分為四級，以下說明 OSFI 與 CDIC 分別或共同對各級問題機構所採取之干預處置措施：

無問題/正常情況—OSFI 與 CDIC 依職權之例行性監理作業，並應依據功能對金融產業整體的重要議題與趨勢進行研究與分析。		
OSFI 之作業	OSFI 與 CDIC 之作業與責任	CDIC 之作業
1. 申請設立或申請新種業務： <ul style="list-style-type: none"> <li>a. 審核所有相關文件</li> <li>b. 向財政部長提出建議</li> </ul> 2. 審核法令規定須核准案件： <ul style="list-style-type: none"> <li>a. 公司改組</li> <li>b. 所有權變更</li> <li>c. 併購其他金融機構</li> <li>d. 讓予營業</li> </ul> 3. 持續監控金融機構填報的相關資訊： <ul style="list-style-type: none"> <li>a. 是否遵循法令規定</li> <li>b. 評估財務狀況與經營成果</li> </ul> 4. 定期實地檢查： <ul style="list-style-type: none"> <li>a. 通知管理階層與董事會檢查結果</li> <li>b. 要求管理階層提供外部稽核檢查報告</li> <li>c. 要求金融機構答覆檢查意見</li> <li>d. 追蹤改進方案</li> </ul>	1. OSFI 報告財政部長其所監理金融機構之現況 2. OSFI 通知 CDIC 要保機構之檢查結果，並確認要保機構是否遵循 CDIC 的健全經營準則。 3. OSFI 與 CDIC 每月召開會議，討論要保機構之公司治理與作業。	1. 處理參加存款保險之申請案並取得適當的保證。 2. 持續評估要保機構風險，經由： <ul style="list-style-type: none"> <li>a. 從 OSFI、中央銀行或其它管道取得的資訊。</li> <li>b. 與監理人員聯繫。</li> <li>c. 信用評等機構之評等。</li> <li>d. 審核分析 OSFI 之年度檢查報告</li> <li>e. 其他資料來源</li> </ul> 3. 確保要保機構遵循 CDIC 法、健全經營準則、存保契約及 CDIC 施行細則。

第一級 警告—由於缺乏政策、程序或作業，將使金融機構未來可能惡化至第二級，應及早改正避免惡化。

OSFI 之干預措施	OSFI 與 CDIC 之責任	CDIC 之干預措施
<p>1. 正式通知金融機構的管理階層及董事會並要求立即採取行動改正缺失。</p> <p>2. 監控改進措施包括要求機構提供更多資訊或執行追蹤檢查。</p> <p>3. OSFI 要求金融機構的外部稽核擴大財務報告檢查範圍，或執行其他檢查程序並提出特別報告，檢查費用由該金融機構負擔。</p>	<p>除前述作業外並採取下列措施：</p> <p>1. OSFI 與 CDIC 會同要求金融機構提出改正方案並訂定時程表。</p> <p>2. OSFI 檢查報告所提相關問題應在每月聯合會議中提出討論改進情況。</p> <p>3. CDIC 通知 OSFI 其將採行之干預措施，並討論與 OSFI 辦理專案檢查的結果，及與金融機構就改正進度和列入觀察名單的溝通情形。</p>	<p>除前述作業外，CDIC 並採取下列風險評估與干預措施：</p> <p>1. 依據 CDIC 的評估結果</p> <p>a. 必要時 CDIC 向 OSFI 或金融機構要求提供更多資訊。</p> <p>b. CDIC 通知要保機構它的關切並通知該機構已列入觀察名單</p> <p>c. CDIC 辦理專案檢查以評估該機構問題嚴重性及對 CDIC 的風險程度。</p> <p>d. 依據風險增加程度，要求金融機構繳交較高保費。</p> <p>2. CDIC 將徵收附加保費，若金融機構未能改正下列缺失：</p> <p>a. 違反 CDIC 的健全經營準則。</p> <p>b. 未能遵循法令規定。</p> <p>c. 未能達成對 CDIC 的保證。</p> <p>d. 未能依據存保契約規定保存紀錄與資料。</p> <p>3. CDIC 要求金融機構或其負責母公司改正缺失。</p>

**第二級 財務狀況與償債能力有問題—下列問題雖尚未立即威脅到金融機構的生存與償債能**

力，但如問題未能立即解決，情況將惡化成嚴重問題：

- 金融機構是否符合資本與盈餘要求的能力受到懷疑
- 金融機構的資產品質或獲利性持續惡化
- 資產負債表外風險過高
- 獲利能力變差或營業發生損失，盈餘或支出有問題
- 取得流動性資金的能力薄弱或流動性管理能力欠佳
- 管理品質欠佳或管理控制程序不良（包括重大違反健全經營準則）
- 其他問題：
  1. 所有權人財力薄弱或發生問題
  2. 擴充太快
  3. 未能遵循法令要求
  4. 信用評等降級
  5. 系統性問題

OSFI 之干預措施	OSFI 與 CDIC 之責任	CDIC 之干預措施
<p>1. OSFI 的高級主管與金融機構的管理階層、董事會和外部稽核討論相關問題與改進方案，管理階層與董事會正式被通知該機構已列入觀察名單。</p> <p>2. 外部稽核被要求針對該機構保障存款人、其他債權人或股東之能力作特別檢查，或為公共利益作其他檢查，並向 OSFI 提出報告，檢查費用由該金融機構負擔。</p> <p>3. 實地檢查的範圍與次數擴大或增加。</p> <p>4. 加強監控該機構，要求增加</p>	<p>除前述外並採取下列措施</p> <p>1. OSFI 及 CDIC 會同與金融機構溝通。</p> <p>2. OSFI 以正式報告方式通知 CDIC 其要保機構被列入觀察名單。</p> <p>3. OSFI 至少每月編製一份觀察名單進度報告給 CDIC 及財政部長，並在與財政部長的定期會議上討論。</p> <p>4. 改進進度將在 OSFI 與 CDIC 的每月聯合會議上討論。</p> <p>5. 該機構將在金融機構監</p>	<p>除前述外，CDIC 並採取下列風險評估與干預措施：</p> <p>1. CDIC 通知金融機構的管理階層及董事會，其被列入 CDIC 的觀察名單將受到更嚴格的監控。</p> <p>2. 如果金融機構違反健全經營準則、存保契約或施行細則，CDIC 將依存款保險法第 30 條對要保機構總經理或董事長寄出正式通知</p> <p>3. 如果 CDIC 對金融機構的改進作業不滿意，經財政部長許可後終止存保契約。</p>

<p>資料填報的次數及內容。</p> <p>5. 機構必需提出能被 OSFI 及 CDIC 同意的改進方案與時程的營業計畫。</p> <p>6. 限制某些業務或作業，如：</p> <p>a. 支付股利或經理人酬勞</p> <p>b. 放款或投資的權限</p> <p>c. 吸收存款的方式或其他取得資金的管道</p> <p>d. 存款利率的訂定</p> <p>e. 其它限制</p> <p>7. 改進方案的進度經由監控和追蹤檢查來掌握。</p>	<p>理委員會中被提出討論</p> <p>6. 開始規劃緊急應變措施</p>	
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**第三級 未來財務狀況有嚴重問題**—在第二級之問題缺乏導正的因素下（例如沒有一個有雄厚資本的母公司來挹注資金），如果未能立即採取改正措施，未來財務狀況及償債能力將有嚴重的威脅。

OSFI 之干預措施	OSFI 與 CDIC 之責任	CDIC 之干預措施
<p>1. 金融機構的管理階層、董事會及外部稽核將正式收到通知問題的嚴重性。</p> <p>2. OSFI 認為必要將要求金融機構外部稽核以外的其他外部稽核進行特別查核，相關費用由該金融機構負擔。</p> <p>3. 如果是收受存款的金融機構，監控工作將移轉給 OSFI</p>	<p>除前述作業外並採取下列措施：</p> <p>1. 若 OSFI 有發現任何新的事件或進展將立即以正式報告通知 CDIC。</p> <p>2. 專案檢查、擴大外部稽核查核結果及場外監控的資料都將與 CDIC 討論。</p>	<p>除前述作業外，CDIC 並採取下列風險評估與干預措施：</p> <p>1. CDIC 經財政部長同意後終止該機構之存保契約。</p> <p>2. 為減少存保基金的損失，CDIC 將提供暫時財務援助：</p> <p>a. 購買該機構資產。</p> <p>b. 貸款給該機構，或對該機構的借入款提供保證或代墊款項。</p>



<p>的特別工作小組負責。</p> <p>4. 某些特殊問題所辦理的專案檢查所牽涉的方面有：</p> <p>a. 增加放款案件抽樣的範圍</p> <p>b. 對案件的審查更深入。</p> <p>c. 需請專業人員評估授信品質、資產價值及備抵呆帳是否足夠等。</p> <p>5. 依據情況，OSFI 派駐檢查人員在金融機構作持續性的監控</p> <p>6. 營業計畫需能有效且及時解決問題，以避免發生流動性危機</p> <p>7. 要求金融機構增加資本。</p> <p>8. 加強監控該機構，並要求增加資料填報的次數及內容。</p> <p>9. 辦理追蹤檢查。</p> <p>10. 增加營業限制。</p> <p>11. 強制管理階層與董事會進行重整或尋求適當的可能買主</p> <p>12. OSFI 擬定緊急應變計畫，以便狀況變化時能快速掌控機構的資產。</p>	<p>3. 如果是收受存款的金融機構，且未來有可能無法應付存款提領，OSFI 應正式報告通知 CDIC。</p>	<p>c. 以存款方式挹注資金或代為保證</p> <p>3. 接獲 OSFI 正式報告該機構可能停業，CDIC 將請求財政部長建請 Governor in Council 發布 FIRP 命令，辦理機構重整。</p>
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**第四級 即將無償債能力—下列因素造成嚴重的財務困難：**

- 無法或即將無法符合資本需求，也無法在短期內改善情況，或
- 已符合法定接管的條件，或
- 無法擬定和施行可被接受的改善計畫，使上述兩個情況在短期內無可避免發生

OSFI 之干預措施	OSFI 與 CDIC 之責任	CDIC 之干預措施
<p>1. 增加業務限制或擴大業務限制範圍。</p> <p>2. OSFI 高級主管透過頻繁的會議要求金融機構的管理階層和董事會儘速改善情況。</p> <p>3. OSFI 通知金融機構的管理階層和董事會，若沒有立即有效的改善計畫，OSFI 將採取更多的監理干預措施。</p> <p>4. 若危及存款的安全，OSFI 將暫時接管金融機構的資產。</p> <p>5. 若金融機構無法達成增加資本等法定要求，OSFI 向局長報告後可繼續控制資產或接管該機構。</p>	<p>1. 其他相關的監理機關（省或國外）亦被通知即將採取的干預措施。</p> <p>2. 金融機構情況若符合清算的條件則可以提出申請，OSFI 或 CDIC 亦可請求發布清算命令，惟財政部長在考量公眾利益下能予以否決。</p> <p>3. 任何由 OSFI 或 CDIC 所提出的干預措施都需經雙方密切協商。</p>	<p>若 CDIC 認為該機構已經或即將喪失償債能力，CDIC 經財政部長同意可撤銷該機構之存保契約。</p>

附錄一

Guide to Intervention for Federal  
Financial Institutions

(英文)

## **Guide to Intervention for Federal Financial Institutions**

The Office of the Superintendent of Financial Institutions (OSFI) was established in 1987 and is responsible, among other things, for regulating and supervising banks, federally incorporated trust companies and loan companies, and federally incorporated or registered insurance companies. OSFI has primary responsibility for supervisory actions with respect to an institution.

The Canada Deposit Insurance Corporation (CDIC) is a federal Crown corporation that insures deposits in both federal and provincial deposit-taking institutions (banks, trust companies and loan companies) that are its members. In order to fulfil its legislated “objects,” control risk to the Deposit Insurance Fund and minimize the exposure of CDIC to loss, CDIC may take certain measures in respect of its member institutions.

Insofar as federally incorporated deposit-taking institutions are concerned, the intervention aspects of OSFI and CDIC are closely intertwined, and a high level of co-ordination and co-operation between the two agencies is expected. It should be stressed that OSFI is the regulator and CDIC is the insurer. OSFI is a primary source of information for CDIC, and CDIC relies on OSFI to examine and report annually on the financial condition of CDIC’s member institutions.

Insurance companies supervised by OSFI include domestic life insurance companies, property and casualty insurance companies, and fraternal benefit societies as well as foreign insurance companies and fraternal benefit societies operating in Canada on a branch basis. The Canadian Life and Health Insurance Compensation Corporation (CompCorp) and the Property and Casualty Insurance Compensation Corporation (PACIC) are industry-run compensation corporations set up to protect policyholders of life and health insurers and property and casualty insurers respectively. These organizations are not federal government agencies; therefore, this appendix does not describe their activities.

The financial institution statutes administered by OSFI and the *Canada Deposit Insurance Corporation Act* provide a wide range of discretionary intervention powers to address situations that give OSFI and, when one of CDIC’s member institutions is involved, CDIC cause for concern. The objective of the intervention process is to identify areas of concern early and intervene effectively to minimize problems and losses to depositors and other creditors, as the case may be, of financial institutions.

The table that follows provides an outline of the intervention processes applied to federally regulated deposit-taking institutions by OSFI and CDIC. It incorporates the measures proposed in the Department of Finance's white paper.

The objective of this table is to promote awareness and enhance transparency of the system of intervention for federal deposit-taking financial institutions and other interested parties. The table summarizes the circumstances under which certain intervention measures may be expected, and it describes the co-ordination mechanisms in place between OSFI and CDIC when dealing with federally regulated deposit-taking institutions.

Over time, the table will be updated to expand, where appropriate, on the circumstances under which action may be taken, including the authorities' risk-rating systems, for example. In addition, more detail on the nature of extended and special exams carried out by OSFI and CDIC will be considered.

The table does not specifically describe the system of intervention for life or property and casualty insurance companies supervised by OSFI or the co-ordination mechanisms in place between OSFI and the two insurance compensation funds. However, they are similar to those described for deposit-taking institutions.

The table outlines what financial institutions can normally expect from OSFI and CDIC. However, circumstances can vary significantly from case to case, and this table should not be interpreted as limiting the scope of action that may be taken by OSFI or CDIC in dealing with specific problems or institutions. It is important to note that OSFI's and CDIC's intervention process is not a rigid regime under which every institution or every situation is necessarily addressed with a predetermined set of actions.

<p><b>No problems/Normal activities</b> — Routine supervisory and regulatory activities pursuant to mandates of OSFI and CDIC. In addition, both agencies conduct research and analyze industry-wide issues and trends, appropriate to their respective functions.</p>		
OSFI Activities	Statutory and Inter-Agency Activities/Responsibilities	CDIC Activities
<p>Incorporation of new financial institutions and issuance of orders to carry on business:</p> <ul style="list-style-type: none"> <li>• review and assess all relevant documents and information</li> <li>• make recommendation to Minister.</li> </ul> <p>Review and assess wide range of applications and requests for regulatory consents required by statutes including</p> <ul style="list-style-type: none"> <li>• corporate reorganizations</li> <li>• changes in ownership</li> <li>• acquisitions of other financial institutions</li> <li>• transfers of business.</li> </ul> <p>Ongoing monitoring of supervised institutions via information obtained from statutory filings and financial reporting requirements:</p> <ul style="list-style-type: none"> <li>• consider compliance with statutory and other regulatory requirements</li> <li>• assess financial situation and operating performance.</li> </ul> <p>Periodic on-site examinations of supervised institutions as required by statutes:</p> <ul style="list-style-type: none"> <li>• inform management and board of directors of findings</li> <li>• management requested to provide copy of report to external auditors</li> <li>• require that concerns be addressed by institutions</li> <li>• monitor remedial measures if required.</li> </ul>	<p>OSFI informs Minister of status of supervised institutions.</p> <p>OSFI reports to CDIC on post examination results for individual deposit-taking member institutions and confirms material compliance with standards of sound business and financial practices.</p> <p>Monthly OSFI-CDIC inter-agency meeting held to discuss corporate governance and activities of member institutions.</p>	<p>Process application for policy of deposit insurance and obtain appropriate guarantees and undertakings.</p> <p>Ongoing risk assessment of selected individual institutions via:</p> <ul style="list-style-type: none"> <li>• information available from OSFI, the Bank of Canada and, where necessary, individual financial institution reports</li> <li>• contacts with regulators</li> <li>• rating agency results</li> <li>• review and analysis of results of annual examinations of federal member institutions carried out by OSFI</li> <li>• other sources.</li> </ul> <p>Ensure compliance with CDIC Act and standards of sound business and financial practices by-laws, policy of deposit insurance and CDIC by-laws.</p>

<p><b>Stage 1 — Early warning</b> — Deficiency in policies or procedures or the existence of other practices, conditions and circumstances that could lead to the development of problems described at Stage 2. Situation is such that it can be remedied before it deteriorates into a Stage-2 problem.</p>		
OSFI Activities/Intervention	Statutory and Inter-Agency Activities/Responsibilities	CDIC Activities/Intervention
<p>Management and board of directors of financial institution are formally notified of concerns and are requested to take measures to rectify situation.</p> <p>Monitoring of remedial actions may involve requests for additional information and/or follow-up examinations.</p> <p>OSFI may require that institution's external auditor enlarge scope of examination of institution's financial statements or that external auditor perform other procedures, and prepare a report thereon. OSFI may assign cost of external auditor's work to institution.</p>	<p>Activities below are in addition to those previously mentioned.</p> <p>OSFI and CDIC coordinate on requested remedial measures to deal with concerns and on establishment of time frame within which situation should be remedied.</p> <p>OSFI's post-examination report to CDIC identifies issues requiring remedial measures, including any material breaches of standards of sound business and financial practices, regardless of whether such issues are treated as formal qualifications to OSFI's report. The status of such issues is reviewed at monthly inter-agency meetings.</p> <p>CDIC notifies OSFI of contemplated intervention measures, discusses results of special examinations with OSFI, and coordinates communications with the institution about its status and placement on "watch list".</p>	<p>CDIC risk assessment and interventions listed here are in addition to those mentioned previously.</p> <p>Depending on CDIC's assessment of situation,</p> <ul style="list-style-type: none"> <li>• CDIC may request additional information from OSFI if available, or from the institution if necessary</li> <li>• CDIC may communicate its concerns to institution and may place it on its preliminary 'watch list' and inform institution of that fact</li> <li>• If circumstances warrant, CDIC may conduct or commission a special examination to obtain more information on the member institution and to be in a position to assess the extent of the institution's problem and CDIC's exposure</li> <li>• Institution may pay higher CDIC premiums, related to increased risk.</li> </ul> <p>CDIC may levy a premium surcharge if the institution does not remedy any of the following:</p> <ul style="list-style-type: none"> <li>• failure to follow CDIC's Standards of Sound Business and Financial Practices</li> <li>• failure to comply with its governing statute</li> <li>• failure to fulfil the terms of an undertaking provided to CDIC</li> <li>• failure to maintain records and information pursuant to provisions of the policies of deposit insurance.</li> </ul> <p>CDIC may request an undertaking from institution or from entity that controls the institution to rectify areas of concern.</p>

<p><b>Stage 2 — Risk to financial viability or solvency</b> — Situation or problems that, although not serious enough to present an immediate threat to financial viability or solvency could deteriorate into serious problems if not addressed promptly, as evidenced by:</p> <ul style="list-style-type: none"> <li>concerns over the institution's ability to meet capital and surplus, or vesting requirements on an ongoing basis</li> <li>deterioration in the quality or value of assets, or the profitability of the business undertaken by the financial institution</li> <li>undue exposure to off-balance sheet risk</li> <li>poor earnings or operating losses or questionable reporting of earnings or expenses</li> <li>low level of accessible liquidity or poor liquidity management in context of the institution's situation</li> <li>less than satisfactory management quality or deficiency in management procedures or controls (including material breaches of standards of sound business and financial practices)</li> <li>other concerns arising from: <ul style="list-style-type: none"> <li>a financially weak or troubled owner</li> <li>non-compliance with regulatory requirements</li> <li>systemic issues</li> <li>rapid growth</li> <li>credit rating downgrades.</li> </ul> </li> </ul>		
OSFI Activities/Intervention	Statutory and Inter-Agency Activities/Responsibilities	CDIC Activities/Intervention
<p>Senior OSFI officers meet with management and board of directors of financial institution and with external auditor of institution to outline concerns and discuss remedial actions. Management and board of directors are formally notified of the fact that institution is being placed on the regulatory "watch list".</p> <p>External auditor of institution may be required to perform a particular examination relating to the adequacy of the institution's procedures for the safety of its depositors, other creditors or shareholders, or any other examination that may be required in the public interest, and report thereon to OSFI. OSFI may assign part of external auditor's work to institution.</p> <p>Scope of on-site examination and/or frequency of on-site examinations may be enlarged or increased.</p> <p>Monitoring of financial institution is enhanced as to frequency of reporting requirements and/or the level of detail of information submitted.</p>	<p>Activities below are in addition to those previously mentioned.</p> <p>CDIC and OSFI coordinate communications with the institution.</p> <p>OSFI immediately notifies CDIC of situation when uncovered, with a formal report to follow.</p> <p>Institution is placed on "watch list".</p> <p>OSFI sends a "watch list" progress report at least monthly to CDIC and Minister; report is discussed in regular meeting with Minister.</p> <p>Progress on remedial measures discussed at monthly OSFI/CDIC inter-agency meeting.</p> <p>Institution may be discussed at Financial Institutions Supervisory Committee.</p> <p>Contingency planning commences.</p>	<p>CDIC risk assessment and intervention listed here is in addition to those previously mentioned.</p> <p>CDIC informs management and board of directors of member institution of situation and of the fact that institution is being placed on CDIC's "watch list" leading to more vigorous monitoring.</p> <p>If institution is in breach of CDIC's Standards of Sound Business and Financial Practices, policy of deposit insurance, bylaws, CDIC may send the CEO or the Chairman of the institution a formal report pursuant to Section 30 of the CDIC Act.</p> <p>CDIC may advise institution that if CDIC is not satisfied with progress made in rectifying the situation referred to in the aforementioned formal report, CDIC may seek (federal institutions) Minister's permission to terminate the institution's policy of deposit insurance.</p>



**Stage 2 — Risk to financial viability or solvency (continued)**

OSFI Activities/Intervention	Statutory and Inter-Agency Activities/Responsibilities	CDIC Activities/Intervention
<p>Institution must produce a business plan acceptable to both OSFI and CDIC that reflects appropriate remedial measures that will rectify problems within a specified time frame.</p> <p>Business restrictions appropriate to circumstances may be imposed on institution via undertakings provided by the institution, restrictions on the institution's order to carry on business or via direction of compliance covering such matters as:</p> <ul style="list-style-type: none"> <li>• payments of dividends or management fees</li> <li>• lending or investment powers</li> <li>• level of deposits and other indebtedness</li> </ul>		

<p><b>Stage 3 — Future financial viability in serious doubt</b> — Situations or problems described at Stage 2 are at a level where, in the absence of mitigating factors such as unfettered access to financial support from a financially strong financial institution parent, unless effective corrective measures are applied promptly, they pose a material threat to future financial viability or solvency.</p>		
OSFI Activities/Intervention	Statutory and Inter-Agency Activities/Responsibilities	CDIC Activities/Intervention
<p>Management, board of directors and external auditor of institution are informed of problems.</p> <p>A special audit may be required from an auditor other than the institution's own external auditor if OSFI is of the opinion that it is required. OSFI may assign cost of external auditor's work to institution.</p> <p>If financial institution is a deposit-taking institution, examination and monitoring responsibility is transferred to an internal special work-out group within OSFI.</p> <p>Enhanced examinations may be carried out, focussing on particular areas of concern such as asset or loan security valuations. Such examinations may involve any of the following:</p> <ul style="list-style-type: none"> <li>• substantial increase in sampling of credit files</li> <li>• more in-depth review of files</li> <li>• engagement of specialists or professionals to assess certain areas such as quality of loan security, asset values, sufficiency of reserves, etc.</li> </ul> <p>Depending on situation, OSFI examination staff may be posted at financial institution to monitor situation on an ongoing basis.</p> <p>Business plan must reflect appropriate remedial measures that will rectify problems within a set time frame so as to avoid triggering impaired viability or impaired solvency procedures (See Stage 4).</p>	<p>Activities below are in addition to those previously mentioned.</p> <p>OSFI immediately notifies CDIC of any material new findings or developments, with a formal report to follow.</p> <p>Results and data from enhanced examinations, expanded audits, etc. and from enhanced monitoring are discussed with CDIC.</p> <p>If financial institution is a deposit-taking institution and it is deemed to be, or is about to become, non viable, OSFI sends a formal report to CDIC to that effect.</p>	<p>CDIC risk assessment and interventions listed here are in addition to those mentioned previously.</p> <p>CDIC may seek Minister's permission to terminate the institution's policy of deposit insurance.</p> <p>In order to minimize risk to deposit insurance fund, CDIC may provide institution with temporary financial assistance or provide support for a restructuring transaction by such measures as:</p> <ul style="list-style-type: none"> <li>• acquiring assets from the institution</li> <li>• making or guaranteeing loans or advances with or without security, to the institution</li> <li>• making or guaranteeing a deposit with the institution.</li> </ul> <p>Following receipt of formal OSFI report to the effect that institution has ceased, or is about to cease, to be viable, CDIC may initiate a restructuring by asking the Minister of Finance to recommend that the Governor in Council issue a "FIRP" order, under the financial institutions restructuring provisions of the CDIC Act.</p>

**Stage 3 — Future financial viability in serious doubt (continued)**

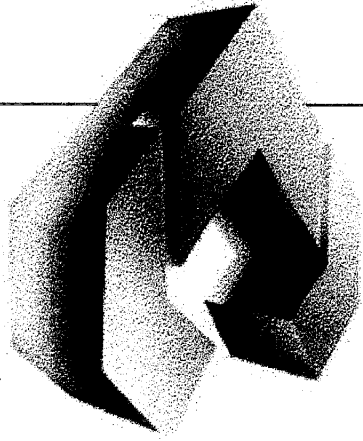
OSFI Activities/Intervention	Statutory and Inter-Agency Activities/Responsibilities	CDIC Activities/Intervention
<p>OSFI may order institution to increase its capital.</p> <p>Monitoring of institution may be further enhanced as to frequency of reporting requirements and/or the level of detail of information submitted so as to monitor progress of remedial measures.</p> <p>Follow-up examinations may be carried out as required.</p> <p>Depending on circumstances, business restrictions may be enhanced or additional ones imposed on institution.</p> <p>Depending on circumstances, pressures may be exerted on management and board of directors to restructure institution or to seek out an appropriate prospective purchaser.</p> <p>OSFI develops contingency plan in order to be able to take rapid control of the assets of the financial institution if changes in circumstances so warrant.</p>		

<b>Stage 4 — Non-viability/ Insolvency Imminent — Severe financial difficulties resulting in</b>		
<ul style="list-style-type: none"> <li>• failure or imminent failure to meet regulatory capital and surplus requirements in conjunction with inability to rectify the situation within a short period of time</li> <li>OR</li> <li>• statutory conditions for taking control being met</li> <li>OR</li> <li>• failure to develop and implement an acceptable business plan, thus making either of the two preceding circumstances inevitable within a short period of time.</li> </ul>		
OSFI Activities/Intervention	Statutory and Inter-Agency Activities/Responsibilities	CDIC Activities/Intervention
<p>New business restrictions may be imposed on institution or existing restrictions may be expanded.</p> <p>Pressure to rectify situation is exerted on management and board of directors of financial institution through frequent meetings with senior OSFI officers.</p> <p>OSFI notifies management and board of directors of institution of intended regulatory intervention measures that will be taken unless situation is rectified imminently.</p> <p>If statutory conditions for taking control of assets exist and if circumstances are such that there is an immediate threat to the safety of depositors and other creditors, OSFI may take control of the assets of the institution for a short period.</p> <p>If statutory conditions exist, such as failure to comply with order to increase capital, and subject to representation to the Superintendent, OSFI may maintain control of assets or take control of the institution.</p>	<p>Other relevant regulatory agencies (provincial or foreign) are notified of proposed regulatory intervention measures to be applied to institution.</p> <p>If the institution meets any of the conditions that would make it eligible to be wound up pursuant to the <i>Winding-up Act</i>, the institution itself may voluntarily seek a winding-up order. Alternatively, either OSFI or CDIC, working in collaboration with the other agency, may seek a winding-up order. Minister may overrule this decision on grounds of public interest only.</p> <p>All intervention measures applied to deposit-taking institutions at this stage, whether initiated by OSFI or CDIC, are the subject of close coordination between the two agencies.</p>	<p>If CDIC is of the opinion that the institution is or is about to become insolvent, CDIC may seek Minister's approval to cancel the institution's policy of deposit insurance.</p>

附錄一

**Guide to Intervention for Federal  
Financial Institutions**

(中文)




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# Supervisory Framework

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1999  
and  
beyond

 Office of the Superintendent  
of Financial Institutions



### **OSFI's Mission**

We are the primary regulator of federal financial institutions and pension plans. Our mission is to safeguard policyholders, depositors and pension plan members from undue loss. We advance and administer a regulatory framework that contributes to public confidence in a competitive financial system. We also provide actuarial services and advice to the Government of Canada.

We are committed to providing a professional, high quality and cost-effective service.



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## 1. Introduction

OSFI's activities can be divided into two broad functions: regulation and supervision. Regulation involves providing input into developing and interpreting legislation and regulations, issuing guidelines, and approving requests from federally regulated financial institutions as required under the various financial institution legislation. Supervision involves assessing the safety and soundness of federally regulated financial institutions, providing feedback to institutions, and using supervisory powers to intervene in a timely manner to achieve OSFI's mandate.

The objective of the Supervisory Framework (Framework) is to provide an effective process to assess the safety and soundness of regulated financial institutions. This is achieved by evaluating an institution's risk profile, financial condition, risk management processes, and compliance with applicable laws and regulations.

Developing supervisory practices is a dynamic process. Continuing change in the financial markets has led OSFI to review its existing supervisory practices to ensure that they remain effective. The review was carried out over a two-year period commencing in 1997. In recognition of the increased globalization of the financial industry and the need for harmonization of supervisory practices across jurisdictions, OSFI considered the practices of a number of foreign regulators. In revising its Framework, OSFI has taken into account the practices developed by these regulators.

The revised Framework also takes into account OSFI's experience in supervising various types and sizes of institutions. It accommodates the special requirements of the deposit-taking, life insurance, and property and casualty insurance sectors. OSFI was unique in this regard when it launched its review, although a number of other countries have since moved towards a single supervisory regime for both deposit-taking institutions and insurers, irrespective of their size.

The Framework applies to all federally regulated financial institutions. It is currently being implemented and will be fine-tuned based on experience and consultation with supervised institutions. OSFI will continue to challenge and refine its practices to ensure that they remain effective and efficient in a rapidly changing environment.

## 2. Benefits

The principal benefits of the revised Framework are:

- better evaluation of risks through separate assessment of inherent risks and risk management processes;
- greater emphasis on early identification of emerging risks and system-wide issues;



- cost effective use of resources through a sharper focus on risk; and
- reporting of risk focused assessments to institutions.

### 3. Key Principles

The following key principles form the basis of the Framework:

- ◆ The supervision of Canadian financial institutions is conducted on a consolidated basis, using information from other regulators as appropriate. It includes an assessment of all material entities (subsidiaries, branches, or joint ventures) both in Canada and internationally.
- ◆ The exercise of sound judgement in identifying and evaluating risks in an institution is central to the effectiveness of the Framework. Work performed will be focused on clearly identified risks or areas of concern.
- ◆ The level and frequency of supervisory scrutiny will depend on the risk assessment of the institution. Institutions that are well managed relative to their risks will require less supervision. Not all areas within an institution need to be reviewed every year.
- ◆ Supervision will include reviews of major risk management control functions such as Financial Analysis, Compliance, Internal Audit, Risk Management, Senior Management and Board Oversight. OSFI's supervisory process uses, where appropriate, the work of the institution's internal management and control functions.
- ◆ Communication of findings and recommendations to institutions will be timely. The degree of intervention will be commensurate with the risk profile of the institution and in accordance with the Guide to Intervention for Federal Financial Institutions.
- ◆ Ratings will be provided to the institution after each on-site review (once federal legislation to protect the confidentiality of such information is promulgated). The ratings will be linked to the stages of intervention in accordance with the Guide to Intervention for Federal Financial Institutions. The evaluation criteria and definitions of ratings, once developed, will be provided to industry for consultation and comment before being implemented.
- ◆ OSFI will continue to rely on external auditors for the fairness of the financial statements and will use their work to modify the scope of its reviews to minimize duplication of effort. Similarly, OSFI will continue to rely on appointed actuaries for the adequacy of policy liabilities and will use their work to modify the scope of its reviews.
- ◆ OSFI will carry out benchmarking studies on a range of subjects which compare institutions to their peer groups to identify best industry practices for dealing with various levels of risk. OSFI will share this information with institutions' senior management and Boards of Directors so that they can ensure that their risk management processes are adequate.



#### 4. Risk Assessment

The addition of a dynamic risk assessment process represents an important change to the Framework.

Risk assessment begins with identifying significant activities of an institution. The net risk in these activities is a function of the aggregate inherent risk offset by the aggregate quality of risk management. This evaluation is illustrated by the following equation:

$$\text{Inherent Risks} \text{ mitigated by } \text{Quality of Risk Management} = \text{Net Risk}$$

The results of the risk assessment are summarized in a Risk Matrix as discussed below (subsection 4.6).

##### 4.1 Significant Activities

Significant activities could include any significant line of business, unit or process. Significant activities are identified from various sources including the institution's organization charts, strategic business plan, capital allocations, and internal and external financial reporting.

Sound judgement is applied in determining the significance or materiality of any activity in which an institution engages. The following are examples of criteria that may be used:

- a. assets generated by the activity in relation to total assets (both on- and off-balance sheet);
- b. risk-weighted assets generated by the activity in relation to total risk-weighted assets;
- c. revenue generated by the activity in relation to total revenue;
- d. net income before tax for the activity in relation to total net income before tax;
- e. risk-weighted capital for the activity in relation to total risk-weighted capital;
- f. internal allocation of capital to the activity in relation to total capital;
- g. insurance underwriting exposure in relation to capital; and
- h. reserves held as a percentage of total reserves.

##### 4.2 Inherent Risk

Inherent risk is intrinsic to a business activity and arises from exposure and uncertainty from potential future events. Inherent risk is evaluated by considering the degree of probability and the potential size of an adverse impact on an institution's capital or earnings.



A thorough understanding of the environment in which an institution operates and its various business activities is essential to effectively identify and assess inherent risk in those activities. OSFI has decided to group these risks in the following categories for assessment purposes:

- credit risk;
- market risk;
- insurance risk;
- operational risk;
- liquidity risk;
- legal and regulatory risk; and
- strategic risk.

These risk categories are described in Appendix A.

After significant activities have been identified, the level of each inherent risk in those activities is assessed as **low**, **moderate**, or **high** (see Appendix B). This assessment is made without considering the impact of risk mitigation through the institution's risk management processes and controls. The quality of these factors are considered separately and combined with the inherent risk assessment to determine the net risk of each activity.

#### 4.3 Quality of Risk Management

The quality of risk management is evaluated for each significant activity. In addition to Operational Management, we have identified six risk management control functions that may exist in an institution. These are: Financial Analysis, Compliance, Internal Audit, Risk Management, Senior Management and Board Oversight (see Appendix C). The presence and nature of these functions vary based on the size and complexity of an institution.

Operational Management for a given activity is primarily responsible for its day-to-day management. This function ensures that policies, processes, control systems, staff levels and experience are sufficient and effective in compensating for the risks inherent in the activity. The organizational structure and controls must be effective in preventing and detecting material errors or irregularities in a timely manner.

The degree to which an institution's Operational Management and controls for a given activity need to be reviewed depends on the assessment of the effectiveness of the institution's other risk management control functions. For example, in conglomerates it may be possible to assess the effectiveness of Operational Management and controls for a given activity through an assessment of

the other risk management control functions. Where institutions lack some or all of the risk management control functions, OSFI looks to other functions, within or external to the institution, that handle these responsibilities.

Where independent reviews of Operational Management and controls have not been carried out or where independent risk management control functions are lacking, OSFI will, under normal circumstances, make appropriate recommendations or direct that appropriate work be done.

The quality of risk management processes for each significant activity is an evaluation of an institution's current practices of each risk management control function for that activity. The quality of risk management processes is assessed as **strong, acceptable or weak**.

#### 4.4 Net Risk

The net risk for each significant activity is a function of the aggregate level of inherent risk offset by the aggregate quality of risk management. The aggregate levels are based on judgements that consider all of the inherent risk ratings and the quality of risk management for the activity.

For example, the investment banking activity of an institution may be evaluated as having a high aggregate level of inherent risk arising from a combination of high credit risk, high market risk, and high liquidity risk. However, net risk for the activity may be rated as moderate due to mitigation by a strong aggregate quality of risk management resulting from strong operational management, strong internal audit, strong risk management, and strong Board oversight.

Net risk is rated as **low, moderate or high** as shown in the chart below.

Aggregate Quality of Risk Management for Significant Activity	Aggregate Level of Inherent Risk for Significant Activity		
	Low	Moderate	High
	Net Risk Assessment		
Strong	Low	Low	Moderate
Acceptable	Low	Moderate	High
Weak	Moderate	High	High

#### 4.5 Direction of Net Risk

The above assessments include a determination of the current direction of net risk. Direction of risk is assessed as **decreasing, stable, or increasing** over an appropriate time horizon for the institution. For example, the time horizon for a conglomerate may need to be much longer than for a smaller institution. The time horizon considered is indicated in each case.

#### 4.6 Risk Matrix

A Risk Matrix (see Appendix D) is used to record the assessment of inherent risks, the quality of risk management, and the resulting net risk evaluation for each significant activity.

The Risk Matrix includes a determination of an **Overall Rating of Net Risk** and the **Direction of Risk**. In arriving at the Overall Rating of Net Risk, the relative significance or materiality of each activity is considered. This is rated **low, moderate, or high**. This assessment ensures that an activity with low materiality but high net risk does not skew the Overall Rating. OSFI's supervisory efforts will be focused on material high risk activities.

An Overall Rating for each risk management control function is also included in the Risk Matrix.

The Risk Matrix includes a **Composite Rating** and a **Direction of Composite Risk** for the institution. These could be affected by factors such as capital and earnings. Accordingly, the assessment includes a review of the quality, quantity, and availability of externally and internally generated capital. In reviewing an institution's ability to generate capital internally, profitability is considered both on a consolidated and unconsolidated basis. An appropriate time frame for the **Composite Rating** and the **Direction of Composite Risk** is also included.

While the Risk Matrix is a convenient way to summarize the conclusions of risk assessment, it is supported by documentation of the analysis and the rationale for the conclusions.

#### 4.7 Risk Assessment Summary

The Risk Assessment Summary (RAS) is an executive summary which highlights an institution's present financial condition, its prospective risk profile, key issues, and past supervisory findings. The RAS includes:

- a. A Risk Matrix;
- b. An overview of the main business activities and strategies;
- c. An assessment of the effectiveness of the key risk management control functions;



- d. An assessment of the adequacy of capital or regulatory deposit and the profitability of the institution;
- e. Where an institution is part of a foreign entity (i.e. a subsidiary or a branch), a suitable assessment of the foreign entity's operations and the supervisory system in effect in the home jurisdiction;
- f. A listing of significant events during the past 12 months;
- g. Financial highlights; and
- h. Intervention status reports.

The RAS facilitates a sharper focus on activities that pose the greatest risk to an institution.

The RAS is used to set priorities for the year. It does not include the supervisory work to be carried out nor resources required. Planned work and resources required are included in the Supervisory Plan discussed below (subsection 6.2).

While the RAS includes a Composite Rating for an institution, this rating is preliminary and is not shared with the institution until the risk rating is confirmed through appropriate on-site reviews.

Once appropriate criteria have been developed, OSFI intends to provide the institution with an Overall Rating for each of its risk management control functions after the completion of an on-site review.

Intervention staging, in accordance with the Guide to Intervention for Federal Financial Institutions, is reviewed after the RAS has been updated. Any changes to the staging requires approval of a senior director and the Deputy Superintendent, Supervision.

The Composite Risk rating of an institution should be a clear indication of the intervention stage rating of the institution. An institution with a "low" Composite Risk Rating should be Stage 0. An institution with a "high" Composite Risk Rating should be Stage 2 or worse. An institution judged to have a "moderate" risk rating could be either a Stage 0 or a Stage 1 depending on the direction of the risk profile (decreasing, stable, or increasing) and the reasons behind the rating (for example, very weak management control processes would indicate a need for higher staging).

The RAS is the primary document provided to senior OSFI officials for briefings. Additional documentation may be necessary in case of institutions at Stage 1 or worse.

OSFI currently translates its assessments of deposit-taking institutions into the CAMEL rating for CDIC and other users of this system.

## 5. The Relationship Manager

Each supervisory group is headed by a director who is the designated relationship manager (RM) for all institutions in his/her group. The director may delegate the role of RM to a member of his/her team.

The RM is the focal point for the supervision of assigned institutions and OSFI's primary contact with those institutions. The RM is also part of the regulatory approval process in conjunction with the Registration and Approvals Division.

The responsibilities of a RM that support the key principles of the Framework are described below under the supervisory process.

## 6. The Supervisory Process

The main steps of the supervisory process are: **Analysis, Planning, Action, Documentation, Reporting, and Follow-up**. These steps are listed below. Although the steps appear sequential, updating of the risk assessment is a dynamic process requiring frequent reassessments at various stages of the supervisory process.

STEPS	OUTPUT
1. Analysis (Understanding the institution and developing a risk profile)	1. Risk Matrix 2. Risk Assessment Summary (RAS)
2. Planning (Scheduling and planning activities for the supervisory period)	3. Supervisory Plans (by Institution, Division, Group, and Sector)
3. Action (Conducting on-site reviews and on-going monitoring)	4. Information requests
4. Documentation (Preparing and filing information to support findings)	5. Section Notes 6. Working papers
5. Reporting (Report of findings and recommendations to the institution)	7. Management Report 8. Updated RAS
6. Follow-up of findings and recommendations.	9. Updated RAS



## 6.1 Analysis (Step 1)

Analysis of the institution is a primary input into the risk assessment process. The supervisory groups are responsible for ongoing analysis and monitoring of institutions. Analysis is performed at least once every three months for institutions rated Stage 1 or better, and on a monthly basis for institutions rated Stage 2 or worse. Analysis work carried out just prior to the preparation of the Supervisory Plan is more extensive to allow for better input into the planning process.

Analysis and monitoring includes a review of company information as well as meetings with key individuals at the institution to discuss trends and emerging issues. The scope of this work will depend on the size and the risk profile of the institution.

Results of the analysis are used to update the Risk Matrix and the RAS.

## 6.2 Planning (Step 2)

A Supervisory Plan is prepared at the beginning of each fiscal year and outlines work planned and resources required. The scope of the work planned is based on the RAS. The focus is on the activities and risk management processes identified in the RAS as significant risk areas. Each director uses the RAS to determine priorities for the upcoming year and to allocate resources to individual institutions accordingly.

The Supervisory Plan for each institution includes a consideration of the following:

- industry risks;
- concerns or issues raised by OSFI's Specialist Support or Regulatory Sectors;
- concerns or issues raised by OSFI executives; and
- planning for benchmarking, peer reviews, or other special studies.

As appropriate and consistent with the general agreements already in place, the planning process is to take into account issues raised by CDIC for institutions of particular concern to them.

Once Supervisory Plans are approved at the group level and priorities established, the institution specific Supervisory Plans are finalized.

The Supervisory Plan is subject to revisions if unforeseen events alter the risk profile of the institution. However, any changes require a reassessment of priorities, not just an extension of the scope of the supervisory efforts.



### **6.3 Action (Step 3)**

The RM communicates with key parties at the institution and maintains an on-going relationship with management. For larger institutions, this will likely involve quarterly visits.

Information requested from an institution is based on the specific requirements arising from the risk assessment process. The main information request is made prior to an on-site review.

On-site reviews are a critical part of the supervisory process. The scope of on-site reviews depends on the Overall Rating of Net Risk. These reviews and interaction with the institution's management also enhance OSFI's understanding of the institution and its risk profile.

### **6.4 Documentation (Step 4)**

All supervisory groups use the same documentation standards.

The revised supervisory file structure is consistent with the new risk framework. The file includes an updated copy of the RAS, a copy of the Management Report and related correspondence, and copies of various section notes.

A section note is prepared in the standard format for each significant activity or risk management control function identified for review. The section note is used to fully document an assessment of the activity or the risk management control function. Working papers necessary to support the assessment are also on file. If a significant activity or risk management control function is not reviewed during an on-site visit, the latest section note is brought forward. This ensures that the file contains the latest information available to OSFI on all areas of an institution.

### **6.5 Reporting (Step 5)**

The RM writes annually to the institution outlining the results of the supervisory work whether or not an on-site review has taken place. In the case of an on-site review, the final stage of the process includes three levels of verbal and written reports. These levels target the following audiences: OSFI management, the institution's management, and external stakeholders.

Written reports to OSFI management consist of the updated RAS, a summary of the findings and section notes with detailed information of significant findings.

Findings and recommendations are first discussed with appropriate senior managers in the institution. Where there is a Risk Management or Internal Audit department, the findings and recommendations are discussed with the responsible manager. This is followed by reporting to the Chief Executive



Officer (CEO) and the Audit and/or Risk Committees. This reporting is not tied to the timing of Audit and/or Risk Committee meetings, but a meeting is scheduled with these groups at the earliest possible time after the Management Report is completed.

The Management Report is the key written document sent to the institution. It addresses findings, recommendations and follow-up of previous findings. Ultimately, the Management Report will also include a brief explanation of the Composite Rating and ratings of the applicable risk management control functions.

Management Reports to Canadian companies are addressed to the CEO and copied to the Chair of the Audit Committee. Management Reports to foreign institutions operating branches in Canada are addressed to the Principal Officer or Chief Agent of the Canadian branch. Where there are significant issues with a Canadian branch, a copy of the Management Report is sent to the CEO and the Chair of the Audit Committee at the home office. In all cases, the covering letter requests that a copy of the Management Report be provided to the external auditors and to the appointed actuary where applicable.

OSFI has agency agreements with CDIC and certain provincial regulators who receive reports from OSFI. Reporting to these parties is in accordance with their respective agreements. In all cases, the confidentiality of the information is respected.

## **6.6 Follow-up (Step 6)**

The findings and recommendations reported to the institution are followed-up on a timely basis and the results included in the RAS updates.

## **Appendix A      Risk Categories**

Following are descriptions of the risk categories identified in subsection 4.2 of the Framework. These descriptions should be read within the context of the definition of inherent risk contained in subsection 4.2.

### **1.      Credit Risk**

Credit risk arises from a counterparty's inability or unwillingness to fully meet its on- and/or off-balance sheet contractual obligations. Exposure to this risk results from financial transactions with a counterparty including issuer, debtor, borrower, broker, policyholder, reinsurer or guarantor.

### **2.      Market Risk**

Market risk arises from changes in market rates or prices. Exposure to this risk can result from market-making, dealing, and position-taking activities in markets such as interest rate, foreign exchange, equity, commodity and real estate.

Interest rate risk and foreign exchange risk are described further below:

#### **a.      Interest Rate Risk**

Interest rate risk arises from movements in interest rates. Exposure to this risk primarily results from timing differences in the repricing of assets and liabilities, both on- and off-balance sheet, as they either mature (fixed rate instruments) or are contractually repriced (floating rate instruments).

#### **b.      Foreign Exchange Risk**

Foreign exchange risk arises from movements in foreign exchange rates. Exposure to this risk mainly occurs during a period in which the institution has an open position, both on- and off-balance sheet, and/or in spot and forward markets.

### **3.      Insurance Risk**

#### **a.      Product Design and Pricing Risk**

Product design and pricing risk arises from the exposure to financial loss from transacting insurance and/or annuity business where costs and liabilities assumed in respect of a product line exceed the expectation in pricing the product line.



**b. Underwriting and Liability Risk**

Underwriting and liability risk is the exposure to financial loss resulting from the selection and approval of risks to be insured, the reduction, retention and transfer of risk, the reserving and adjudication of claims, and the management of contractual and non-contractual product options.

**4. Operational Risk**

Operational risk arises from problems in the performance of business functions or processes. Exposure to this risk can result from deficiencies or breakdowns in internal controls or processes, technology failures, human errors or dishonesty and natural catastrophes.

**5. Liquidity Risk**

Liquidity risk arises from an institution's inability to purchase or otherwise obtain the necessary funds, either by increasing liabilities or converting assets, to meet its on- and off-balance sheet obligations as they come due, without incurring unacceptable losses.

**6. Legal and Regulatory Risk**

Legal and regulatory risk arises from an institution's non-conformance with laws, rules, regulations, prescribed practices, or ethical standards in any jurisdiction in which the institution operates.

**7. Strategic Risk**

Strategic risk arises from an institution's inability to implement appropriate business plans, strategies, decision-making, resource allocation and its inability to adapt to changes in its business environment.



## **Appendix B      Definitions of Inherent Risk Ratings**

### **Low Inherent Risk:**

Low inherent risk exists when there is a lower than average probability of an adverse impact on an institution's capital or earnings due to exposure and uncertainty from potential future events.

### **Moderate Inherent Risk:**

Moderate inherent risk exists when there is an average probability of an adverse impact on an institution's capital or earnings due to exposure and uncertainty from potential future events.

### **High Inherent Risk:**

High inherent risk exists when there is a higher than average probability of an adverse impact on an institution's capital or earnings due to exposure and uncertainty from potential future events.

## **Appendix C Risk Management Control Functions**

### **1. Operational Management**

Operational management is responsible for planning, directing and controlling the day-to-day operations of an institution's business activities.

### **2. Financial Analysis**

Financial analysis is the function that performs in-depth analyses of the operational results of an institution and reports them to management. Effective reporting is key to this function as the operational results affect strategic and business decisions made by management and the Board. This function is generally only found as a separate unit in larger institutions.

### **3. Compliance**

Compliance is an independent function within an institution that: 1) sets the policies and procedures for adherence to regulatory requirements in all jurisdictions where an institution operates; 2) monitors the institution's compliance with these policies and procedures; and, 3) reports on compliance matters to senior management and the Board.

### **4. Internal Audit**

Internal audit is an independent function within the institution that assesses adherence to and effectiveness of operational and organizational controls. In addition, internal audit may also assess adherence to and effectiveness of compliance and risk management policies and procedures.

### **5. Risk Management**

Risk management is an independent function responsible for planning, directing and controlling the impact on the institution of risks arising from its operations. The function is generally only found as a separate unit in the larger institutions, and may address the following:

- identification of risks;
- development of measurement systems for risks;
- establishment of policies and procedures to manage risks;
- development of risk tolerance limits;

- monitoring of positions against approved risk tolerance limits; and
- reporting of results of risk monitoring to senior management and the Board.

#### **6. Senior Management**

Senior management is responsible for planning, directing and controlling the strategic direction and general operations of the institution. Its key responsibilities include:

- ensure organizational and procedural controls are effective;
- ensure compliance with approved policies and procedures;
- develop strategies and plans to achieve approved strategic and business objectives; and
- develop sound business practices, culture and ethics.

#### **7. Board of Directors**

The Board of Directors is responsible for providing stewardship and management oversight for the institution. Its key responsibilities include:

- ensure management is qualified and competent;
- review and approve organizational and procedural controls;
- ensure principal risks are identified and appropriately managed;
- review and approve policies and procedures for the institution's major activities;
- review and approve strategic and business plans; and
- provide for an independent assessment of management controls.





Institution Name Risk Matrix as at DATE												Net Direction Risk of Risk		
Significant Activities/Materiality	Inherent Risks						Quality of Risk Management					Net Direction Risk of Risk		
	Credit/Market	Liquidity	Insurance	Operational	Legal & Regulatory	Strategic	Operational Mgmt.	Financial Analysis	Compliance	Internal Audit	Risk Mgmt./Mgmt.		Senior Mgmt.	Board Oversight
Activity 1														
Activity 2														
Activity 3														
etc.														
<b>Overall Rating</b>														

<b>Capital</b>		<b>Earnings</b>	
<b>Composite Rating</b>		<b>Direction of Risk</b>	<b>Time Frame</b>

## 附錄三

# 風險評等評估準則



Office of the Superintendent  
of Financial Institutions Canada  
121 King Street West  
Toronto, Ontario  
M5H 3T9

Bureau du surintendant  
des institutions financières Canada  
121 rue King ouest  
Toronto, Ontario  
M5H 3T9

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## Introduction to the Supervisory Framework Ratings Assessment Criteria

OSFI shared its Supervisory Framework (“Framework”) with institutions in August 1999.

As indicated in the Framework's Key Principles, we will be sharing our assessments with institutions through supervisory ratings. Each institution will be provided with a Composite Risk rating, which represents OSFI's assessment of the safety and soundness of the institution. We will also be preparing ratings for each of the institution's applicable Risk Management Control Functions (“Oversight Functions”), with the ratings reflecting an assessment of the effectiveness of these functions in overseeing the management of the institution's activities.

We will begin sharing the Composite Risk rating with institutions in 2002, with full implementation expected over the following two years. Relationship Managers will be prepared to discuss the rationale for their assessments with individual institutions, which may include discussing ratings of particular Oversight Functions.

Assessment Criteria for the supervisory ratings were developed over a two-year period through research of material available nationally and internationally, review of practices at some forty different types and sizes of regulated institutions in Canada, and with input from supervised industries through their associations. The Assessment Criteria are not required standards. They will be used to guide supervisory assessments. Ratings will be based on actual findings and observations during on-site reviews and monitoring activities.

OSFI expects that the nature and extent of oversight by an institution over its activities will be commensurate with its complexity and risk profile. Accordingly, the various factors considered in the assessment of the Oversight Functions may be weighted differently for different institutions.

It is not intended that institutions should restructure or reorganize their oversight processes as a result of this initiative. OSFI expects institutions to establish organizational structures and control practices that are appropriate to their unique circumstances.

It is important to recognise that the ratings were developed as an internal process for standardizing OSFI's approach to the assessment of institutions, thereby improving the consistency and comparability of our assessments. The Assessment Criteria may be revised from time to time, based on experience gained through implementation and as industry practices change over time.

Confidentiality of the rating information is protected by the *Supervisory Information Regulations*. The regulations provide that institutions may disclose “prescribed supervisory information”, which includes ratings, to affiliates, directors, officers, employees, external auditors, appointed actuaries, security underwriters, or legal advisors, provided the institution ensures the continued confidentiality of the information.

## An Overview of the Supervisory Framework and Related Ratings

The objective of the supervisory process is to assess the safety and soundness of regulated financial institutions and intervene on a timely basis where OSFI considers an institution's practices to be imprudent or unsafe. The Supervisory Framework sets out a disciplined, risk-based approach to making these assessments, that uses the work of an institution's Oversight Functions, where appropriate, to understand how effectively an institution manages its risks.

The Composite Risk rating is the key rating under the Framework. It represents OSFI's assessment of the safety and soundness of an institution. The Assessment Criteria provide rating categories and criteria for assessing the Composite Risk rating and each of its components, i.e., Overall Net Risk, Earnings and Capital.

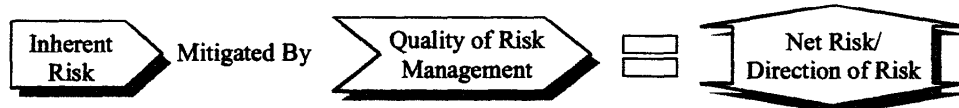
It is important to note that all assessments made throughout the supervisory process consider the nature, scope, complexity and risk profile of an institution, i.e., its unique circumstances.

### Assessing an Institution's Safety and Soundness

The assessment of an institution's safety and soundness is built on an understanding of the institution, its industry, and its environment. Based on this understanding, an institution's significant activities are identified. Both qualitative and quantitative factors are used to assess the materiality or significance of an activity to the achievement of the institution's objectives and strategies.

A significant activity can be a line of business, business unit, or other institution-wide process such as treasury operations or information technology. Generally, OSFI groups an institution's activities in a manner that is consistent with the business model used by the institution, i.e., how the institution is structured and managed.

Significant activities are assessed using the following equation:



For each significant activity, the key risks inherent in the activity are identified and assessed, without considering the level of mitigation provided by the institution's risk management processes and controls. This assessment is mainly qualitative. Inherent risk assessments are identified under seven risk categories: credit, market, insurance, operational, liquidity, legal and regulatory, and strategic. These categories represent a broad classification of the risks that are generally applicable to financial institutions, and most risks can be considered within one of these categories.

The Quality of Risk Management is evaluated to assess the level of risk mitigation occurring within the significant activities to arrive at the Net Risk and Direction of Risk for each activity. This assessment is judgemental and is based on a sound understanding of the activity, the risks

inherent in the activity, and the effectiveness of the institution's mitigation, taking into account the unique circumstances of the institution.

In assessing the Quality of Risk Management, both Operational Management and the Oversight Functions of an institution are reviewed.

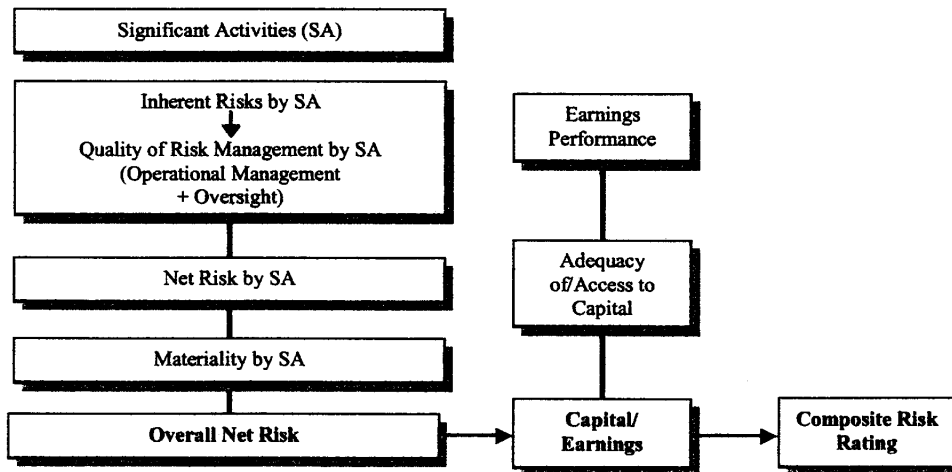
Operational Management for a given activity is primarily responsible for its day-to-day management. This function ensures that policies, processes, control systems, staff levels and experience are in place, and are sufficient and effective in managing and mitigating risks inherent in the activity.

Besides Operational Management, OSFI has identified six Oversight Functions that may exist in an institution. They are Board of Directors, Senior Management, Risk Management, Internal Audit, Compliance, and Financial Analysis. These functions provide an independent review of the management of business activities. The purpose of this oversight is to ensure that Operational Management is effective in managing and controlling the risks for a given significant activity on a day-to-day basis.

OSFI's primary objective in assessing the Oversight Functions is to determine the extent to which it can use the work of these functions to ensure that appropriate controls are in place and are being followed at the operational level. This allows OSFI to focus its own resources on reviewing areas that are likely to affect the risk profile of the institution.

### Composite Risk Rating

The Composite Risk rating is an assessment of the institution's overall risk profile. It reflects OSFI's assessment of the institution's safety and soundness. The following chart illustrates the structure of the Composite Risk Rating:



Once the net risk in significant activities has been assessed, the materiality of each activity is taken into account to arrive at the level and direction of Overall Net Risk for the institution as a whole. The Overall Net Risk is a weighted aggregation of the Net Risks in the institution's significant activities.

The adequacy of Earnings and Capital, given an institution's Overall Net Risk, is assessed to arrive at the level and direction of the institution's Composite Risk.

The objective of assessing Earnings is to understand and assess the quality, quantity and volatility/sustainability of an institution's earnings and how they contribute to Capital.

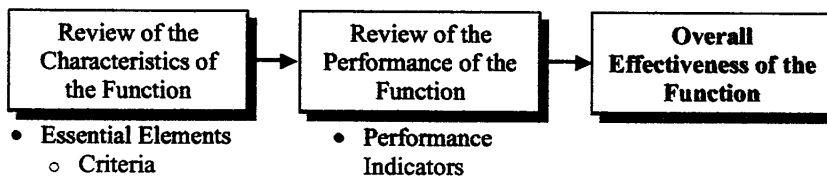
Capital is a source of financial support that contributes to an institution's safety and soundness. It is a cushion to absorb unexpected losses and to provide a safety net for the institution. In assessing Capital, the objective is to assess capital adequacy and the effectiveness of capital management policies and processes in the context of the risk profile of the institution.

### **Oversight Function Ratings**

Institutions will also be provided with ratings for the Oversight Functions that exist within the institution. These ratings are developed during the review of significant activities and reflect an assessment of the function's overall effectiveness across all significant activities. They also reflect, in part, the extent to which an institution's Oversight Functions satisfy the Assessment Criteria that are considered appropriate and relevant to its operations.

OSFI's overall assessment of an Oversight Function involves assessing the characteristics and performance of the function in executing its mandate across all significant activities, in the context of the institution.

The structure of the rating is illustrated below:



The unique circumstances of an institution are key considerations in assessing the effectiveness of the institution's Oversight Functions. This requires the use of judgement in applying criteria and performance indicators included in the Assessment Criteria, in the context of the institution. The particular circumstances of each institution will determine the relative importance of the individual criteria and performance indicators in arriving at an overall rating for a function.

Smaller institutions are not likely to have all the Oversight Functions because oversight responsibilities, in these institutions, are generally carried out by Senior Management. Where an institution lacks some or all of the Oversight Functions, OSFI looks to other functions, within or external to the institution, that handle these oversight responsibilities, for example,

operations reviews by other branches, outsourcing arrangements, and Senior Management's activities. In the absence of effective oversight, OSFI will step up its supervision of the institution and recommend or require that the institution implement an appropriate level of oversight.

## 附錄四

### CDIC/OSFI Strategic Alliance Agreement



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**CDIC/OSFI STRATEGIC ALLIANCE  
AGREEMENT**

March 7, 2003

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## INTRODUCTION

The Superintendent of Financial Institutions (“Superintendent”) is appointed pursuant to, and the Office of the Superintendent (“OSFI”) is established by, the *Office of the Superintendent of Financial Institutions Act* (“*OSFI Act*”).

Under the *OSFI Act*, the objects of OSFI in respect of financial institutions (“FIs”) are:

- (a) to supervise FIs in order to determine whether they are in sound financial condition and are complying with their governing statute law and supervisory requirements under that law;
- (b) to promptly advise the management and board of directors of an FI in the event the institution is not in sound financial condition or is not complying with its governing statute or supervisory requirements under that law and, in such a case, to take, or require the management or board to take, the necessary corrective measures or series of measures to deal with the situation in an expeditious manner;
- (c) to promote the adoption by management and boards of directors of FIs of policies and procedures designed to control and manage risk; and
- (d) to monitor and evaluate system-wide or sectoral events or issues that may have a negative impact on the financial condition of FIs.

Canada Deposit Insurance Corporation (“CDIC”) is established by the *Canada Deposit Insurance Corporation Act* (“*CDIC Act*”).

Under the *CDIC Act* the objects of CDIC are:

- (a) to provide insurance against the loss of part or all of deposits;
- (b) to be instrumental in the promotion of standards of sound business and financial practices for member institutions and to promote and otherwise contribute to the stability of the financial system in Canada; and
- (c) to pursue the objects set out in paragraphs (a) and (b) for the benefit of persons having deposits with member institutions and in such manner as will minimize the exposure of the Corporation to loss.

In addition to OSFI and CDIC, the federal FI supervisory system includes the Department of Finance, the Financial Consumer Agency of Canada and the Bank of Canada. Although each has distinct mandates, the over-all design of the system is premised upon, and the functioning of the system as a whole is best served by, close coordination and cooperation. Accordingly, it is important that CDIC and OSFI strive to foster an effective working relationship among these organizations and, in particular, with each other.

### **PURPOSE OF AGREEMENT**

The purpose of this Agreement is to enhance the ability of CDIC and OSFI to carry out their mandates efficiently and effectively.

This Agreement provides a framework for OSFI and CDIC to coordinate their activities, to promote consultation and to facilitate the exchange of information.

### **SCOPE OF AGREEMENT**

This Agreement concerns the following, as applicable within each section of the Agreement:

- federally-incorporated CDIC member institutions ("federal members");
- provincially-incorporated CDIC member institutions ("provincial members") that are related to federally-incorporated financial institutions regulated by the Superintendent ("FRFIs") or are examined on behalf of CDIC by the Superintendent;
- FRFIs that are related to federal or provincial members;
- applicants that plan on incorporating federally and applying for CDIC membership;
- applicants seeking approval to accept deposits in Canada without being a member of CDIC;

- foreign banks that apply for approval to establish and operate branches in Canada and that are (or would be) related to a CDIC member; and
- applicants that plan on incorporating provincially and applying for CDIC membership that are (or would be) related to a FRFI.

Whenever this Agreement refers to meetings, notifications, the exchange of information or any other sharing of information between OSFI and CDIC personnel it is intended that these are to occur as promptly and expeditiously as practical.

### **INCORPORATION, LICENSING AND INSURANCE APPLICATIONS**

Applicants seeking to establish a bank or a federal trust or loan company must apply to the Minister of Finance for letters patent-incorporating the institution. OSFI assesses these applications and makes recommendations to the Minister.

A bank or federal trust or loan company may not commence business until it obtains an order to commence and carry on business issued by the Superintendent.

Applicants that intend to take insured deposits also require CDIC membership. Applications for deposit insurance are submitted to and assessed by CDIC and decided upon by the CDIC Board of Directors.

OSFI and CDIC to work together to process applications for federal incorporation and CDIC membership concurrently; to the greatest extent possible. OSFI and CDIC intend that this co-operations will facilitate the expeditious processing of applications, reduce the potential for conflicting messages to an applicant, wherever possible, allow the effective equivalent of a single answer to be given in respect of an applicant, and reduce the risk of the Minister issuing letters patent incorporating a financial institution only to have the CDIC Board of Directors reject that institution's application for CDIC membership.

Recognizing that interested parties often contact OSFI or CDIC about the possibility of applying, OSFI and CDIC will advise each other about such expressions of interest to apply.

In respect of applications to OSFI and CDIC, the following principles apply:

## CDIC/OSFI Strategic Alliance Agreement

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- OSFI will advise CDIC of each application for federal incorporation of an institution that wishes to be permitted to accept insured deposits. OSFI will advise the representatives of an applicant to communicate with CDIC as soon as possible if they have not already done so.
- CDIC will advise OSFI of each application for CDIC membership of an institution that would require federal incorporation or of an institution that would require provincial incorporation and would be related to a FRFI. CDIC will advise the representatives of such an applicant to communicate with OSFI as soon as possible if they have not already done so.
- CDIC and OSFI will advise each other about the status of applications as material developments occur. Personnel from both organizations will meet monthly to review the status of applications and discuss matters related to applications or processes, or other matters of mutual interest.
- OSFI and CDIC will share application information and provide each other with access to relevant files pertaining to applications.
- Where there are material issues of common interest between OSFI and CDIC, both organizations should attend meetings with the representatives of the applicant. OSFI and CDIC will inform each other of proposed meetings and the anticipated topics to be discussed. Where one organization is unable or chooses not to attend a meeting, the other organization will debrief the organization that did not attend.
- Once the OSFI and CDIC personnel who review applications have had an opportunity to consider an application, they will advise each other of their intentions and of any concerns, recommended conditions or other issues pertaining to an application.
- In the event that the OSFI personnel who review applications have the view that the merits of an application for incorporation warrant approval by the Minister but the CDIC personnel who review applications have the view that the merits of an application for CDIC membership do not warrant approval by the CDIC Board of Directors (or warrant approval only subject to one or more conditions or limitations that are not concurred in by the OSFI personnel), a meeting will be arranged between senior management of the two organizations to discuss the situation.

- OSFI personnel who review applications for incorporation will advise CDIC personnel who review applications for deposit insurance of all application decisions by the Minister.
- CDIC personnel who review applications for deposit insurance will advise OSFI personnel who review applications for incorporation of all application decisions by the CDIC Board of Directors.

**Applications to Opt-Out of CDIC Membership:**

The *Bank Act* and the *CDIC Act* permit CDIC member banks and newly incorporated banks to apply to CDIC for authority to take deposits in Canada without being members of CDIC (referred to as “opting-out”).

CDIC will advise OSFI of each application (or indication of an intention to apply) to opt-out that it receives.

CDIC will advise OSFI of its intention to approve an opting-out application (subject to the refusal of the application by the Minister on public interest grounds).

CDIC will provide OSFI with a copy of the letter to an applicant advising the applicant that it has been granted authority to take deposits in Canada without being a CDIC member.

**Authorized Foreign Bank Branches:**

Under the *Bank Act*, foreign banks may apply to the Minister of Finance for approval to establish and operate branches in Canada.

Authorized foreign banks are not qualified to become members of CDIC. However, an authorized foreign bank can both establish and operate a branch or branches in Canada and own or control one or more FRFIs that may or may not be CDIC members.

Where a foreign bank that is (or would be) related to a CDIC member applies, or indicates to OSFI that it intends to apply to establish and operate a branch or branches in Canada, OSFI will:

- advise CDIC of the foreign bank's plans for the CDIC member; and
- provide CDIC with regular updates on the status of such application.

**Bank Holding Companies:**

Under the *Bank Act*, one or more persons may apply to the Minister of Finance for letters patent to incorporate a bank holding company.

OSFI will advise CDIC of any application (or indication of an intention to apply) for letters patent to incorporate a bank holding company, if that bank holding company would be affiliated with a CDIC member.

**RISK ASSESSMENT**

**Annual Examinations of CDIC Member Institutions:**

The *CDIC Act* requires member institutions to be examined or inspected annually. For federal members, the *CDIC Act* designates the Superintendent as the examiner on behalf of CDIC. For provincial members, CDIC may conduct annual inspections or designate another person to do so on its behalf. Typically, CDIC does not perform annual inspections of provincial members itself. Rather, CDIC relies on examinations carried out by the institutions' provincial regulators or designates the Superintendent to inspect them.

CDIC places significant reliance on the examinations and inspections conducted by the Superintendent. Reports received from OSFI are used by CDIC in assessing the risk posed to CDIC by individual member institutions and the CDIC membership as a whole, including whether each member is following the CDIC Standards of Sound Business and Financial Practices ("Standards").

OSFI and CDIC will meet at least once a year to provide CDIC with an opportunity to familiarize itself with any enhancements or changes to the OSFI examination methodology and the examination procedures and programs related thereto and to ensure that such enhancements or changes are consistent with CDIC's examination requirements and take into account the CDIC Standards.

OSFI and CDIC will meet as necessary to review the schedules for upcoming examinations of federal members and to discuss CDIC concerns about the risk

## CDIC/OSFI Strategic Alliance Agreement

(including adherence to CDIC Standards) of any particular federal member (or group of members) that it wishes to have addressed during the annual examination.

OSFI and CDIC will meet at least once a year to discuss the results of OSFI's supervision and the content of reports provided under the *CDIC Act* on each member institution (or group of institutions). In advance of these meetings, CDIC and OSFI will exchange information pertaining to each organization's assessment of the member (or group of members) being discussed (e.g., OSFI Risk Assessment Summary and CDIC Risk Assessment Profile) and a list of issues for discussion.

In situations in which CDIC wishes to designate the Superintendent to conduct an annual examination of a provincial member:

- OSFI and CDIC will meet to establish the objectives, scope, resources, budget and schedule of the examination;
- OSFI will conduct the examination using its usual supervisory practices; and
- CDIC will reimburse OSFI for reasonable costs incurred by the Superintendent in the conduct of the examination.

### **Reporting the Results of Annual Examinations:**

The *CDIC Act* requires that the person who conducts an annual examination of a member institution is to provide CDIC, in a timely manner, with written reports that:

- provide, by way of a rating or any other means, an assessment of the safety and soundness of the member, including its financial condition;
- comment on the operations of the member, taking into account the CDIC Standards; and
- if the institution is a provincial member and CDIC and the person agree, comment on whether the provisions of the statutes governing the provincial member are being complied with.



## CDIC/OSFI Strategic Alliance Agreement

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In addition, the person who conducts an annual examination is required to inform CDIC, without delay, of any change in the circumstances of the member that might materially affect CDIC.

CDIC places significant reliance on the reports received from OSFI related to examinations and inspections conducted by the Superintendent. Such reports are used by CDIC in assessing the risk posed to CDIC by individual member institutions and the CDIC membership as a whole, including whether each member is following the CDIC Standards and whether annual Standards attestations and periodic Standards Reports can be relied upon.

In order to satisfy the reporting requirements under the *CDIC Act*, where the Superintendent conducts an annual examination of a CDIC member OSFI will provide CDIC with:

- each Risk Assessment Summary (“RAS”) prepared for the individual member institution or for a consolidated group of related members and, where the member is related to a FRFI, the RAS prepared for that related institution or such other document as captures similar information, as they are prepared or updated;
- a copy of each Management Letter and Management Report sent to the member institution or any of its subsidiaries or other affiliates, as well as the corresponding replies or such other written communication with the member as captures similar information, as they are prepared or received;
- a copy of each Intervention Status Report for staged CDIC member institutions, at least quarterly; and
- any other information that the Superintendent considers is relevant to the safety and soundness, financial condition and operations of a member institution (e.g., reports, letters or other documents pertaining to OSFI cross-systems reviews, section notes or compliance reports, records of telephone call or ad-hoc memoranda).

It is understood that OSFI’s ability to provide reports, ratings or information on changes in circumstances may be limited for provincial members to the extent that OSFI usually does not have responsibility for the continuous monitoring of those members and may not fully apply its Supervisory Framework to them.

OSFI's Supervisory Framework and examination methodology, procedures and programs are consistent with the CDIC Standards. Therefore, information that could lead CDIC to conclude whether a member institution is following the Standards, and whether a member's annual Standards attestations and periodic Standards Reports can be relied upon, is identified in OSFI RAS and other reports provided to CDIC in fulfilling OSFI's reporting requirements under the *CDIC Act*. It is agreed that OSFI will state in the RAS that matters that have come to its attention may raise Standards related issues.

It is further agreed that Standards matters will be discussed at CDIC/OSFI information sharing meetings. OSFI and CDIC will document the discussion on Standards-related issues and will exchange notes from the meetings.

In circumstances where a federal member has identified deficiencies in following CDIC Standards, it is required under the *CDIC Standards By-law* to send OSFI a copy of its action plan describing the deficiencies and the corrective actions to be taken to address them (including the person or persons responsible for addressing the deficiencies and the timeframe for completion). OSFI will advise CDIC when it has received an action plan from the member and will provide CDIC a copy of the action plan. Where a member institution identifies deficiencies directly to CDIC, CDIC will advise OSFI.

Under the *CDIC Standards By-law*, member institutions are required to submit periodic Standards Reports describing how they have determined whether they are following the Standards. The frequency of the Standards Report is based on a member institution's premium categorization under the *CDIC Differential Premiums By-law*.

In a year in which a member institution that is examined by OSFI submits a Standards Report, OSFI will comment to CDIC whether, based on its examination work (and where applicable other supervisory work), the information provided in the report is consistent with OSFI's understanding of the institution and whether it is aware of any information that could lead to a conclusion that the member's Standards Report might not be reliable (including an explanation of the reasons that could lead to such a conclusion).

When CDIC concludes that a member institution is not following CDIC Standards (other than in circumstances where the member has so determined), CDIC will discuss the matter with OSFI before it so notifies the member.

In circumstances where CDIC is considering concluding that a member institution is not following CDIC Standards or that it cannot rely on a member's Standards attestation or Standards Report, CDIC may request that OSFI provide additional clarification related to information contained in OSFI reports provided to CDIC to satisfy the reporting requirements under the *CDIC Act* or about information in the member's attestation or report.

CDIC will provide OSFI with a copy of its Risk Assessment Profile for each federal member and for each provincial member that is related to a FRFI and of other membership risk reports that it produces from time to time.

**Reviews of Premium-related Returns:**

CDIC is funded primarily by premiums payable annually by member institutions. Premiums are calculated on insured deposits held by members as at April 30<sup>th</sup> of each year. The *CDIC Act* requires the amount of each member's insured deposits to be reported to CDIC annually using the Return of Insured Deposits.

The *CDIC Differential Premiums By-law* requires certain member institutions to provide to CDIC annually certain information that is used to determine the members' premium rate classifications, using a return referred to as the Differential Premiums Reporting Form.

The *CDIC Act* provides that CDIC may request the Superintendent to review, within the time specified by CDIC, the correctness of the premiums-related returns filed by a federal member or by a provincial member that is examined by the Superintendent on behalf of CDIC.

When the Superintendent is asked to review a member institution's Return of Insured Deposits or Differential Premiums Reporting Form, the review will be conducted in accordance with the "Review Programs: CDIC Return of Insured Deposits and Differential Premiums By-law Reporting Form" agreed to between CDIC and OSFI and the reports related thereto will be in the form set out under that Program.

CDIC will advise OSFI by September 30<sup>th</sup> of each year of the member institutions' returns it requests the Superintendent to review for the premium year commencing May 1<sup>st</sup> of that year, and the time within which it wishes the reviews to be completed and reports provided.

The *CDIC Differential Premiums By-law* also requires information from OSFI to calculate the scores of member institutions for the purpose of classifying members into different premium categories. When requested in writing by CDIC, OSFI will provide CDIC with such information to facilitate the calculation of member differential premiums scores.

Under the *CDIC Differential Premiums By-law*, a member institution may request a review of its score, provided it gives a reason in writing. If a member has questions with respect to its examiner's rating, CDIC will not discuss the matter with the member but will instead advise the member to direct its inquiries to the examiner or will facilitate, through a tripartite meeting, such discussion. In no case will CDIC discuss the examiner's rating with a member without the consent of OSFI.

**Approvals of Changes in Corporate Structure, Ownership, Governing Legislation or Governing Jurisdiction:**

Under the statutes governing FRFIs, the Minister of Finance or the Superintendent may approve changes to the corporate structure, ownership or governing jurisdiction of FRFIs. Among other things, this may include attaching conditions or limitations to a previously issued order approving the commencement and carrying on of business by a FRFI, approving the sale of all or substantially all of the assets of an institution to a purchaser that assumes all or substantially all of the liabilities of the institution, approving the acquisition of a significant interest in a FRFI, approving an application by a provincially-incorporated financial institution to continue as a FRFI or approving an application to continue as a bank holding company.

OSFI and CDIC will advise the other of such matters, including but not limited to:

- any intention of the Superintendent to vary the commencement order of a CDIC member or of a FRFI that is related to a CDIC member;
- any application, or plan to apply, to the Minister for letters patent of amalgamation for, or approval of a sale of all or substantially all assets by, a federal member or a FRFI that is related to a CDIC member;
- any application, or plan to apply, to the Minister to approve the acquisition of a significant interest in a federal member or in a FRFI that is related to a CDIC member;

- any application, or plan to apply, by a provincial member to continue as a federal member;
- any application, or plan to apply, by a bank to convert to a federally-incorporated trust or loan company or by a federally-incorporated trust or loan company to convert to a bank; or
- any application, or plan to apply, by a body corporate incorporated under an Act of Parliament for letters patent continuing the body corporate as a bank holding company, if that body corporate is a CDIC member or is affiliated with a CDIC member.

**Electronic information Sharing and Systems Technology Coordination and Cooperation:**

OSFI and CDIC have established a CDIC/OSFI Systems Technology Committee to:

- explore the sharing of information electronically;
- identify other opportunities where systems technology solutions could be utilized and infrastructure costs related thereto could be shared and/or minimized to increase efficiency and effectiveness; and
- be responsible for ensuring the implementation of identified initiatives.

The CDIC/OSFI Systems Technology Committee will meet quarterly or at the request of either OSFI or CDIC. Areas of discussion would include, but would not necessarily be limited to:

- the potential of converging respective information technology strategies over time;
- opportunities for joint technology initiatives;
- information security designations and classifications;
- business resumption planning;

- electronic information exchange;
- security requirements; and
- other issues that may arise as suggested by either OSFI or CDIC to pursue the goal of efficient and effective utilization of technology resources.

The CDIC/OSFI Systems Technology Committee will maintain an action matrix of issues arising from meetings and will report to the Liaison Committee annually on the results achieved during the year.

## **RISK MANAGEMENT**

### **Guide to Intervention for Federal Financial Institutions:**

OSFI and CDIC have developed a Guide to Intervention for Federal Financial Institutions. The Guide outlines the actions available to OSFI and CDIC, individually or in concert, to address circumstances that are a concern at a FRFI with CDIC insurance.

OSFI and CDIC will meet as required to review the Guide to ensure that it continues to reflect the actions available and processes in place to deal with FRFIs.

OSFI will advise CDIC if it intends to take any action set out under the Guide against a federal member or against a FRFI that is related to a CDIC member institution.

CDIC will advise OSFI if it intends to take any action set out under the Guide against a federal member or against a provincial member that is related to a FRFI.

### **Staged and Watchlist Institutions:**

OSFI stages FRFIs in accordance with criteria set out in the Guide to Intervention for Federal Financial Institutions.

CDIC maintains a watchlist of member institutions that cause a concern or pose a risk to CDIC because of their financial condition or the way they conduct their operations or for other reasons. In placing members on its watchlist CDIC takes

## CDIC/OSFI Strategic Alliance Agreement

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into account, among other things, various qualitative and quantitative factors including the examiner's assessment of the institution. CDIC informs members of their status on the watchlist and the reasons and implications related thereto.

Prompt and full communication between CDIC and OSFI about staged and watchlist institutions is of particular importance in ensuring that each organization is aware of potential problems. The early identification of problems, and the taking of prompt corrective action, is more likely to lead to resolution.

Where CDIC is considering placing a federal member, or a provincial member that is related to a FRFI, on its watchlist, CDIC will advise OSFI of:

- the fact that it is contemplating placing the member on its watchlist;
- the reasons why it is considering placing the member on the watchlist; and
- any action that it is planning to take in the circumstances.

Where the Superintendent is considering staging a federal member, or a FRFI that is related to a CDIC member, OSFI will advise CDIC of:

- the fact that the Superintendent is considering staging the institution;
- the reasons why he/she is considering staging the institution ; and
- any action that the Superintendent is planning to take in the circumstances.

### **Obtaining Information:**

Under the Policy of Deposit Insurance CDIC may require a member or its officers, auditors or former auditors to provide it with information pertaining to the affairs of the member for the purpose of monitoring or assessing the compliance of the member with the CDIC by-laws or if CDIC considers the information necessary or desirable in the furtherance of its objects.

CDIC will advise OSFI if it intends to request information from a federal member or from a provincial member that is related to a FRFI pertaining to the institution's solvency, viability or financial condition.

Under the statutes governing FRFIs, the Superintendent may direct an institution, or a person who controls a FRFI or any entity that is affiliated with a FRFI, to provide the Superintendent with information or documents where he/she believes that the production of the information or documents is necessary in order to be satisfied that the provisions of the legislation are being duly observed and that the institution is in a sound financial condition.

OSFI will advise CDIC if the Superintendent intends to request information from a federal member or from a FRFI that is related to a CDIC member pertaining to the institution's solvency, viability, financial condition or compliance with its governing legislation.

**Meetings with Boards of Directors of Staged and Watchlist Institutions:**

From time to time, OSFI or CDIC finds it necessary to meet with the board of directors of a staged or watchlist institution to discuss the reasons that the Superintendent has staged the institution or that CDIC has placed the institution on the CDIC watchlist, and to discuss measures to be taken to rectify the situation.

CDIC will advise OSFI if it intends to have such a meeting with the board of directors of a federal member or of a provincial member that is related to a FRFI.

OSFI will advise CDIC if it intends to have such a meeting with the board of directors of a federal member or of a FRFI that is related to a CDIC member institution.

**Special Examinations:**

The *CDIC Act* provides CDIC with the authority to make examinations of member institutions, or cause such examinations to be made, for specified purposes, at such times as CDIC may require.

It is impossible to list the circumstances in which CDIC may require a special examination. However, typically CDIC performs or commissions a special examination when there are signs of deterioration in the financial condition of a member to the point where the institution poses a higher risk of loss to the deposit insurance fund and CDIC's interest might be compromised. With the information available from a special examination, CDIC seeks to be in a position to more thoroughly understand the member's circumstances, practices or condition, assess the extent of the problem or its exposure and weigh all options.



Where CDIC considers it necessary that a special examination be made of a federal member, or of a provincial member that is related to a FRFI, CDIC will meet with OSFI to discuss the reasons for, the objectives of and the scope of the examination.

Where CDIC does not engage the Superintendent to make a special examination of a federal member, or of a provincial member that is related to a FRFI, CDIC will inform OSFI of the progress of the special examination and of the findings and conclusions upon completion of the examination and, if requested, will provide OSFI with access to the working papers and reports related thereto.

Where CDIC engages the Superintendent to conduct a special examination, the objectives, scope, resources, budget and schedule of the examination will be set out in an engagement letter agreed to between OSFI and CDIC and CDIC will reimburse OSFI for reasonable costs incurred by the Superintendent in the conduct of the examination.

**Enlarging the Scope of the Work of an External Auditor or of Others:**

Under the statutes governing FRFIs, the Superintendent may require that an institution's external auditor enlarge the scope of his/her audit of the institution's financial statements or that the external auditor or another person perform other procedures and prepare a report thereon.

Where a request is directed at obtaining information about the safety, soundness or financial condition of the institution or its compliance with its governing legislation OSFI will advise CDIC if the Superintendent intends to require the external auditor of a federal member, or of a FRFI that is related to a CDIC member institution, to enlarge the scope of his/her audit work, or to require other persons to conduct work at a federal member, or at a FRFI that is related to a CDIC member, and will provide CDIC with a copy of any report by the external auditor or other person related thereto.

**Other Risk Management Actions:**

Under the statutes governing FRFIs, the Superintendent may take a range of other actions against institutions. Among others, these include obtaining letters of comfort or undertakings, issuing directions, applying to the courts for various orders and vetoing the policies of such institutions or granting security interests.

OSFI will advise CDIC if the Superintendent intends to take such action related to the safety, soundness, financial condition or legislative or regulatory compliance of a federal member or a FRFI that is related to a CDIC member and, if such action is taken, will provide CDIC with regular updates on the FRFIs progress in responding to the action.

Under the *CDIC Act*, CDIC may apply to a court for an order directing a member institution or another person to comply with, or restraining any act in breach of, the *CDIC Act*, the CDIC by-laws or the Policy of Deposit Insurance.

CDIC will advise OSFI if it intends to apply for a compliance order involving a federal member or a provincial member that is related to a FRFI and, if such an application is made, will provide OSFI with regular updates on the progress of the proceeding and, if an order is made, on whether it has been complied with.

**Premium Surcharges:**

Under the *CDIC Act*, after consulting with the Superintendent and giving the member institution an opportunity to be heard, CDIC may levy a premium surcharge if, in the opinion of CDIC, a member is engaging in any of the practices identified in the *CDIC Prescribed Practices Premium Surcharge By-law*.

CDIC will advise OSFI if CDIC management intends to recommend to the CDIC Board of Directors the imposition of a premium surcharge on a federal member or on a provincial member that is related to a FRFI.

**Preparatory Examinations:**

When CDIC believes that a deposit insurance payout is imminent, the *CDIC Act* permits CDIC, subject to the concurrence of the Superintendent in the case of a federal member, to conduct (or cause to be conducted) a preparatory examination of the institution. The primary objectives of a preparatory examination are to review and analyze the deposit liabilities of the institution, understand and document its information and accounting systems in detail and develop a payout plan with timing and cost estimates. Undertaking preparatory examinations significantly improves the speed and lowers the cost of making deposit insurance payments.

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Where CDIC considers a preparatory examination necessary for a provincial member that is related to a FRFI, CDIC will advise OSFI in advance of the planned examination.

In each such case, as well as in the case of any preparatory examination of a federal member, CDIC will inform OSFI of the progress of the preparatory examination, will provide OSFI with a copy of any report relating to the examination and will discuss with OSFI the findings and conclusions arising from the examination.

### **CDIC Financial Support:**

CDIC has the authority to purchase assets, to make or guarantee loans (with or without security), to make or guarantee deposits and, generally, to render financial assistance to its member institutions. Except to the extent that it is expressly constrained by applicable law (e.g., CDIC is prohibited from acquiring shares of a federal institution, except shares pledged to it as security or vested in it by a FIRP order), CDIC essentially can enter into any form of financial transaction that fits its objects and is aimed at reducing a loss, or averting a risk of loss, to CDIC.

CDIC will advise OSFI if it is requested to provide, or is considering providing, financial assistance to a federal member or to a provincial member that is related to a FRFI.

### **Contingency Planning:**

Contingency planning provides a means to focus appropriate resources on taking action to address the impact of a distress situation, and the potential disruption associated with it, should such a situation arise. OSFI and CDIC each have contingency plans in place for responding to situations of distress at FRFIs and CDIC members.

CDIC and OSFI will each routinely provide the other with the names of those individuals within the organization (and the means by which to contact them) that should be contacted in the event of a distress situation involving a federal member, a FRFI that is related to a CDIC member institution or a provincial member that is related to a FRFI.

## **TERMINATION, CANCELLATION AND WINDING-UP**

### **Termination of a Policy of Deposit Insurance:**

Under the *CDIC Act*, CDIC may initiate the process for terminating a member institution's deposit insurance where it is of the opinion that the member is failing to follow the CDIC Standards of Sound Business and Financial Practices or is in breach of the *CDIC Act*, any CDIC by-law or any of the conditions of its Policy of Deposit Insurance.

CDIC will advise OSFI if CDIC management intends to recommend to the CDIC Board of Directors the commencement of the process for terminating the deposit insurance of a federal member or of a provincial member that is related to a FRFI, and, if such process is commenced, CDIC will provide OSFI with regular updates on the status of events.

### **Cancellation of Deposit Insurance:**

Under the *CDIC Act*, CDIC may cancel a member institution's deposit insurance when it is of the opinion that the member is or is about to become insolvent, or when a member ceases to accept deposits. In a case of cessation, it is the practice of the CDIC Board of Directors to cancel the Policy of Deposit Insurance as soon as practicable.

CDIC will advise OSFI if CDIC management intends to recommend to the CDIC Board of Directors that the deposit insurance of a federal member, or of a provincial member that is related to a FRFI, be cancelled.

OSFI will advise CDIC if it learns of any plan by a CDIC member to cease accepting deposits (e.g., a proposed or actual application for permission to wind-up and dissolve, or a potential sale of assets to and assumption of liabilities by another party).

### **Taking Control:**

Under the statutes governing FRFIs, the Superintendent may, in various specified circumstances, take control of an institution. The Superintendent may relinquish control if he/she is of the opinion that the circumstances leading to the taking of control have been substantially rectified.

OSFI will advise CDIC if the Superintendent intends to take control of a CDIC member or a FRFI that is related to a CDIC member or if the Superintendent intends to relinquish control in any such case.

**Winding-up:**

Where the Superintendent has taken control (or, if applicable, prior to the Superintendent doing so), of a CDIC member or a FRFI that is related to a CDIC member, OSFI will advise CDIC if the Superintendent intends to request the Attorney General of Canada to apply for the winding-up of that institution.

CDIC will advise OSFI if it intends to apply for the winding-up of a federal member or of a provincial member that is related to a FRFI.

CDIC and OSFI will cooperate and co-ordinate their efforts in the process of petitioning for the winding-up of a federal member, with a view to having the action conducted effectively and efficiently.

**Selection of Liquidators:**

Ordinarily, the involuntary winding-up of a FRFI is preceded by the Superintendent taking control for some period and the Superintendent retains as his/her agent for that purpose a professional firm that is qualified for appointment as a liquidator.<sup>1</sup>

Where a CDIC member institution is placed in involuntary winding-up, CDIC ordinarily will be the largest (and very often is the predominant) creditor of the estate.

Where the Superintendent intends to engage a professional firm as his/her agent for taking control of a CDIC member, OSFI will advise CDIC of the Superintendent's intention and consult with CDIC to ensure that the firm would be acceptable to CDIC as the liquidator in the event the institution is placed in winding-up.

Where CDIC intends to nominate a liquidator to conduct the winding-up of a federal member that is not preceded by the Superintendent taking control, or in the

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<sup>1</sup> The *Winding-up and Restructuring Act* requires that (with the exception of CDIC) a liquidator must be a licensed trustee in bankruptcy.

winding-up of a provincial member that is related to a FRFI, CDIC will accord OSFI the opportunity to comment on the proposed selection.

In selecting an agent or a liquidator, OSFI or CDIC, respectively, will ensure that:

- the professional firm is not related to the auditor of the relevant institution or any related financial institution;
- the firm has satisfied OSFI or CDIC, as well as its own senior management, that there are no conflicts in the acceptance of an assignment in relation to the relevant institution (e.g., the firm is not related to any party already embarked on a management consulting assignment for the institution or any related financial institution);
- the firm has the necessary resources available to perform the assigned task and is capable of fielding adequate numbers of skilled, competent individuals for the control and management of branch operations and with the capacity to establish the current condition of the institution, including its insured and uninsured deposit liabilities profile, quickly and accurately;
- the firm is legally qualified and competent to perform the role of a liquidator effectively and efficiently (where applicable); and
- the engagement will not cause concentration of engagements with one professional firm.

#### **INSURANCE AND SUPERVISORY POLICY INITIATIVES**

The Superintendent is the chair and the CDIC Chairperson is a member of the Financial Institutions Supervisory Committee (FISC). The legislated mandate of FISC is the exchange of information among its members on all matters relating directly to the supervision of financial institutions.

CDIC will notify OSFI of any topics or issues that the CDIC Chairman would like to be discussed at the FISC.

## CDIC/OSFI Strategic Alliance Agreement

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The Superintendent and the CDIC Chairperson also are members of the Senior Advisory Committee ("SAC"). SAC provides advice to the Minister of Finance on financial sector policy.

To ensure policy co-ordination at the federal level, CDIC and OSFI will:

- advise each other about policy initiatives with respect to federal members or their related parties or FRFIs that are related to provincial members; and
- for those initiatives that touch on the mandates and operations of both organizations, provide each other with the opportunity to comment on such initiatives at appropriate stages of their development and prior to their distribution for formal consultation to institutions and their associations and other interested parties, as well as prior to finalization.

### **MINISTERIAL, PARLIAMENTARY AND OTHER REPORTING**

From time to time, the Superintendent, the CDIC Chairperson or other representatives of OSFI or CDIC are requested to provide the Minister of Finance, other Ministers, Parliament, committees of the House of Commons or the Senate or other public bodies with information about institutions for which both organizations have responsibilities under their respective mandates or about matters directly relevant to the mandate of the other organization.

When such requests are made, CDIC and OSFI will:

- inform each other about the requests; and
- where appropriate, co-ordinate responses to such requests.

### **HUMAN RESOURCE TRAINING AND DEVELOPMENT**

OSFI and CDIC are committed to attracting competent personnel and providing them with an opportunity for growth through training and development. In many cases, the human resource requirements and training and development needs of OSFI and CDIC personnel are similar.

CDIC and OSFI will, where appropriate:

- co-ordinate courses, conferences, seminars and other training and development opportunities; and
- where such training and development is done in-house, invite the participation of personnel from both CDIC and OSFI.

OSFI and CDIC support and encourage the movement of personnel between the two organizations. In situations in which OSFI or CDIC is contemplating extending an offer of employment to a person employed with the other organization, the CDIC President and Chief Executive Officer or the Superintendent (as applicable) will inform the other of the potential offer.

### **CONFIDENTIALITY**

Under the *OSFI Act*, as well as under parallel provisions in the statutes governing FRFIs, all information regarding the business or affairs of a FRFI or persons dealing with a FRFI 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 must be treated accordingly.

Under the *CDIC Act*, all information regarding the affairs of a member institution, or of any person dealing with a member, that is obtained or produced by or for CDIC is confidential and must be treated accordingly.

CDIC and OSFI acknowledge the need to treat as confidential information received from each other and agree that unless compelled to do so by law neither of them will release to third parties information received from the other without the permission of the organization from whom the information was received.

If compelled by law to release information received from the other, CDIC or OSFI will advise the other prior to releasing the information.

### **CDIC/OSFI LIAISON COMMITTEE**

OSFI and CDIC have established the CDIC/OSFI Liaison Committee to coordinate the activities of OSFI and CDIC, to avoid unwarranted duplication and cost and



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generally to foster a close and effective working relationship between the two organizations. The Superintendent and the CDIC Chairperson jointly chair this committee.

The CDIC/OSFI Liaison Committee will meet at the request of either the Superintendent or the CDIC Chairperson.

### **AMENDMENTS**

This Agreement may be amended at any time by agreement between the CDIC President and Chief Executive Officer and the Superintendent of Financial Institutions. An amendment may be requested by either organization and to be effective must be confirmed in writing.

### **SIGNING AUTHORITIES**

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Jean Pierre Sabourin  
President and CEO  
Canada Deposit Insurance Corporation

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Nicholas Le Pan  
Superintendent of Financial Institutions

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## OSFI 法

Office of the Superintendent of Financial Institutions Act ( R.S. 1985, c. 18 (3rd Supp.) )

Disclaimer: These documents are not the official versions ([more](#)).

Source: <http://laws.justice.gc.ca/en/O-2.7/text.html>

Updated to August 31, 2003

Subject: Financial Institutions and related matters

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## Office of the Superintendent of Financial Institutions Act

### R.S., 1985, c. 18 (3rd Supp.)

[Enacted as Part I to R.S., 1985, c. 18 (3rd Supp.), in force July 2, 1987, *see* SI/87-146.]

[O-2.7]

#### *Short Title*

Short title

2. This Part may be cited as the *Office of the Superintendent of Financial Institutions Act*.

#### *Interpretation*

Interpretation

3. In this Part,

"bank holding company"  
« *société de portefeuille  
bancaire* »

"bank holding company" means a bank holding company as defined in section 2 of the *Bank Act*;

"Deputy Superintendent"  
« *surintendant adjoint* »

"Deputy Superintendent" means a Deputy Superintendent of Financial Institutions appointed pursuant to section 8;

"financial institution"  
« *institution financière* »

"financial institution" means

(a) a bank within the meaning of section 2 of the *Bank Act*,

(a.1) an authorized foreign bank within the meaning of section 2 of the *Bank Act*,

(b) a company to which the *Trust and Loan Companies Act* applies,

(c) an association to which the *Cooperative Credit Associations Act* applies or a central cooperative credit society for which an order has been made under subsection 473(1) of that Act,

(d) a company, society, foreign company or provincial company to which the *Insurance Companies Act* applies, and

(e) Green Shield Canada;

(f) [Repealed, 1996, c. 6, s. 104]

"insurance holding  
company" « *société de  
portefeuille  
d'assurances* »

"insurance holding company" means an insurance holding company as defined in subsection 2 (1) of the *Insurance Companies Act*,

"Office" «Bureau»

"Office" means the Office of the Superintendent of Financial Institutions established pursuant to section 4;

"pension plan" « régime de pension »

"pension plan" has the same meaning as in subsection 2(1) of the *Pension Benefits Standards Act, 1985*;

"Superintendent" «surintendant»

"Superintendent" means the Superintendent of Financial Institutions appointed pursuant to subsection 5(1).

R.S., 1985, c. 18 (3rd Supp.), s. 3; 1991, c. 45, s. 557, c. 47, s. 742; 1992, c. 1, s. 142, c. 56, s. 18; 1996, c. 6, s. 104; 1998, c. 12, s. 27; 1999, c. 28, s. 127; 2001, c. 9, s. 466.

#### *Purpose of Act*

To ensure regulation of institutions and pension plans

3.1 The purpose of this Act is to ensure that financial institutions and pension plans are regulated by an office of the Government of Canada so as to contribute to public confidence in the Canadian financial system.

1996, c. 6, s. 105; 1998, c. 12, s. 28.

#### *Establishment of the Office*

Office established

4. (1) There is hereby established an office of the Government of Canada called the Office of the Superintendent of Financial Institutions over which the Minister shall preside and for which the Minister shall be responsible.

Objects of Office -- financial institutions

(2) The objects of the Office, in respect of financial institutions, are

(a) to supervise financial institutions in order to determine whether they are in sound financial condition and are complying with their governing statute law and supervisory requirements under that law;

(b) to promptly advise the management and board of directors of a financial institution in the event the institution is not in sound financial condition or is not complying with its governing statute law or supervisory requirements under that law and, in such a case, to take, or require the management or board to take, the necessary corrective measures or series of measures to deal with the situation in an expeditious manner;

(c) to promote the adoption by management and boards of directors of financial institutions of policies and procedures designed to control and manage risk; and

(d) to monitor and evaluate system-wide or sectoral events or issues that may have a negative impact on the financial condition of financial institutions.

Objects of Office -- pension plans

(2.1) The objects of the Office, in respect of pension plans, are

(a) to supervise pension plans in order to determine whether they meet the minimum funding requirements and are complying with the other requirements of the *Pension Benefits Standards Act, 1985* and its regulations and supervisory requirements under that legislation;

(b) to promptly advise the administrator of a pension plan in the event that the plan is not meeting the minimum funding requirements or is not complying with other requirements of the *Pension Benefits Standards Act, 1985* or its regulations or supervisory requirements under that legislation and, in such a case, to take, or require the administrator to take, the necessary corrective measures or series of measures to deal with the situation in an expeditious manner; and

	(c) to promote the adoption by administrators of pension plans of policies and procedures designed to control and manage risk.
Protection of depositors, etc.	(3) In pursuing its objects, the Office shall strive  (a) in respect of financial institutions, to protect the rights and interests of depositors, policyholders and creditors of financial institutions, having due regard to the need to allow financial institutions to compete effectively and take reasonable risks; and  (b) in respect of pension plans, to protect the rights and interests of members of pension plans, former members and any other persons who are entitled to pension benefits or refunds under pension plans.
Factors affecting financial institutions	(4) Notwithstanding that the regulation and supervision of financial institutions by the Office and the Superintendent can reduce the risk that financial institutions will fail, regulation and supervision must be carried out having regard to the fact that boards of directors are responsible for the management of financial institutions, financial institutions carry on business in a competitive environment that necessitates the management of risk and financial institutions can experience financial difficulties that can lead to their failure.
Factors affecting pension plans	(5) Notwithstanding that the regulation and supervision of pension plans by the Office and the Superintendent can reduce the risk that pension plans will fail to pay the expected benefits, regulation and supervision must be carried out having regard to the fact that administrators of pension plans are responsible for the management of the pension plans and that pension plans can experience financial and funding difficulties that can result in the reduction of those benefits.

R.S., 1985, c. 18 (3rd Supp.), s. 4; 1996, c. 6, s. 106; 1998, c. 12, s. 29.

*Superintendent of Financial Institutions*

Appointment of Superintendent	5. (1) The Governor in Council shall appoint an officer called the Superintendent of Financial Institutions to be the deputy head of the Office.
Tenure of office and removal	(2) The Superintendent holds office during good behaviour for a term of seven years, but may be removed for cause by the Governor in Council.
Tabling reasons	(3) Where the Superintendent is removed from office, the order in council providing for the removal and the documents relating thereto shall be laid before each House of Parliament not later than the fifteenth sitting day of that House following the day that the order is issued.
Further terms	(4) The Superintendent, on the expiration of any term of office, is eligible to be re-appointed for a further term of office.
Absence or incapacity	(5) In the event of the absence or incapacity of the Superintendent, or if the office of Superintendent is vacant, the Governor in Council may appoint a qualified person to hold office instead of the Superintendent for a term not exceeding six months, and that person shall, while holding that office, have all of the powers, duties and functions of the Superintendent under this Part or any other Act of Parliament.
Further terms	(6) A person appointed pursuant to subsection (5), on the expiration of any term of office, is eligible to be re-appointed for a further term of office.

*Powers, Duties and Functions of the Superintendent*

Duties, powers and functions of the Superintendent	6. (1) The Superintendent has the powers, duties and functions assigned to the Superintendent by the Acts referred to in the schedule to this Part and shall examine into and report to the Minister from time to time on all matters connected with the administration of the provisions of those Acts except those that are consumer provisions as defined in section 2 of the <i>Financial Consumer Agency of Canada Act</i> .
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- Securities activities
- (2) Where, pursuant to the Act that applies to it, a financial institution or any of its officers or employees engages in
- (a) underwriting securities,
  - (b) trading in securities, or
  - (c) providing advisory or management services in respect of securities,

the Superintendent shall examine and inquire into the carrying out of those activities, and report to the Minister from time to time on all matters connected therewith.

Superintendent to administer regulations

(3) The Superintendent is responsible for the administration of such regulations as the Governor in Council may make respecting the carrying out of the activities referred to in subsection (2) by financial institutions and their officers and employees, and every financial institution and every officer and employee thereof that carries out any such activity shall do so subject to those regulations.

Regulation may provide for discretion

(4) A regulation made pursuant to subsection (3) may provide that the Superintendent may, by order, determine such matters or exercise such discretion as the regulation may specify in relation to the carrying out of the activities referred to in subsection (2) by a financial institution or any of its officers and employees.

Interpretation

(5) For the purposes of subsection (2), the Act that applies to a financial institution is the Act set out in respect thereof in the definition "financial institution" in section 3.

R.S., 1985, c. 18 (3rd Supp.), s. 6; 1997, c. 15, s. 334; 2001, c. 9, s. 467.

Duties and functions generally

7. (1) The Superintendent shall engage exclusively in the duties and functions of the Superintendent under section 6 and the duties and functions of the Superintendent as the deputy head of the Office.

Other duties

(2) Notwithstanding subsection (1), the Superintendent may hold any other office under Her Majesty or perform any other duties for Her Majesty, but not for reward.

R.S., 1985, c. 18 (3rd Supp.), s. 7; 1997, c. 15, s. 335.

#### *Agreements*

Agreements with provinces

7.1 (1) The Minister may, with the approval of the Governor in Council, enter into agreements with the appropriate authority of a province

(a) with respect to the administration, application and enforcement of provincial legislation in respect of trust, loan or insurance companies incorporated or regulated by or under an Act of the legislature of the province;

(b) in order to authorize the Superintendent to exercise or perform the powers, duties and functions on behalf of the appropriate authority of the province, that the Minister may determine, in respect of trust, loan or insurance companies incorporated or regulated by or under an Act of the legislature of the province; and

(c) in order to

(i) make applicable the *Trust and Loan Companies Act*, the *Insurance Companies Act* or this Act, or any provisions of these Acts, and the regulations made under any of these Acts, with the modifications that the Minister considers necessary, in respect of trust, loan or insurance companies that are incorporated or regulated by or under an Act of the legislature of the province, and

(ii) limit the application of provincial legislation in respect of trust, loan or insurance companies that are incorporated or regulated by an Act of the legislature of the province.

Notice of agreement (2) The Minister shall cause a notice of every agreement entered into under subsection (1) to be published in the *Canada Gazette*.

1999, c. 28, s. 128.

#### *Deputy Superintendents*

Appointment of Deputy Superintendents 8. The Superintendent may appoint one or more officers each to be called a Deputy Superintendent of Financial Institutions.

R.S., 1985, c. 18 (3rd Supp.), s. 8; 1996, c. 6, s. 107.

Deputy Superintendent to act under Superintendent 9. Every Deputy Superintendent shall act under the instructions of the Superintendent.

#### *Exercise of Powers, Duties and Functions*

Exercise by personnel 10. Except as otherwise provided by the Superintendent and subject to any terms and conditions that may be specified by the Superintendent, a person who is an officer or employee of the Office may exercise any of the powers and perform any of the duties and functions of the Superintendent under this Act if the person is appointed to serve in the Office in a capacity appropriate to the exercise of the power or performance of the duty or function.

R.S., 1985, c. 18 (3rd Supp.), s. 10; 1997, c. 15, s. 336; 2001, c. 9, s. 468.

#### *Staff of the Office*

Officers, etc. 11. Such employees as are necessary to enable the Superintendent to perform the duties of the Superintendent shall be appointed in accordance with the *Public Service Employment Act*.

Continuity of employment 12. Every person who was an employee of the Department of Insurance or the office of the Inspector General of Banks immediately prior to the coming into force of this Part becomes an employee of the Office and is deemed to have been appointed pursuant to section 11.

Responsibility for personnel management 13. In respect of persons appointed under section 11, the Superintendent is authorized to exercise the powers and perform the duties and functions of the Treasury Board under the *Financial Administration Act* that relate to personnel management, including the determination of terms and conditions of employment and the responsibility for employer and employee relations, within the meaning of paragraphs 7(1)(b) and (e) and section 11 of that Act.

Collective agreements 14. Any collective agreement affecting employees of the Department of Insurance or the office of the Inspector General of Banks that was entered into before the coming into force of this Act remains in force and binds the Superintendent as employer of those persons until the expiration of that agreement.

Classification standards 15. Classification standards may be prepared by the Superintendent for positions to which persons are appointed under section 11.

#### *Financial*

Appropriation 16. Subject to section 17, all expenses incurred in the administration of this Part shall be paid out of moneys appropriated by Parliament for the purpose.

Expenditures out of the C.R.F. 17. (1) The Minister may make expenditures out of the Consolidated Revenue Fund to defray the expenses arising out of the operations of the Office.

Authority to spend assessments and revenues	(2) The Minister may spend, for the purpose mentioned in subsection (1), any assessment and interim assessment received under section 23 or 23.1 and any other revenue arising out of the operations of the Office.
Excess expenditures	(3) The aggregate of expenditures made under subsection (1) shall not at any time exceed by more than \$40,000,000, or such other amount as may be specified in an appropriation Act, the total of the assessments and revenues referred to in subsection (2).
Treasury Board approval	(4) No expenditure may be made under subsection (1) without the approval of the Treasury Board if the aggregate of the expenditures actually made under that subsection at any time exceeds the aggregate of <ul style="list-style-type: none"> <li>(a) all assessments and revenues referred to in subsection (2), and</li> <li>(b) moneys appropriated by Parliament pursuant to section 16.</li> </ul>

R.S., 1985, c. 18 (3rd Supp.), s. 17; 1997, c. 15, s. 337.

*Committee*

Committee established	18. (1) There is hereby established a committee consisting of <ul style="list-style-type: none"> <li>(a) the Superintendent;</li> <li>(a.1) the Commissioner of the Financial Consumer Agency of Canada;</li> <li>(b) the Governor of the Bank of Canada;</li> <li>(c) the Chairperson of the Canada Deposit Insurance Corporation; and</li> <li>(d) the Deputy Minister of Finance.</li> </ul>
Chairman	(2) The Superintendent is the chairman of the committee.
Purpose of committee	(3) The purpose of the committee is to facilitate consultations and the exchange of information among its members on all matters relating directly to the supervision of financial institutions, bank holding companies or insurance holding companies.
Access to information	(4) Every member of the committee is entitled to any information on matters relating directly to the supervision of financial institutions, bank holding companies or insurance holding companies that is in the possession or under the control of any other member and any member requested by another member to provide any such information shall forthwith provide it.
Designated person permitted	(5) Information requested from one member of the committee by another member may be provided to any person designated by the member making the request.

R.S., 1985, c. 18 (3rd Supp.), s. 18; 1996, c. 6, s. 108(E); 2001, c. 9, s. 469.

*Conflict of Interest*

Ownership	19. No member of the committee referred to in section 18, person appointed under subsection 5(5) or Deputy Superintendent shall beneficially own, directly or indirectly, any shares of any financial institution, bank holding company, insurance holding company or of any other body corporate, however created, carrying on any business in Canada that is substantially similar to any business carried on by any financial institution.
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R.S., 1985, c. 18 (3rd Supp.), s. 19; 2001, c. 9, s. 470.



- Borrowing 20. No member of the committee referred to in section 18, person appointed under subsection 5(5) or Deputy Superintendent shall borrow money from any financial institution or from any member institution within the meaning of the *Canada Deposit Insurance Corporation Act* unless the Minister is first informed in writing of the intention of that member, person or Deputy Superintendent to do so.
- No grant or gratuity to be made 21. (1) The Superintendent, a person appointed under subsection 5(5), a Deputy Superintendent or a person appointed under section 11 shall not accept or receive, directly or indirectly, any grant or gratuity from a financial institution, bank holding company or insurance holding company, or from a director, officer or employee of any of them, and no such financial institution, bank holding company, insurance holding company, director, officer or employee shall make or give any such grant or gratuity.
- Offence and punishment (2) Every person, financial institution, bank holding company or insurance holding company that contravenes subsection (1) is guilty of an offence and liable
- (a) on summary conviction, to a fine not exceeding two thousand dollars or to imprisonment for a term not exceeding six months or to both; or
- (b) on conviction on indictment, to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding five years or to both.
- R.S., 1985, c. 18 (3rd Supp.), s. 21; 2001, c. 9, s. 471.

#### *Confidentiality*

- Information is confidential 22. (1) Subject to subsection (3), the following information, and any information prepared from it, is confidential and shall be treated accordingly:
- (a) information regarding the business or affairs of a financial institution, foreign bank, bank holding company or insurance holding company or regarding persons dealing with any of them 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;
- (b) information received by any member of the committee established by subsection 18(1), or by any person referred to in subsection 18(5) designated by any member of that committee, in the course of an exchange of information permitted by subsection 18(3); and
- (c) information furnished to the Superintendent pursuant to section 522.27 of the *Bank Act*.
- 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 or any compensation association designated by order of the Minister pursuant to subsection 449(1) or 591(1) of the *Insurance Companies Act*, 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.

**Regulations** (2.1) The Governor in Council may make regulations prohibiting, limiting or restricting the disclosure by financial institutions, bank holding companies or insurance holding companies of prescribed supervisory information.

**Disclosure** (3) The Superintendent shall disclose, at such times and in such manner as the Minister may determine, such information obtained by the Superintendent under the *Bank Act*, the *Cooperative Credit Associations Act*, the *Insurance Companies Act* and the *Trust and Loan Companies Act* as the Minister considers ought to be disclosed for the purposes of the analysis of the financial condition of a financial institution and that

(a) is contained in returns filed pursuant to the Superintendent's financial regulatory reporting requirements; 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 financial institutions.

**Prior consultation required** (4) The Minister shall consult with the Superintendent before making any determination under subsection (3).

**Exceptions to disclosure** (5) Subject to any regulations made under a statute referred to in subsection (3) governing the use by a financial institution of any information supplied to it by its customers, no information obtained by a financial institution regarding any of its customers shall be disclosed or made available under subsection (3).

**Report respecting disclosure** (6) The Superintendent shall prepare a report, to be included in the report referred to in section 40, respecting the disclosure of information by financial institutions, and describing the state of progress made in enhancing the disclosure of information in the financial services industry.

R.S., 1985, c. 18 (3rd Supp.), s. 22; 1991, c. 46, s. 601; 1994, c. 26, s. 49(F); 1996, c. 6, s. 109; 1997, c. 15, s. 338; 1999, c. 28, s. 129; 2001, c. 9, s. 472.

#### *Assessment of Financial Institutions*

**Superintendent to ascertain expenses** 23. (1) The Superintendent shall, before December 31 in each year, ascertain the total amount of expenses incurred during the immediately preceding fiscal year for or in connection with the administration of the *Bank Act*, the *Cooperative Credit Associations Act*, the *Green Shield Canada Act*, the *Insurance Companies Act* and the *Trust and Loan Companies Act*.

**Amount conclusive** (2) The amount ascertained by the Superintendent under subsection (1) is final and conclusive for the purposes of this section.

**Assessment** (3) As soon as possible after ascertaining the amount referred to in subsection (1), the Superintendent shall assess the amount against each financial institution, bank holding company and insurance holding company to any extent and in any manner that the Governor in Council may, by regulation, prescribe.

**Interim assessment** (4) The Superintendent may, during each fiscal year, prepare an interim assessment against any financial institution, bank holding company or insurance holding company.

R.S., 1985, c. 18 (3rd Supp.), s. 23; 1991, c. 45, s. 558, c. 46, s. 602, c. 47, s. 743; 1992, c. 1, s. 142, c. 56, s. 18; 1996, c. 6, s. 110, c. 21, s. 72; 1997, c. 15, s. 339; 1999, c. 28, s. 130; 2001, c. 9, s. 473.

**Meaning of "person"** 23.1 (1) For the purpose of this section, "person" means a natural person, a personal representative, a body corporate, a trust, a partnership, a fund, an unincorporated association or

	either of those rights, the government of a foreign country or of a political subdivision of a foreign country, an agency of the government of a foreign country or an agency of the government of a political subdivision of a foreign country.
Assessment of particular expenses	(2) The Superintendent may assess against a person a prescribed charge and applicable disbursements for any service provided by or on behalf of the Superintendent for the person's benefit or for the benefit of a group of persons of which the person is a member.
Interim assessment	(3) The Superintendent may, during each fiscal year, prepare an interim assessment against any person towards the amount to be assessed against the person under subsection (2).
Penalty	(4) The Superintendent may assess a penalty of a prescribed amount against a financial institution or the administrator of a pension plan where that financial institution or administrator fails to <p>(a) file a return or other information required by the Act of Parliament that governs the financial institution or the <i>Pension Benefits Standards Act, 1985</i>, as the case may be, at the interval set out in, or within the time required by, that Act; or</p> <p>(b) provide complete and accurate information with respect to the return or other information required by the Act of Parliament that governs the financial institution or the <i>Pension Benefits Standards Act, 1985</i>, as the case may be.</p>
Continuing offence	(5) A failure to file a return or other information under paragraph (4)(a) is deemed to be a separate offence for each day during which the failure is continued.
	1997, c. 15, s. 339; 1999, c. 28, s. 131.
Assessment is binding	23.2 (1) Every assessment and interim assessment made under section 23 or 23.1 is final and conclusive and binding on the person against whom it is made.
Recovery	(2) Every assessment and interim assessment made under section 23 or 23.1 constitutes a debt due to Her Majesty and is immediately payable and may be recovered as a debt in any court of competent jurisdiction.
Interest	(3) Interest may be charged on the unpaid amount of an assessment or interim assessment under section 23 or 23.1 at a rate equal to the rate prescribed under the <i>Income Tax Act</i> for amounts payable by the Minister of National Revenue as refunds of overpayments of tax under that Act in effect from time to time plus two per cent.
	1997, c. 15, s. 339; 2001, c. 9, s. 475(F).
	23.3 [Repealed, 2001, c. 9, s. 477]

#### *Administrative Monetary Penalties*

#### Interpretation

Definitions	24. (1) The following definitions apply in this section and in sections 25 to 37.
"entity" « <i>entité</i> »	"entity" means an entity as defined in section 2 of the <i>Bank Act</i> .
"financial institutions Act" « <i>loi sur les institutions financières</i> »	"financial institutions Act" means the <i>Bank Act</i> , the <i>Cooperative Credit Associations Act</i> , the <i>Insurance Companies Act</i> , the <i>Pension Benefits Standards Act, 1985</i> and the <i>Trust and Loan Companies Act</i> .
"penalty" « <i>pénalité</i> »	"penalty" means an administrative monetary penalty.
"person" <i>Version anglaise seulement</i>	"person" means a natural person or an entity.

(2) This section and sections 25 to 37 do not apply in respect of consumer provisions as defined in section 2 of the *Financial Consumer Agency of Canada Act*.

R.S., 1985, c. 18 (3rd Supp.), s. 24; 2001, c. 9, s. 476.

Violations

Regulations

25. (1) The Governor in Council may make regulations

(a) designating, as a violation that may be proceeded with under sections 26 to 37, the contravention of a specified provision of a financial institutions Act or of a specified provision of a regulation made under one or the non-compliance with

(i) an order made by the Superintendent under a financial institutions Act,

(ii) a direction made under a financial institutions Act to cease or refrain from committing an act or pursuing a course of conduct that is an unsafe or unsound practice, or to perform a remedial act,

(iii) terms and conditions imposed by the Superintendent or an undertaking given to the Superintendent under a financial institutions Act, or

(iv) a prudential agreement entered into with the Superintendent under a financial institutions Act;

(b) classifying each violation as a minor violation, a serious violation or a very serious violation;

(c) fixing, in accordance with subsection (2), a penalty, or a range of penalties, in respect of any violation;

(d) respecting the service of documents required or authorized to be served under sections 26 to 37, including the manner and proof of service and the circumstances under which documents are deemed to be served; and

(e) generally for carrying out the purposes and provisions of section 24, this section and sections 26 to 37.

Maximum penalties

(2) The maximum penalty for a violation is

(a) in the case of a violation that is committed by a natural person, \$10,000 for a minor violation, \$50,000 for a serious violation and \$100,000 for a very serious violation; and

(b) in the case of a violation that is committed by an entity, \$25,000 for a minor violation, \$100,000 for a serious violation and \$500,000 for a very serious violation.

R.S., 1985, c. 18 (3rd Supp.), s. 25; 2001, c. 9, s. 476.

Criteria for penalty

26. Except if a penalty is fixed under paragraph 25(1)(c), the amount of a penalty shall, in each case, be determined taking into account

(a) the degree of intention or negligence on the part of the person who committed the violation;

(b) the harm done by the violation;

(c) the history of the person who committed the violation with respect to any prior violation or conviction under a financial institutions Act within the five-year period immediately

(d) any other criteria that may be prescribed by regulation.

R.S., 1985, c. 18 (3rd Supp.), s. 26; 2001, c. 9, s. 476.

How act or omission may be proceeded with

27. If a contravention or non-compliance that is designated under paragraph 25(1)(a) can be proceeded with either as a violation or as an offence, proceeding in one manner precludes proceeding in the other.

R.S., 1985, c. 18 (3rd Supp.), s. 27; 2001, c. 9, s. 476.

#### Proceedings

Commission of violation

28. (1) Every contravention or non-compliance that is designated under paragraph 25(1)(a) constitutes a violation and the person who commits the violation is liable to a penalty determined in accordance with sections 25 and 26.

Notice of violation

(2) If the Superintendent believes on reasonable grounds that a person has committed a violation, he or she may issue, and shall cause to be served on the person, a notice of violation.

Contents of notice

(3) A notice of violation shall name the person believed to have committed a violation, identify the violation and set out

(a) the penalty that the Superintendent proposes to impose;

(b) the right of the person, within 30 days after the notice is served or within any longer period that the Superintendent specifies, to pay the penalty or to make representations to the Superintendent with respect to the violation and the proposed penalty, and the manner for doing so; and

(c) the fact that, if the person does not pay the penalty or make representations in accordance with the notice, the person will be deemed to have committed the violation and the Superintendent may impose a penalty in respect of it.

R.S., 1985, c. 18 (3rd Supp.), s. 28; 2001, c. 9, s. 476.

#### Determination of Responsibility and Penalty

Payment of penalty

29. (1) If the person pays the penalty proposed in the notice of violation, the person is deemed to have committed the violation and proceedings in respect of it are ended.

Representations to Superintendent

(2) If the person makes representations in accordance with the notice, the Superintendent shall decide, on a balance of probabilities, whether the person committed the violation and, if so, may, subject to any regulations made under paragraph 25(1)(c), impose the penalty proposed, a lesser penalty or no penalty.

Failure to pay or make representations

(3) A person who neither pays the penalty nor makes representations in accordance with the notice is deemed to have committed the violation and the Superintendent may, subject to any regulations made under paragraph 25(1)(c), impose the penalty proposed, a lesser penalty or no penalty.

Notice of decision and right of appeal

(4) The Superintendent shall cause notice of any decision made under subsection (2) or (3) to be issued and served on the person together with, in the case of a serious violation or very serious violation, notice of the right of appeal under section 30.

R.S., 1985, c. 18 (3rd Supp.), s. 29; 2001, c. 9, s. 476.

#### Appeal to Federal Court

	<p>30. (1) A person on whom a notice under subsection 29(4) in respect of a serious violation or very serious violation is served may, within 30 days after the notice is served, or within any longer period that the Court allows, appeal the decision to the Federal Court.</p>
Court to take precautions against disclosing	<p>(2) In an appeal, the Court shall take every reasonable precaution, including, when appropriate, conducting hearings in private, to avoid the disclosure by the Court or any person of confidential information referred to in subsection 22(1).</p>
Powers of Court	<p>(3) On an appeal, the Court may confirm, set aside or, subject to any regulations made under paragraph 25(1)(c), vary the decision of the Superintendent.</p> <p>R.S., 1985, c. 18 (3rd Supp.), s. 30; 2001, c. 9, s. 476.</p>
Enforcement	
Debts to Her Majesty	<p>31. (1) A penalty constitutes a debt due to Her Majesty in right of Canada and may be recovered in the Federal Court.</p>
Time limit	<p>(2) No proceedings to recover a debt referred to in subsection (1) may be commenced later than five years after the debt became payable.</p>
Proceeds payable to Receiver General	<p>(3) A penalty paid or recovered under sections 25 to 30, this section and sections 32 to 37 is payable to and shall be remitted to the Receiver General.</p> <p>R.S., 1985, c. 18 (3rd Supp.), s. 31; 2001, c. 9, s. 476.</p>
Certificate	<p>32. (1) The unpaid amount of any debt referred to in subsection 31(1) may be certified by the Superintendent.</p>
Registration in Federal Court	<p>(2) Registration in the Federal Court of a certificate made under subsection (1) has the same effect as a judgment of that Court for a debt of the amount specified in the certificate and all related registration costs.</p> <p>R.S., 1985, c. 18 (3rd Supp.), s. 32; 2001, c. 9, s. 476.</p>
Rules about Violations	
Violations not offences	<p>33. For greater certainty, a violation is not an offence and, accordingly, section 126 of the <i>Criminal Code</i> does not apply in respect of one.</p> <p>R.S., 1985, c. 18 (3rd Supp.), s. 33; 2001, c. 9, s. 476.</p>
Due diligence available	<p>34. (1) Due diligence is a defence in a proceeding in relation to a violation.</p>
Common law principles	<p>(2) Every rule and principle of the common law that renders a circumstance a justification or an excuse in relation to a charge for an offence under a financial institutions Act applies in respect of a violation to the extent that it is not inconsistent with this Act.</p> <p>R.S., 1985, c. 18 (3rd Supp.), s. 34; 2001, c. 9, s. 476.</p>
Continuing violation	<p>35. A minor violation that is continued on more than one day constitutes a separate violation for each day during which it is continued.</p> <p>R.S., 1985, c. 18 (3rd Supp.), s. 35; 2001, c. 9, s. 476.</p>
General Provisions	
Evidence	<p>36. In a proceeding in respect of a violation or a prosecution for an offence, a notice purporting to be issued under subsection 28(2) or 29(4) or a certificate purporting to be made under subsection 32(1) is admissible in evidence without proof of the signature or official</p>

R.S., 1985, c. 18 (3rd Supp.), s. 36; 2001, c. 9, s. 476.

Time limit

37. (1) No proceedings in respect of a violation may be commenced later than six months after the subject-matter of the proceedings became known to the Superintendent, in the case of a minor violation, or two years after the subject-matter of the proceedings became known to the Superintendent, in the case of a serious violation or a very serious violation.

Certificate of Superintendent

(2) A document appearing to have been issued by the Superintendent, certifying the day on which the subject-matter of any proceedings became known to the Superintendent, is admissible in evidence without proof of the signature or official character of the person appearing to have signed it and is, in the absence of evidence to the contrary, proof of the matter asserted in it.

R.S., 1985, c. 18 (3rd Supp.), s. 37; 2001, c. 9, s. 476.

#### *Regulations*

Power to make regulations

38. The Governor in Council may make regulations

(a) prescribing anything that is required or authorized by this Act to be prescribed; and

(b) prescribing the way in which anything that is required or authorized by this Act to be prescribed shall be determined.

R.S., 1985, c. 18 (3rd Supp.), s. 38; 2001, c. 9, s. 477.

#### *No Liability*

No liability

39. No action lies against Her Majesty, the Minister, the Superintendent, any Deputy Superintendent, any officer or employee of the Office or any person acting under the direction of the Superintendent for anything done or omitted to be done in good faith in the administration or discharge of any powers or duties that under any Act of Parliament are intended or authorized to be executed or performed.

R.S., 1985, c. 18 (3rd Supp.), s. 39; 2001, c. 9, s. 477.

#### *Annual Report*

Annual report

40. The Minister shall cause to be laid before each House of Parliament, not later than the fifth sitting day of that House after September 30 next following the end of each fiscal year, a report showing the operations of the Office for that year.

R.S., 1985, c. 18 (3rd Supp.), s. 40; 2001, c. 9, s. 477.

[Note: The former sections 26 to 46, as originally enacted by R.S., c. 18 (3rd Supp.), Part I, are spent but not yet repealed. Those spent provisions will be repealed by a future amendment.]

### SCHEDULE TO PART I

#### *(Section 6)*

Bank Act

*Loi sur les banques*

Cooperative Credit Associations Act

*Loi sur les associations coopératives de crédit*

Green Shield Canada Act

*Loi sur l'association personnalisée le Bouclier vert du Canada*

Insurance Companies Act

*Loi sur les sociétés d'assurances*

Pension Benefits Standards Act, 1985

*Loi de 1985 sur les normes de prestation de pension*

Trust and Loan Companies Act

*Loi sur les sociétés de fiducie et de prêt*

R.S., 1985, c. 18 (3rd Supp.), Sch. to Part I; 1991, c. 47, s. 744; 1992, c. 1, s. 142, c. 56, s. 18; 1994, c. 26, ss. 50, 51; 1996, c. 6, s. 111; 1999, c. 31, s. 171.

#### AMENDMENT NOT IN FORCE

-- 2001, c. 9, s. 474:

1999, c. 28, s. 131

474. Subsections 23.1(4) and (5) of the Act are repealed.

#### RELATED PROVISIONS

-- 1996, c. 6, s. 110(3):

Transitional

(3) Notwithstanding subsections (1) and (2) and section 166, the Superintendent of Financial Institutions shall, before December 31 in the year in which this subsection comes into force, ascertain

(a) the total amount of expenses incurred during the immediately preceding fiscal year and up to and including the date on which this subsection comes into force for or in connection with the administration of the *Investment Companies Act*, as that Act read immediately before the coming into force of section 166 of this Act, and

(b) the average total assets during the calendar year 1994 of each investment company to which the *Investment Companies Act* applied on December 31, 1995, as that Act read immediately before the coming into force of section 166 of this Act,

and subsections 23(2), (3), (5), (6) and (7) of the *Office of the Superintendent of Financial Institutions Act* continue to apply, with such modifications as the circumstances require, in respect of the final assessment of each investment company that was in existence under the *Investment Companies Act*, as that Act read immediately before the coming into force of section 166 of this Act.

-- 1996, c. 21, s. 72(2):



(2) Subsection (1) applies to interest that is calculated in respect of periods that are after June 1995.

## 附錄六

# Guidance for Developing Effective Deposit Insurance Systems

## FINANCIAL STABILITY FORUM

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## FINANCIAL STABILITY FORUM

### I. Executive Summary

The Financial Stability Forum's Working Group on Deposit Insurance has developed guidance for the benefit of countries considering the adoption or the reform of an explicit, limited-coverage deposit insurance system (hereinafter referred to in this Report as "a deposit insurance system"). The guidance was developed through the preparation of a series of discussion papers and a consultative process that involved over 100 countries. In developing this guidance, the Working Group drew heavily on the practical experience of its members and other countries. Thus, the guidance is reflective of, and designed to be adaptable to, a broad range of country circumstances, settings and structures.

The principal objectives of a deposit insurance system are to contribute to the stability of a country's financial system and to protect less-financially-sophisticated depositors from the loss of their deposits when banks fail. There are a variety of options available for achieving these objectives.

A deposit insurance system is preferable to implicit protection if it clarifies the authorities' obligations to depositors and limits the scope for discretionary decisions that may result in arbitrary actions. To be credible, however, and to avoid distortions that may result in moral hazard, such a system needs to be properly designed, well implemented and understood by the public. A deposit insurance system needs to be part of a well-designed financial safety net, supported by strong prudential regulation and supervision, effective laws that are enforced, and sound accounting and disclosure regimes.

The first step in adopting a deposit insurance system or reforming an existing system is to specify appropriate public-policy objectives and to ensure that their implications are fully understood. In conjunction with identifying public-policy objectives, policymakers will need to assess a large variety of conditions and factors that can have a bearing on the design of the system. This self-assessment process is referred to in this Report as a situational analysis. Conditions and factors that should be taken into consideration include: the state of the economy, current monetary and fiscal policies, the state and structure of the banking system, public attitudes and expectations, the strength of prudential regulation and supervision, the legal framework, and the soundness of accounting and disclosure regimes. In many cases, country conditions may not be ideal and, therefore, it is important to identify gaps between existing conditions and more-desirable situations and thoroughly evaluate available options, since the establishment of a deposit insurance system is not a remedy for dealing with major deficiencies.

Countries transitioning from a blanket guarantee to a deposit insurance system should undertake the same type of situational analysis as countries moving from implicit protection.

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The transition from a blanket guarantee should be as rapid as the country's circumstances permit, since adjustment can become more difficult the longer it is in place. Public awareness plays a particularly important role in enabling a smooth transition.

After the self-assessment process has been completed, policymakers should turn their attention to specific deposit insurance system design features. The starting point should be to address the mandates, powers and basic organisational structure of the deposit insurer. Although no single set of mandates, powers and structures is suitable in all circumstances, those elements should be well defined, understood, and consistent with public-policy objectives, and there should be clear oversight and accountability for the system. It also is critical to address explicitly interrelationship issues among safety-net participants by specifying clear mandates, effective information exchange, confidentiality of information, and close coordination of the activities relevant to the deposit insurer.

Policymakers then should consider membership and coverage issues. Explicit eligibility rules should exist and be transparent, and membership generally should be compulsory. When deciding on the scope and level of coverage, policymakers should consider the relative importance of different deposit instruments in relation to stated public-policy objectives and the effect that the level of coverage may have on moral hazard. The level of coverage can then be set through an examination of relevant data from banks.

Deposit insurance systems need to have access to adequate funds in order to reimburse depositors promptly. The characteristics of the system and its benefits and limitations should be publicised regularly so that its credibility can be maintained and strengthened.

There are a variety of methods available to safety-net participants for resolving failed banks or to deal with banks that are in danger of failing. The methods are: liquidation and reimbursement of depositors' claims, purchase-and-assumption transactions and open-bank financial assistance. Asset-management and disposition strategies should be guided by commercial considerations and their economic merits.

Finally, the Working Group recommends that a continuous-improvement process be instituted for reviewing the extent to which a deposit insurance system is meeting its objectives. In this way, a country can ensure that its deposit insurance system remains consistent with economic and social conditions and lessons learned, and is better able to deal with evolving challenges.

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### II. Introduction

The Financial Stability Forum (FSF) was created in 1999 to promote international financial stability, to improve the functioning of markets, and to reduce systemic risk. In recognition of the increasing use of deposit insurance as an integral component of an effective financial safety net, the FSF established a Study Group on Deposit Insurance. The Study Group was asked to assess the desirability and feasibility of setting out international guidance on deposit insurance arrangements. The Study Group's report was tabled at a meeting of the FSF in March 2000. On the basis of the conclusions in that report, the FSF invited Mr. Jean Pierre Sabourin, President and Chief Executive Officer, Canada Deposit Insurance Corporation, to constitute a Working Group on Deposit Insurance (the Working Group) to develop such guidance and to deliver a final report to the FSF by September 2001.<sup>1</sup>

The mandate of the Working Group was to develop guidance on sound deposit insurance arrangements for countries considering the adoption of a deposit insurance system or the reform of an existing one. The mandate specified that such guidance should be developed through a consultative process that included countries interested in deposit insurance issues. The guidance was to be reflective of, and adaptable to, the broadest set of circumstances, settings and structures.

In fulfilling its mandate the Working Group engaged in a wide range of activities. These included: the publication of a series of business plans and discussion papers on specific issues<sup>2</sup>, outreach sessions, seminars, conferences, utilisation of a Web site to solicit feedback and share knowledge, and the production of this Final Report. The discussion papers identified critical issues associated with adopting an explicit, limited-coverage deposit insurance system or with reforming an existing one. The Working Group met with over 400 people from over 100 countries and they have been kept fully informed about the development of the guidance topics.

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<sup>1</sup> The Working Group was comprised of representatives from Argentina, Canada, Chile, France, Germany, Hungary, Italy, Jamaica, Japan, Mexico, Philippines, the United States of America, the World Bank and the International Monetary Fund (cf Annex I). The approach that the Working Group used to develop discussion papers on the guidance topics and the techniques used in the outreach activities are set out in Annex II. Annex III contains the organisations and countries involved in the outreach sessions, seminars and conferences. A glossary of terms used in this report can be found at the end of this document. A separate volume to this report (Volume II), which can be downloaded from the Internet at the following Web site address ([www.cdic.ca/international](http://www.cdic.ca/international)), includes the research plan, the discussion papers on the 16 guidance topics, a bibliography and additional information on the outreach activities.

<sup>2</sup> Readers should consult the discussion papers for a more in-depth examination of the topics presented in this report.

## **FINANCIAL STABILITY FORUM**

This report is organised as follows. Section III explores the contextual issues related to forms of depositor protection. Section IV sets out the issues and processes that need to be addressed when adopting or reforming a deposit insurance system. Section V presents the design features that help to ensure the effectiveness and credibility of a system. Section VI outlines the key issues and considerations involved in resolution options, the reimbursement of depositors, and claims and recoveries. The final section summarises the key guidance points.



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### III. Contextual Issues for Deposit Insurance Systems

This section discusses issues that policymakers should consider when adopting or reforming a deposit insurance system. The first part examines the role of the banking sector and the financial safety net. Next, there is a discussion on the forms depositor protection can take in different countries. The last part focuses on how the financial safety-net participants can mitigate moral hazard.

#### 1. The role of the banking sector and the financial safety net

Financial institutions that accept deposits from the public (hereinafter referred to as banks) are important in the economy because of their involvement in the payments system, their role as intermediaries between depositors and borrowers, and their function as agents for the transmission of monetary policy. Banks are in the business of assuming and managing risks. By their nature, banks are vulnerable to liquidity and solvency problems, among other things, because they transform short-term liquid deposits into longer-term, less-liquid loans and investments. They also lend to a wide variety of borrowers whose risk characteristics are not always readily apparent.

The importance of banks in the economy, the potential for depositors to suffer losses when banks fail, and the need to mitigate contagion risks, lead countries to establish financial safety nets. A financial safety net usually includes prudential regulation and supervision, a lender of last resort and deposit insurance. The distribution of powers and responsibilities between the financial safety-net participants is a matter of public-policy choice and individual country circumstances. For example, some countries incorporate all financial safety-net functions within the central bank, while others assign responsibility for certain functions to separate entities.

#### 2. Forms of depositor protection

Policymakers have many choices regarding how they can protect depositors. Some countries have implicit protection that arises when the public, including depositors and perhaps other creditors, expect some form of protection in the event of a bank failure. This expectation usually arises because of the government's past behaviour or statements made by officials. Implicit protection is, by definition, never formally specified. There are no statutory rules regarding the eligibility of bank liabilities, the level of protection provided or the form which reimbursement will take. By its nature, implicit protection creates uncertainty about how depositors, creditors and others will be treated when bank failures occur. Funding is discretionary and often depends on the government's ability to access public funds. Although

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a degree of uncertainty can lead some depositors to exert greater effort in monitoring banks, it can undermine stability when banks fail.

Statutes or other legal instruments usually stipulate explicit deposit insurance systems. Typically, there are rules governing insurance coverage limits, the types of instruments covered, the methods for calculating depositor claims, funding arrangements and other related matters. A deposit insurance system is preferable to implicit protection if it clarifies the authorities' obligations to depositors and limits the scope for discretionary decisions that may result in arbitrary actions. A deposit insurance system can also provide countries with an orderly process for dealing with bank failures.

The introduction of a deposit insurance system can be more successful when a country's banking system is healthy. A deposit insurance system can contribute effectively to the stability of a country's financial system if it is part of a well-designed safety net. To be credible, a deposit insurance system needs to be properly designed, well implemented and understood by the public. It also needs to be supported by strong prudential regulation and supervision, sound accounting and disclosure regimes, and the enforcement of effective laws. A deposit insurance system can deal with a limited number of simultaneous bank failures, but cannot be expected to deal with a systemic banking crisis by itself.

### **3. Moral hazard**

A well-designed financial safety net contributes to the stability of a financial system; however, if poorly designed, it may increase risks, notably moral hazard. Moral hazard refers to the incentive for excessive risk taking by banks or those receiving the benefit of protection. Such behaviour may arise, for example, in situations where depositors and other creditors are protected, or believe they are protected, from losses or when they believe that a bank will not be allowed to fail. In these cases, depositors have less incentive to access the necessary information to monitor banks. As a result, in the absence of regulatory or other restraints, weak banks can attract deposits for high-risk ventures at a lower cost than would otherwise be the case.

Moral hazard can be mitigated by creating and promoting appropriate incentives through good corporate governance and sound risk management of individual banks, effective market discipline and frameworks for strong prudential regulation, supervision and laws. These elements involve trade-offs and are most effective when they work in concert.

Good corporate governance and sound risk management of individual banks help to ensure that business strategies are consistent with safe-and-sound operations, and thus can act as the first line of defence against excessive risk taking. Good corporate governance and sound risk

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management includes standards, processes, and systems for ensuring appropriate direction and oversight by directors and senior managers, adequate internal controls and audits, management of risks, the evaluation of bank performance, the alignment of remuneration with appropriate business objectives, and management of capital and liquidity positions.

Moral hazard can be mitigated by market discipline exercised by shareholders as well as by larger creditors and depositors who are exposed to the risk of loss from the failure of a bank. However, for market discipline to work effectively, these groups must have the knowledge required to assess the risks they face. Information should be readily available and be generally understandable by the public. Sound accounting and disclosure regimes are required, as well as ongoing attention to a bank's soundness by ratings agencies, market analysts, financial commentators and other professionals.

Many countries rely heavily on prudential regulatory and supervisory discipline to mitigate moral hazard and control excessive risk taking. Regulatory discipline can be exercised through sound and effective regulations covering the establishment of new banks, the implementation of minimum capital requirements, the qualifications of directors and managers, sound-business activities, fit-and-proper tests for controlling shareholders, standards for risk management, strong internal controls, and external audits. Supervisory discipline can be exercised by ensuring that banks are monitored for safety and soundness as well as compliance issues and that corrective actions are taken promptly when problems surface, including the closure of banks when necessary.

Specific deposit insurance design features can also mitigate moral hazard. These features may include: placing limits on the amounts insured; excluding certain categories of depositors from coverage; using certain forms of coinsurance; implementing differential or risk-adjusted premium assessment systems; minimising the risk of loss through early closure of troubled banks; and demonstrating a willingness to take legal action, where warranted, against directors and others for improper acts.

Many of the methods used to mitigate moral hazard require certain conditions to be in place. For example, differential or risk-adjusted differential premium assessment systems may be difficult to design and implement in new systems and in emerging or transitional economies. Early intervention, prompt corrective action and, when warranted, bank closure require that supervisors and deposit insurers have the necessary legal authority, in-depth information on bank risk, financial resources, and incentives to take effective action. Personal-liability provisions and availability of sanctions can reinforce incentives of bank owners, directors, and managers to control excessive risk, but they depend on the existence of an effective legal system that provides the necessary basis for action against inappropriate behaviour.

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Policymakers should consider a country's conditions and factors that may determine the effectiveness of particular measures for mitigating moral hazard, the commitment and the ability to implement them, and the advancement of a reform agenda to eliminate gaps that may limit their effectiveness.

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### IV Processes for Adopting and Maintaining a Deposit Insurance System

This section sets out the general policy issues and processes that need to be addressed when adopting or reforming a deposit insurance system. The discussion begins with a focus on the public-policy objectives of a deposit insurance system. It is then suggested that policymakers conduct a situational analysis to guide their deliberations. Some special issues related to transitioning from a blanket guarantee to a deposit insurance system are discussed in the penultimate part of this section. In the final part, a six-step iterative self-assessment methodology is presented.

#### 1. Public-policy objectives

The first step in designing a deposit insurance system is to identify the public-policy objectives that it is expected to achieve and these objectives must be well understood. The principal objectives for deposit insurance systems are to contribute to the stability of the financial system and to protect less-financially-sophisticated depositors. Although the determination of such objectives is the responsibility of governments, the private sector can play a role in their achievement. The choice of how a deposit insurance system is to be operated depends on many factors that are unique to each country and its governmental and financial systems.

A well-designed and well-understood deposit insurance system contributes to the stability of a country's financial system by reducing the incentives for depositors to withdraw their insured deposits from banks because of a loss of confidence. Policymakers should ensure that the authorities and the public view all components of the deposit insurance system as credible. The level and scope of coverage, the speed with which insured deposits are repaid, and the credibility of the underlying guarantee will affect the deposit insurance system's ability to enhance the stability of the financial system. Public attitudes and expectations play a particularly important role in reinforcing the credibility and the effectiveness of a deposit insurance system.

Deposit insurance protects insured depositors against the consequences associated with the failure of a bank but it is not designed to protect banks from failing. The provision of deposit insurance relieves insured depositors of the difficult tasks of monitoring and assessing the condition of banks and their asset quality. At the same time, deposit insurance contributes to the maintenance of confidence, so that less-financially-sophisticated depositors, or those who find it hard to assess the financial condition of a bank, are less likely to participate in bank runs.

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A continuous-improvement process should exist for reviewing the extent to which a deposit insurance system is meeting its public-policy objectives and its mandate. Also, the appropriateness of the mandate, powers and elements that make up a deposit insurance system should be periodically reviewed. In this way, countries can ensure that their deposit insurance arrangements remain consistent with economic and social conditions and lessons learned, and that financial safety-net participants are better able to deal with the challenges they may encounter.

### 2. Situational analysis and implementation considerations

In conjunction with the identification of public-policy objectives, policymakers should conduct a situational analysis to guide their decision-making. Among the conditions and factors that should be taken into consideration are: the level of economic activity; current monetary and fiscal policies; the state and structure of the banking system; public attitudes and expectations; the legal framework; prudential regulatory, supervisory, accounting and disclosure regimes. Where existing conditions and factors are not ideal, it is important to identify gaps and thoroughly evaluate the options available since the establishment of a deposit insurance system is not a remedy for dealing with major deficiencies. If actions are necessary, they can be taken before, or in concert with, the adoption or reform of a deposit insurance system.

#### *(a) Economic factors, the state and structure of the banking system and public attitudes and expectations*

The establishment of a deposit insurance system is more difficult if underlying issues relating to the stability of the financial system have not been addressed. Policymakers should undertake an analysis of conditions and factors such as the level of economic activity, current monetary and fiscal policies, inflation and the condition of financial markets. These conditions and factors affect the banking system and will influence the effectiveness of a deposit insurance system. A situational analysis also requires an assessment of the soundness of the banking system, including a detailed evaluation of the condition of banks' capital, liquidity, credit quality, risk-management policies and practices, and the extent of any problems. When problems exist, an assessment should be made as to whether they are confined to individual banks or are systemic in nature.

The number, type and characteristics of banks will have design implications for a deposit insurance system and so the structure of the banking system should be analysed. Policymakers also may need to examine the extent of competition, concentration, and the degree of state ownership as well as state direction. The issue of concentration is of growing importance for deposit insurance systems given the globalisation of capital markets and financial industry

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consolidation. For example, in a concentrated system the capacity of a deposit insurance system to fund or cope with the failure of a large and complex bank may be problematic.

When resource distribution and credit decisions are directed mainly by the state, the state is viewed as being responsible for the results of such operations. Deposits in such systems generally are perceived as having a full government guarantee.

It is advisable to undertake an analysis of public attitudes and expectations before adopting or reforming a deposit insurance system. If there are significant gaps between expectations and planned systems or reforms, they will need to be addressed through greater public awareness. Public awareness plays a particularly important role in enhancing the credibility and the effectiveness of a deposit insurance system.

*(b) The state of legal, prudential regulatory, supervisory, accounting and disclosure regimes*

It is important for policymakers to assess the state of legal, prudential regulatory and supervisory, accounting and disclosure regimes. Policymakers have a wider range of options available for designing a deposit insurance system if these regimes are robust.

A critical element of a sound legal regime is the ability to enforce laws. Deposit insurance systems cannot be effective if relevant laws do not exist or if the legal regime is characterised by inconsistencies. The situational analysis should focus on the level of enforcement, the efficiency of the judicial system, and the effectiveness of creditors' redress mechanisms. Additional factors that should be considered include: the ability of a legal regime to support early intervention and prompt corrective action, the ability to close troubled banks promptly, and provisions for the clear and orderly liquidation of assets and resolution of creditors' claims.

The strength of prudential regulation and supervision will have implications for the effectiveness of a deposit insurance system. Strong prudential regulation and supervision should allow only viable banks to operate. Banks should be well capitalised and follow sound-and-prudent risk management, governance and other business practices. Other characteristics include an effective licensing or chartering regime for new banks, regular and thorough examinations, and the risk assessment of individual banks.

Sound accounting and financial reporting regimes are necessary for an effective deposit insurance system. Accurate, reliable and timely information reported by these regimes can be used by management, depositors, the marketplace, and authorities to make decisions regarding the risk profile of a bank, and thereby increase market, regulatory and supervisory discipline.

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Attributes of a sound accounting regime include accurate and meaningful assessments of information in areas such as asset valuation, the measurement of credit exposures, loan-loss provisioning, measurement of nonperforming loans, the treatment of unrealised losses, off-balance-sheet exposures, capital adequacy, and bank earnings and profitability. In many countries, increased market discipline has been fostered by the adoption of sound and prudent accounting principles and practices, and methods to ensure compliance with agreed-upon accounting conventions.

Comprehensive disclosure regimes also enhance the effectiveness of a deposit insurance system. This can be accomplished by requiring banks to release timely, detailed and useful financial information so the market can assess the performance of a bank.

### **3. Transitioning from a blanket guarantee to a deposit insurance system**

Some countries have introduced an explicit blanket guarantee during a financial crisis to fully protect all bank depositors and creditors. The provision of such guarantees may be unavoidable in periods of extreme financial distress to maintain domestic and international confidence in the banking system. However, blanket guarantees can have a number of adverse effects if retained too long, notably an increase in moral hazard. If a country decides to transition from a blanket guarantee to a deposit insurance system, the transition should be as rapid as a country's circumstances permit.

A country considering transitioning from a blanket guarantee to a deposit insurance system should undertake the same type of situational analysis as a country moving from implicit protection. In addition, countries transitioning from a blanket guarantee will need to consider three special issues.

The first issue arises from the fact that protection for depositors and other creditors is being reduced. This may present a concern to the public. Therefore, policymakers should pay particular attention to public attitudes and expectations. In addition, countries with a high level of capital mobility, and/or a regional integration policy, should consider the effects of different countries' protection levels and other related policies.

Second, policymakers should consider the capacity of the banking system to fund a new deposit insurance system. The final issue concerns how fast the transition should proceed. Some countries have implemented so-called fast-track transitions successfully soon after the crisis has passed. These are countries that have restored the banking system to financial health rapidly; and where strong prudential regulation and supervision, effective legal frameworks, and sound accounting and disclosure regimes were already in place. When a fast-track



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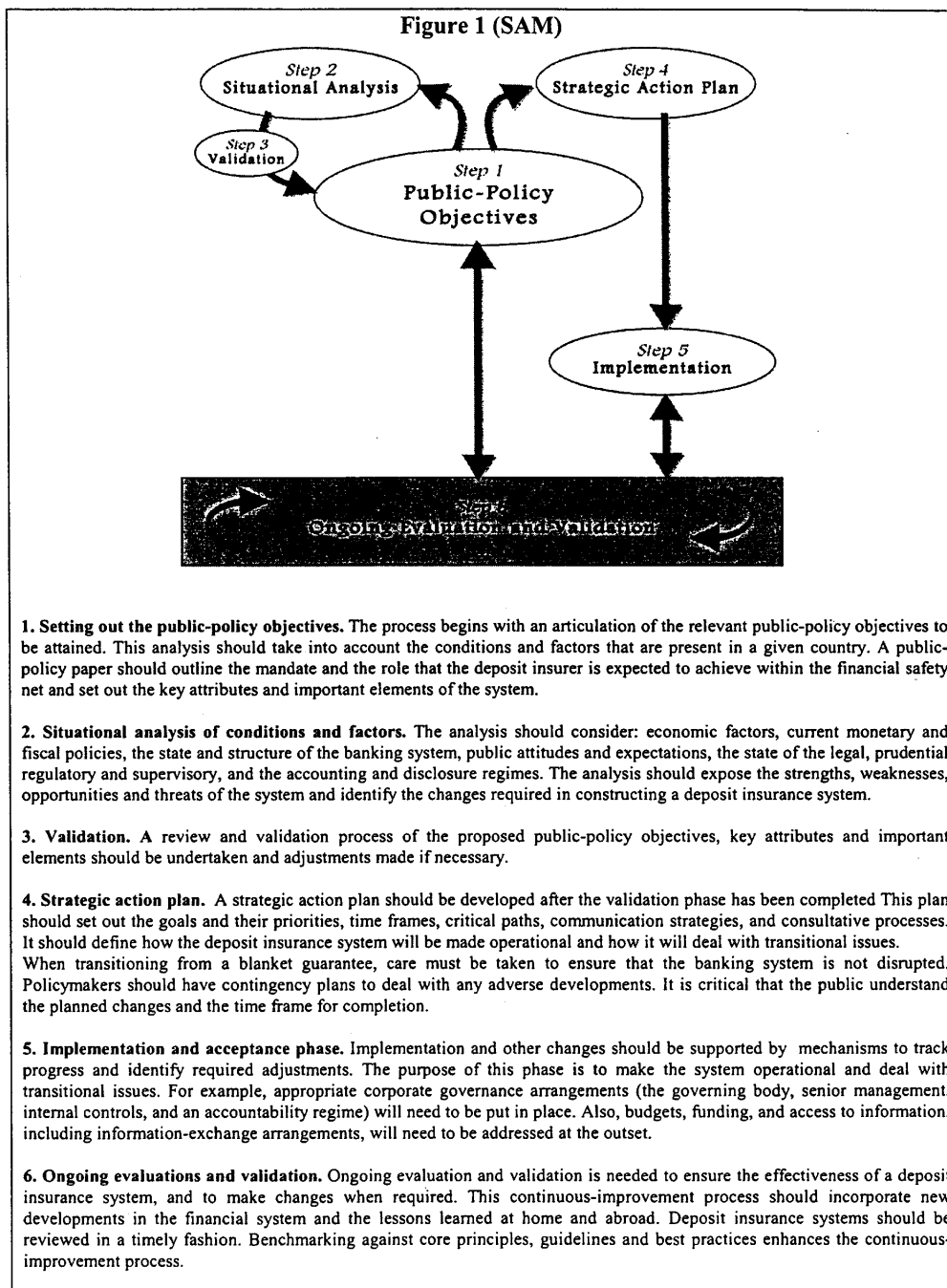
approach is adopted, policymakers should consider phase-in provisions such as continuing to protect deposits with maturities extending beyond the expiration date of a blanket guarantee.

In other countries, the implementation of a blanket guarantee has been associated with a comprehensive post-crisis bank restructuring strategy and measures to improve prudential regulation and supervision, the legal framework, and the accounting and disclosure regimes. This has implications both for the length of time that the blanket guarantee needs to stay in place and for the speed of the transition. The gradual removal of a blanket guarantee allows banks time to adjust to new prudential standards. In addition, a gradual transition permits bank managers to be trained in a risk-management culture and gives depositors time to become accustomed to the new arrangements. A major disadvantage, however, is that the transition period might be perceived as being too long, raising doubts among depositors and creditors about the government's commitment to withdraw the blanket guarantee. In addition, the longer the blanket guarantee remains in place, the more likely it is to give rise to additional moral hazard.

#### **4. Self-assessment methodology (SAM)**

In its outreach sessions the Working Group suggested that policymakers use an iterative "self-assessment methodology" as a tool to design, implement, modify and continually assess a deposit insurance system. The six-step methodology presented below allows policymakers to begin from general principles and then modify, as appropriate, the specific design features to meet their own country's needs.

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### V. Structure and Design Features

This section focuses on the structure and design features of a deposit insurance system. After policymakers have completed a situational analysis, as part of a self-assessment process, attention should turn to issues such as the mandate, powers and structure of the deposit insurance system. In recognition of the interconnectedness of a deposit insurance system with the other safety-net functions, it is critical to address interrelationship issues among financial safety-net participants. Once those issues have been addressed, design features such as membership, coverage, funding and public awareness can be considered. At the end of this section there is a discussion of cross-border deposit insurance issues.

#### 1. Mandates, powers and structure

##### (a) *Mandates and powers*

A mandate is a set of official instructions or statement of purpose. There is no single mandate or set of mandates suitable for all deposit insurers. Existing deposit insurers have mandates ranging from narrow, so-called “paybox” systems to those with broader powers and responsibilities, such as risk-minimisation, with a variety of combinations in between. Whatever the mandate selected, it is critical that there be consistency between the stated objectives and the powers and responsibilities given to the deposit insurer.

Paybox systems largely are confined to paying the claims of depositors after a bank has been closed. Accordingly, they normally do not have prudential regulatory or supervisory responsibilities or intervention powers. Nevertheless, a paybox system requires appropriate authority, as well as access to deposit information and adequate funding, for the timely and efficient reimbursement of depositors when banks fail.

A “risk-minimiser” deposit insurer has a relatively broad mandate and accordingly more powers. These powers may include: the ability to control entry and exit from the deposit insurance system, the ability to assess and manage its own risks, and the ability to conduct examinations of banks or request such examinations. Such systems also may provide financial assistance to resolve failing banks in a manner that minimises losses to the deposit insurer. Some risk-minimisation systems have the power to set regulations, as well as to undertake enforcement and failure-resolution activities.

Formally specifying the mandate of a deposit insurer (either in law, in a formal policy statement, an agreement, or by private contract) clarifies the role of deposit insurance within the financial safety net. Clarity of the mandate reinforces the stability of the financial system and contributes to sound governance and greater accountability.

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As a general principle, a deposit insurer should have all powers necessary to fulfil its mandate. All deposit insurers require the ability to enter into contracts, set appropriate requirements, and access timely and accurate information to ensure that they can meet their obligations to depositors promptly.

### *(b) Basic structure and operational issues*

Regardless of the scope of a deposit insurer's mandate, there are certain structural and operational issues that must be addressed. One of the first tasks is to determine whether the deposit insurance function should be assigned to an existing organisation or whether a separate entity should be established.

Assigning the deposit insurance function to an existing entity, (for example adding a department to a central bank), has the advantage of allowing the deposit insurer to draw on staff resources and skills from the larger organisation. However, this approach also has drawbacks. The primary disadvantage is that a larger organisation may have difficulties separating its other responsibilities and interests from the deposit insurance function. Whether or not the deposit insurer is a separate organisation, it is vitally important to set clearly the responsibility and accountability of each safety-net function.

### *(c) Basic governance arrangements*

There are a variety of forms of governance that can be used by a deposit insurance system. The form of governance utilised should reflect the mandate and the degree to which the deposit insurer is legally separated from the other financial safety-net participants.

The governing body of the deposit insurance system should include individuals with the requisite knowledge who understand the organisation's activities as well as the environment in which it operates, and they should have the authority to make decisions. The deposit insurer should have access to the input and views of the other safety-net participants and relevant interested parties. Members of the governing body and management of the deposit insurer should be subject to a fit-and-proper test, and they should be free from conflicts of interest.

Governance systems and practices should be developed on the basis of sound strategic planning, risk-management processes, and good internal control and audit systems. The governance structure should be transparent and subject to clear oversight and accountability. Rules specifying corporate governance practices should be developed.

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### *(d) Human resources and statutory indemnification*

The ability to attract and retain qualified employees is a key challenge for most deposit insurers. Indeed, a lack of skilled staff, capable of dealing with the complex and rapidly evolving issues that characterise periods of financial stress, has increased costs for a number of governments and deposit insurers.

Several approaches have been employed to ensure the availability of qualified people to meet the operational objectives of deposit insurance systems. They include the use of dedicated resources, access to the resources of other financial safety-net participants and/or reliance on outside service providers.

The importance of statutory indemnification should be recognised and employees should receive legal protection against lawsuits for their actions taken in good faith. The lack of legal protection for employees can reduce incentives to be vigilant in carrying out their responsibilities, particularly in cases where mandates emphasise early detection, intervention and closure of troubled banks.

## **2. Interrelationships among financial safety-net participants**

Policymakers should address the deposit insurer's relationships and coordination with the other safety-net participants. A need for close coordination exists in any institutional setting and information sharing among safety-net participants is essential.

When a single organisation performs all of the safety-net functions the smooth resolution of potential tensions is dependent on clarity of mandates and an adequate accountability regime among the relevant departments. However, when the functions are assigned to different organisations, issues related to information sharing, allocation of powers and responsibilities, and coordination of actions among different functions are more complex and need to be addressed clearly and explicitly.

The supervisory authority usually is the primary source of information on banks. In order to ensure that the deposit insurer obtains the information it needs, while minimising reporting burdens on banks, it is important to closely coordinate the collection and sharing of information. Depending on the breadth of their individual mandates, deposit insurers may need to supplement information provided by supervisors with information collected directly from banks.

A deposit insurer's information needs vary significantly according to its mandate and powers. All deposit insurers need information to be able to reimburse depositors' claims when

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necessary, including information on the amount of insured deposits held by individual depositors. A deposit insurer should have ready access to specific information related to banks' deposit base, including the amount of insured and total deposits, so that plans for resources and funding needs can be developed. Accordingly, guidelines may need to be issued to ensure that banks maintain and safeguard appropriate records.

A deposit insurer with a risk-minimisation mandate must have access to timely and accurate information so that it can assess the financial condition of individual banks, as well as the banking industry. It also must anticipate the financial troubles of individual banks and deal with them effectively when they arise. The deposit insurer also needs information regarding the value of the bank's assets and the expected time frame for the liquidation process, given that the value of a bank's assets depends, in part, on the time necessary to liquidate them.

Although informal arrangements for information sharing and coordination can work well, clearly specified agreements are highly desirable, given the sensitivity of bank-specific information and the need to maintain confidentiality. The challenge of maintaining open communication channels suggests that it may be useful to formalise these arrangements either through legislation, memoranda of understanding, legal agreements, or a combination of these techniques. These arrangements also may be useful in providing a general framework for safety-net participants to coordinate their related activities. Rules regarding confidentiality of information should apply to all safety-net participants.

### **3. Membership and coverage**

This subsection deals with specific design features, such as which institutions should be eligible for membership, what financial instruments should be covered, and the level of coverage. A number of different factors should be taken into consideration to determine which financial institutions should be members of a deposit insurance system. Of particular importance is whether they are subject to strong prudential regulation and supervision. Explicit eligibility rules for membership should exist and membership should be compulsory, in most circumstances. In addition, it is important to define clearly in law or private contract what is an insurable deposit.

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### *(a) Membership*

#### *(i) Compulsory membership*

In general, membership should be compulsory to avoid adverse selection. There are some cases, however, where a strong commitment of banks to participate in a deposit protection system can be observed and broad participation of banks may be achieved without a legal obligation. This can occur if depositors are aware of and sensitive to the existence of deposit insurance, thus creating strong incentives for banks to be part of a system. In other cases, if depositors are less concerned about deposit insurance or are not aware that coverage is limited to certain banks, then the stronger banks may opt out. Further, in a voluntary system strong banks may opt out if the cost of failures is high and this may affect the financial solvency and the effectiveness of a deposit insurance system.

#### *(ii) Considerations when granting membership to banks*

There are two circumstances that may require different approaches to granting membership to banks. First, when a deposit insurance system is established and second, when membership is granted to new banks in an existing system.

When a deposit insurance system is created, policymakers are faced with the challenge of minimising the risks to the deposit insurer, while granting extensive membership. Generally, two options are available: automatic membership or requiring banks to apply for entry.

Automatic membership for all banks may be the simplest option in the short term. However, the deposit insurer may then be faced with the difficult task of having to accept banks that create an immediate financial risk or that pose other adverse consequences for the deposit insurance system.

Alternatively, banks may be required to apply for membership. This option provides the deposit insurer with the flexibility to control the risks it assumes by establishing entry criteria. It also can serve to enhance compliance with prudential requirements and standards. In such cases, an appropriate transition plan should be in place that details the criteria, process and time frame for attaining membership. The criteria should be transparent.

The way that policymakers grant membership in existing deposit insurance systems varies. In some countries, the licensing or chartering of new banks and the granting of membership in a deposit insurance system are separate functions of different safety-net participants. In other countries the relevant safety-net participants jointly approve new members and in others, membership is automatic with the issuance of a bank charter or license. Whichever option is

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chosen, appropriate mechanisms are necessary to ensure that membership requests are handled expeditiously and effectively, and that eligible banks meet minimum prudential standards and entry requirements.

### *(iii) Foreign banks*

Although domestically incorporated or chartered banks are the principal members of most deposit insurance systems, some countries require foreign-bank subsidiaries and branches to participate in the system as well. Several arguments are made for their inclusion: the stability of the domestic financial system; the goal of providing a minimum level of deposit insurance to all depositors; the notion that foreign banks benefit from a stable domestic financial system and should therefore participate in the deposit insurance system as part of doing business in a country; the desire to minimise competitive issues by placing foreign banks on the same footing as domestic banks; and the diversification that arises from wider membership and expansion of the funding base.

### *(iv) Non-bank financial institutions*

Policymakers take different approaches to non-bank financial institutions that offer deposits and deposit-like products. The rationales for expanding membership beyond banks include: the desire not to introduce competitive distortions among different types of institutions offering similar products; the objective of enhancing the stability of the financial system by including all institutions that accept deposits or deposit-like products; and the desire to apply prudential regulatory and supervisory rules to all such institutions.

There are many cases, however, where non-bank financial institutions are excluded from membership. The most common reasons are that such institutions may not be as relevant as banks to a country's financial stability, that they may be subject to different regulatory and supervisory standards, and they may have different authorities overseeing their affairs. In such circumstances, policymakers may establish separate protection schemes to cover non-bank financial institutions.

### *(v) State-owned banks*

State-owned banks present unique issues for deposit insurance systems. These banks are usually the beneficiaries of an implicit or full government guarantee that may make their inclusion in a deposit insurance system appear unnecessary. Nevertheless, some countries have chosen to include them in their systems. Some of the reasons are: to facilitate privatisation; to ensure competitive equality with private-sector banks in terms of the level of coverage and premium contributions; to provide a mechanism to bring such banks under the



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same prudential regulatory and supervisory rules applicable to other banks; and to diversify the deposit insurer's risks and increase its funding base.

*(b) Coverage*

*(i) Scope and level*

Policymakers should define clearly in law or by private contract what is an insurable deposit. In doing so, they should consider the relative importance of different deposit instruments, including foreign-currency deposits and the deposits of non-residents in relation to the public-policy objectives of the system. Once the relevant deposits are selected, exclusions of specific deposits and/or depositors can be determined.

Many deposit insurance systems exclude deposits held by depositors who are deemed capable of ascertaining the financial condition of a bank and exerting market discipline. Examples include deposits held by banks, government bodies, professional investors such as mutual funds, and deposits held by bank directors and officers. In some cases, deposits held by individuals who bear responsibility for the financial well-being of a bank are excluded from reimbursement. Also, deposits with extremely high yields are sometimes excluded from coverage; or reimbursement may be limited to the principal owed, with a lower rate of interest applied. Many countries exclude bearer deposits because it is difficult to establish ownership of the account and to ensure that coverage limits are respected.

Once the scope is determined, the level of coverage can be set. This can be done through an examination of relevant data, such as statistical information describing the size distribution of deposits held in banks. This gives policymakers an objective measure, such as the fraction of depositors covered, with which to assess the adequacy of a certain level of coverage. Whatever coverage level is selected, it must be credible and internally consistent with other design features, and meet the public-policy objectives of the system. Policymakers should consider the relationship between coverage levels and moral hazard.

There are a number of ways to apply coverage limits. Usually coverage limits are applied per deposit or per depositor. Using the per deposit method may be incompatible with ensuring limited coverage since a depositor can easily circumvent the limit by opening multiple accounts in a single bank for an amount equal to or below the insured limit. Focusing the coverage limit solely on the depositor avoids that pitfall but information requirements are greater since all deposit accounts held by a single depositor need to be identified and aggregated for deposit insurance purposes.

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Coverage limits can also be applied per bank or across all member banks. Although coverage across all banks is likely to instill more market discipline, depositors may be affected by multiple bank failures even though they had diversified their risks among member banks. As a result, this approach may increase the potential for bank runs. Providing deposit insurance across all member banks requires detailed data of all depositor accounts in all banks. This type of coverage is highly difficult and costly to administer as it requires not only a great deal of information regarding ownership of deposit instruments but also requires a process for combining depositor accounts at different banks when they fail. It also requires that a time element be attached to the coverage limit- such as per calendar year. A mechanism would also be needed to track depositor reimbursements to determine when a particular depositor reached the coverage limit. This option is seldom used because of its complexity and its potential to undermine depositor confidence.

Given the importance of effectively limiting coverage and contributing to financial system stability, as well as keeping the requirement for information reasonable, it is preferable to apply deposit insurance on a per depositor per bank basis.

### *(ii) Coinsurance*

One approach to foster market discipline and to reduce somewhat the costs of deposit insurance is the use of coinsurance, whereby a pre-specified proportion of deposits is insured. Depositors in a limited-coverage deposit insurance system should be aware that they may suffer losses if their deposits exceed the limit when a bank fails. This awareness will be heightened under coinsurance because depositors may suffer losses if their deposits are below the insurance limit. However, even under a coinsurance system, individuals who have small account balances may not exercise market discipline because of a lack of financial incentives or sophistication, or because the costs of doing so exceed the benefits. In this case, individuals bear a cost for bank failure without increasing market discipline. As well, for coinsurance to be effective, extensive information needs to be provided to the public regarding the financial condition of banks.

A negative consequence of coinsurance is that depositors may opt out of the banking system. One way to protect against these potentially adverse effects is to apply it above a certain amount so that individuals holding small account balances are protected fully against the risk of loss, while maintaining the incentive for depositors holding larger account balances to monitor banks.

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### *(iii) Adjusting coverage limits*

Inflation, the growth of real income, the development of new financial instruments, and the way in which these factors influence the composition and size of deposits may require the adjustment of coverage limits. A trade-off exists, however, between the goal of maintaining the level of deposit insurance constant for a sufficiently long period of time so that depositors know the coverage limit with certainty, and the goal of setting the level of coverage that is appropriate to meet the objectives of the system. This problem is especially acute for high-inflation countries.

Adjustments to the level of deposit insurance coverage may take place either on a discretionary basis or they may be made systematically through automatic or periodic indexing. Indexed adjustments may be automatically implemented, which requires care in choosing the frequency and amounts of adjustments. If adjustments occur too often, or for odd amounts, this could confuse the public. Alternatively, if adjustments occur too infrequently, the deposit insurance system may be unable to meet its stated public-policy objectives.

### *(iv) Foreign-currency deposits*

The decision whether to cover deposits denominated in foreign currencies depends heavily on a country's usage of foreign currency. When usage is high, it would be of little value to institute a deposit insurance system without covering these deposits.

If foreign-currency deposits are to be covered by deposit insurance, it is important to consider whether these deposits are to be reimbursed in local or foreign currency when a bank fails. This decision is important because it has implications as to who bears the foreign-exchange risk. If reimbursements are made in foreign currency, the deposit insurer may bear this risk. If foreign-currency deposits are converted into local currency before reimbursing depositors after a bank failure, the risk is transferred to the depositors. If reimbursements are made in local currency, a transparent rule should be set out in advance with respect to the date chosen for the exchange rate that will be used to calculate the amount to be reimbursed. At a minimum, a system that offers to repay depositors in a foreign currency must have access to sufficient foreign assets or other sources of foreign-currency funding to make this commitment credible.

To mitigate foreign-exchange risk, policymakers should ensure that banks have sound foreign-exchange risk-management systems and controls in place. Furthermore, the deposit insurer should develop sound policies and procedures to prudently manage any foreign-exchange risk it faces. In designing such policies and procedures, the deposit insurer may wish to draw on the expertise residing in banks.

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### 4. Funding

Sound funding arrangements are critical to the effectiveness of a deposit insurance system and the maintenance of public confidence. A deposit insurance system should have available all funding mechanisms necessary to ensure the prompt reimbursement of depositors' claims after a bank failure. Inadequate funding can lead to delays in resolving failed banks, to significant increases in costs and a loss of credibility of the deposit insurance system. Funding can be assured in many ways, such as government appropriations, levies or premiums assessed against member banks, market borrowings, or a combination thereof.

Premiums or levies can be assessed on an *ex-ante* or *ex-post* basis. Beyond the decision of how to fund a deposit insurance system, some additional issues should be considered by policymakers. Among these are: how deposit insurance assessments should be determined, verified, and collected; and whether it is appropriate to establish separate deposit insurance funds for different types of deposit-taking institutions.

Member banks should pay the cost of deposit insurance since they and their clients directly benefit from having an effective deposit insurance system. Policymakers should consider the effect of premium levels on the financial health of the banking industry, and an assessment base should be chosen against which a given premium rate will be applied. One choice is insured deposits; alternatively, a bank's total deposit liabilities may be used. Although the use of total deposit liabilities may be easier administratively, there may be issues of equity since banks that rely more heavily on uninsured deposits for funding could be required to pay a disproportionate share of premiums.

#### (a) *Funding on an ex-ante or ex-post basis*

*Ex-ante* funding, which refers to the accumulation of a reserve or a fund, provides an opportunity to smooth the premiums paid by banks over the course of a business cycle. Because all banks contribute to building and maintaining a reserve or fund, banks that subsequently fail will have contributed to paying for the cost of their failure. *Ex-ante* funding sources may be supplemented by measures such as *ex-post* levies or premium assessments on member banks, draws on government lines of credit, and/or government guarantees. *Ex-ante* funding has the potential to remove capital from the banking system because premiums paid to the deposit insurer cannot be used for other purposes. If policymakers decide to use *ex-ante* funding, the deposit insurer should ensure that funds are well managed and readily available to cover losses as they arise. This can be accomplished by implementing appropriate investment policies and procedures, and by instituting sound internal controls, disclosure and reporting systems.

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*Ex-post* funding requires member banks to pay premiums or levies only after failures occur and are most likely to be assessed during an economic downturn. *Ex-post* funding may improve inter-bank monitoring because each bank has an incentive to avoid the costs associated with the failure of a member. Such incentives may be particularly strong in banking systems characterised by a small number of large banks. Because assessments and collections occur post-failure, prompt reimbursement of insured depositors may be more problematic if other funding mechanisms are unavailable at the time. Moreover, banks that fail will not have contributed to funding the costs associated with their failure.

Failures often occur during an economic downturn and, in some circumstances, this may create pressure to provide forbearance because the banking system's ability to pay is weakened. In some cases, this can be offset if the deposit insurer has access to other resources such as government assistance through temporary funding mechanisms, guarantees or backstops. The costs associated with providing such assistance should be recovered through future assessments against banks.

In practice, deposit insurance systems often are funded on a combined *ex-ante* and *ex-post* basis. The advantages and disadvantages associated with *ex-ante* and *ex-post* funding are generally applicable to hybrid funding arrangements.

### *(b) Issues related to the establishment and size of a deposit insurance fund*

In principle, there are two approaches available to establishing a deposit insurance fund. First, banks may be assessed a steady premium rate over a long period. This approach allows a deposit insurance fund to fluctuate in response to insurance losses and movements in the deposit insurance fund do not trigger automatic changes in premium rates. Using this approach the insurer could be dependent on government or other financial support in times when the fund is inadequate to meet obligations to depositors.

Second, a premium assessment system can be designed to maintain a target fund ratio or range. Using this approach, premiums could be set and adjusted over time by taking into account some ratio of the deposit insurance fund to insured deposits, for example. This approach helps to mitigate the loss exposure that the deposit insurer is assuming. In principle, the target fund ratio should be sufficient to reduce the probability of the fund's insolvency to an acceptable minimum, although estimating probabilities of loss is very complicated in practice. Policymakers in economies that are subject to greater financial-system volatility should take this into account when determining their funding needs.

Using a target fund ratio method could lead to a *de facto ex-post* system after the deposit insurance fund achieves a certain level. This method can also result in banks paying few

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premiums in good economic times, but paying higher premiums during an economic downturn.

A case can be made either for establishing and maintaining one fund or for establishing and maintaining separate funds for different types of financial institutions that accept deposits from the public. If separate funds are established, policymakers should ensure that distinctions among the institutions and their funds do not contribute to competitive distortions.

### *(c) Deposit insurance assessments: flat-rate versus risk-adjusted differential premium systems*

Policymakers have a choice between adopting a flat-rate premium system or a premium system that is differentiated on the basis of individual-bank risk profiles. The primary advantage of a flat-rate premium system is the relative ease with which assessments can be calculated and administered. However, in a flat-rate system, low-risk banks effectively pay for part of the deposit insurance benefit received by high-risk banks.

Most newly established systems initially adopt a flat-rate system given the difficulties associated with designing and implementing a risk-adjusted differential premium system. However, because flat-rate premiums do not reflect the level of risk that a bank poses to the deposit insurance system, banks can increase the risk profile of their portfolios without incurring additional deposit insurance costs. As a result, flat-rate premiums may be perceived as encouraging excessive risk taking by some banks, unless there is a mechanism to impose financial sanctions or penalties.

Risk-adjusted differential premium systems can mitigate such criticisms and may encourage more prudent risk-management practices at member banks. When the information required to implement a risk-adjusted differential premium system is available, relating premiums to the risk a bank poses to the deposit insurer is preferable.

The information-intensive nature of the intermediation process, however, makes risk measurement a complicated task. The particular difficulties related to risk-adjusted differential premium systems include: finding appropriate and acceptable methods of differentiating bank risk; obtaining reliable and timely data; ensuring that rating criteria are transparent; and examining the potential destabilising effects of imposing high premiums on already troubled banks. As well, risk-adjusted differential premium systems require resources necessary to administer the system appropriately. An important but delicate issue that policymakers should consider is whether to allow the release of information related to the risk profile of each bank, or to restrict this information for confidentiality or other reasons.

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### 5. Public awareness

In order for a deposit insurance system to be effective, it is essential that the public be informed about its benefits and limitations. Experience has shown that the characteristics of a deposit insurance system need to be publicised regularly so that its credibility can be maintained and strengthened.

A well-designed public-awareness program can achieve several goals, including the dissemination of information that promotes and facilitates an understanding of the deposit insurance system and its main features. Also, a public-awareness program can build or help restore confidence in the banking sector. Additionally, such a program can help to disseminate vital information when failures occur, such as guidance regarding how to file claims and receive reimbursements.

When designing a public-awareness program, it is critical to identify the target audience. Bank employees, especially those in operations, as well as those on the front-line, are important conduits for providing information about deposit insurance.

Care should be taken to select strategies that meet the goals set in the public-awareness program. A public-awareness plan that addresses issues related to failures should be carefully developed before an actual failure occurs. A well-designed public-awareness program helps to counteract the potentially disruptive effects of bank failures and helps maintain confidence in the stability of the financial system.

In countries where public confidence in the banking system is high and awareness of an existing deposit insurance system is very low, special communication strategies need to be developed to ensure that the stated goals are achieved while public confidence is maintained.

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### Cross-Border Issues

Deposit taking is usually a domestic business, but cross-border issues are increasing in many jurisdictions. In some countries, cross-border issues already play a considerable role in the creation and design of a deposit insurance system. This is the case, for example, where banking systems are characterised by a significant presence of foreign-bank branches. In weak banking systems (especially after a crisis), the outflow of deposits to other countries may have to be taken into account when establishing or reforming a deposit insurance system. In regions where economies are closely related, or in closely integrated regions, such as in the European Union (EU), special considerations may apply. The EU minimum requirements for deposit insurance are harmonised and the responsibility for providing deposit insurance rests primarily with the home country.

Relevant laws, regulations and other provisions applicable to banks, their customers and deposit insurers are generally those of the bank's country of incorporation or charter. However, if a bank operates branches in other jurisdictions or provides services to customers' abroad, the laws and regulations of other countries may apply. Depending on the volume of these activities, the implementation of policies by home and host countries regarding issues such as coverage and asset disposition can be crucial for the effective operation of deposit insurance systems and for the achievement of public-policy objectives.

Deposits collected from individuals located in countries where a bank has not established a physical presence (that is, a branch or subsidiary) normally are covered by the deposit insurance system the bank belongs to in its home country. Deposits at foreign branches may be protected by the bank's home-country

deposit insurance system, by the host-country system where the branch is located, by a combination of both systems, or not protected at all. Where deposits are covered by a combination of both systems, the home-country system may provide basic coverage that is supplemented by the host country.

Foreign banks may expose the deposit insurer to risks that it has a limited capacity to mitigate. Additionally, they may complicate the recovery process in the event of a failure, because assets located abroad may be subject to another country's bankruptcy/insolvency regime.

Foreign branches participating in a host country deposit insurance system should conform generally to the membership criteria of the host-country system, which may possibly include the application of supervisory requirements on a stand-alone basis. If the host-country system provides supplementary coverage, multiple reimbursements of insured depositors should be avoided. The deposit insurance already provided by the home-country system should be recognized in the determination of levies and premiums.

In general, information received by safety-net participants in other jurisdictions should be subject to the same strict confidentiality rules applicable to information received from other domestic safety-net participants. Provided confidentiality is ensured, all relevant information should be exchanged between deposit insurers in different jurisdictions and possibly between deposit insurers and other foreign safety-net participants when appropriate. In any case, deposit insurers should receive all information necessary to enable a prompt reimbursement of claims of depositors and to enable them to meet their mandate.



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### VI. Resolutions, Reimbursements, Claims and Recoveries

Timely and effective exit strategies for handling failed banks enhance confidence in a deposit insurance system, help contain costs, and avoid adverse effects on other safety-net participants, the government, the public, the banking industry, and the economy. Cooperation among the various financial safety-net participants, both before and after a failure, is essential if these results are to be achieved.

It is critical to determine when a bank is in serious financial difficulty. This determination should be made on the basis of well-defined and transparent criteria by a safety-net participant with authority to act. Prompt and decisive actions are crucial to reduce the cost of a bank failure but care needs to be taken to address confidentiality issues to protect the exchange of information among financial safety-net participants. There are a number of steps necessary to liquidate a bank's business and affairs. These steps include the resolution or disposition of the failed bank, reimbursement of insured depositors, liquidation of the bank's assets, settlement of claims in accordance with applicable laws, and disposition of pending or outstanding litigation.

From a deposit insurance perspective, the objectives of an effective failure-resolution process are to: meet the deposit insurer's obligations; ensure depositors are reimbursed promptly and accurately; minimise resolution costs and disruption of markets; maximise recoveries on assets; settle *bona-fide* claims on a timely and equitable basis; and reinforce discipline through legal actions in cases of negligence or other wrongdoings. There are potential tensions and trade-offs among these objectives that need to be addressed by policymakers.

#### 1. Private-sector solutions

Before a troubled bank reaches the point of failure, it usually has been the subject of various efforts to strengthen its operations. Such actions may have included restructuring efforts that are broadly similar to resolution transactions, in that they involve a merger with, or acquisition by, a healthy bank. These efforts are frequently described as private-sector solutions and do not impose a cost on the deposit insurer.

Private-sector solutions require that action be taken early while acquirers are still willing to take over the troubled bank. They also require the existence of healthy banks, which have the financial and managerial capabilities to combine with weaker ones and that can continue to comply with regulatory and supervisory requirements. Finally, the responsible authority must be prepared to close a troubled bank if the private-sector solution fails, otherwise the bank's bondholders and shareholders may have little incentive to make the financial concessions necessary to help make a solution work.

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### 2. Resolving troubled banks

A resolution may be defined as a method of disposing of a failed bank, which is directed by the responsible safety-net participant, and generally is designed to reimburse insured depositors while minimising costs to the deposit insurer.

#### *(a) Options*

Three basic resolution options exist: liquidation and reimbursement of depositors' claims, purchase-and-assumption transactions (sales) and open-bank financial assistance. Bankruptcy/insolvency and other laws may heavily influence the choice of resolution methods since such laws vary considerably among countries and, in some cases, may make a particular resolution method difficult to implement. Because of the special significance of banks and bank failures, policymakers may wish to review whether bankruptcy/insolvency laws facilitate the orderly exit of troubled banks.

#### *(i) Liquidation and reimbursement of depositors' claims*

Reimbursement of depositors' claims occurs when an acquisition or merger is unattractive to potential acquirers or merger partners. The failed bank is closed and the assets and uninsured claims are transferred to a receiver/liquidator for liquidation and settlement. Reimbursing claims may be accomplished by directly paying depositors or by transferring their insured deposits to another bank.

#### *(ii) Purchase-and-assumption transactions (sales)*

In a purchase-and-assumption transaction, a healthy bank or group of investors assumes some or all of the obligations, and purchases some or all of the assets, of the failed bank. Assets purchased by the acquirer typically include performing loans and other good-quality investments. Assets not sold to the acquirer at resolution are passed on to the receiver/liquidator for disposition. Clearly, acquirers must have sufficient resources to absorb the acquisition, sufficient capital to handle the new bank's costs, and qualified management.

Variants of the purchase-and-assumption method include the "bridge bank," or other interim arrangements, which have been used primarily to manage failures of large and complex banks. In such arrangements, the responsible safety-net participant takes ownership or control of the failed bank and operates it for a period of time. The goals are to prevent further deterioration of the bank, give the authorities more time to seek a permanent resolution, and provide potential acquirers a greater opportunity to review the quality of the bank's assets. If the bank

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remains too long under official control, however, it may lose value and may draw deposits away from other banks. The authorities, as well, may be tempted to postpone a permanent solution unduly. As a result, it may be desirable to establish limits on the length of time that such arrangements remain in operation.

### *(iii) Open-bank financial assistance*

Financial assistance may be provided to an operating bank that is in danger of failing. The deposit insurer may retain ownership rights in the bank and additional capital from outside investors and replacement of managers and directors may be required. Uninsured depositors and certain other creditors are generally fully protected, although bondholders and shareholders may be required to bear significant losses.<sup>3</sup> Open-bank assistance usually is provided to banks when it is believed that closing them would pose significant risks for the stability of the financial system.

Open-bank assistance has features that some countries regard as undesirable. Bondholders and shareholders, while suffering losses, may receive compensation or benefits that they would not otherwise receive. Depending on the legal system, closed-bank transactions also may have other advantages. For example, the appropriate authority may have the right to abrogate certain contracts without penalty. Finally, where small banks are generally ineligible for open-bank assistance, they may believe that they are being treated unfairly.

### *(b) Costs and other considerations*

Choices among resolution methods involve various considerations, including statutory requirements and mandates. Where least-cost resolutions are mandated to the deposit insurer, the chosen method must be demonstrated to be less costly than any other possible method. Alternatively, a less-stringent cost test might require that the chosen method be less expensive than a liquidation and reimbursement of depositors' claims. An implicit assumption in cost-test calculations is that the resolution of one failed bank will not affect the cost of subsequently resolving other banks. This is most likely to be true in countries where occasional bank failures are regarded as a normal occurrence and the failed bank does not represent a major proportion of the banking industry.

There may be special provisions for large and complex banks that are perceived to have special significance from the standpoint of financial-system stability or for banks whose closure would result in a harmful interruption of banking services in particular markets or regions. Such banks often have been resolved in ways that are not designed primarily to

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<sup>3</sup> In some countries the deposit insurer may have significant legal exposure to dissatisfied creditors.

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minimise resolution costs. In such circumstances, consideration should be given as to how these costs should be allocated.

### 3. Reimbursing depositors

Determining who should be reimbursed and ensuring that deposit insurance limits are respected are the most crucial steps in the reimbursement process and are important to the effectiveness of a variety of resolution methods. This is most evident in a liquidation process where depositors' claims need to be reimbursed up to their insured limits. In other resolution transactions, determining the insurance status of individual accounts is also necessary, if such resolutions are to meet a least-cost test or when acquirers of failed banks assume only insured deposits. A determination of the status of individual accounts is also necessary when applicable statutes mandate the priority of insured depositor claims.

Systems and processes should be developed in order to undertake preparatory reviews of deposit liabilities held by troubled banks. This requires development of administrative practices and procedures and the ongoing review of the quality and security of bank deposit records.

#### *(a) Conditions for effective reimbursement*

Depositors need to know when and under what conditions the deposit insurer will start the reimbursement process, as well as the applicable coverage limits. If reimbursement does not occur immediately after closure of the bank, depositors should be told the time frame over which reimbursement will take place. The deposit insurer should know, as soon as possible, when a bank will be closed. Access to the necessary deposit data before the bank is closed lessens the risk of record manipulation, shortens the time for completing the reimbursement process, and helps preserve public confidence. The deposit insurer must decide whether to maintain adequate resources internally or whether it will outsource the function by employing contractors to handle reimbursements as they arise.

#### *(b) Eligibility for coverage*

The deposit insurer must assess the amount in each deposit account at the time of closure and determine whether the accounts are within the scope and limits of the deposit insurance system. In making such a determination, the deposit insurer must apply the laws governing ownership rights and capacities with respect to coverage of single accounts, joint accounts, business accounts, retirement accounts, and fiduciary accounts. In some countries, the deposit insurance limit is applied by combining all deposit accounts held by a depositor, while in others, deposit accounts held under different rights and capacities are insured separately. Other

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important steps in the reimbursement process include the need to reconcile suspense accounts, process deposit and other items in transit and deal with clearing and settlement issues.

As discussed later in this section, rules regarding set-off and collateral must be applied in determining the amount of coverage. If the depositor reimbursement and claims/liquidation functions are administered separately, close cooperation between the responsible organisations is necessary in applying any set-off and collateralisation rules.

### *(c) Procedures for reimbursing depositors*

The deposit insurer's administrative practices and procedures should specify the necessary steps to ensure the accuracy of the reimbursement process. An important consideration is whether the verification and reconciliation of accounts can be achieved on the basis of the bank's own records, or whether the depositor is required to submit a claims form, effectively proving ownership of the account. In some cases requiring submission of a claims form may be inconvenient for depositors and can delay the reimbursement process, but this procedure may be necessary if the quality of the bank records is suspect or poor, or if bank-secrecy laws prevent accurate identification of depositors and their accounts.

Another important consideration is whether to pay depositors quickly or only after extensive verification of account data. A reasonable position would be to issue payments after best efforts to ensure accuracy and completeness have been made. In some situations, a possible remedy is to make partial payments to insured depositors before all the steps necessary for an accurate reimbursement process have been completed. The final action before reimbursement is the preparation of reconciliation statements specifying the amount to be paid to depositors and claimed from the liquidator/receiver. The reimbursement process should be evaluated *ex-post* to incorporate lessons learned.

### *(d) Payments to depositors*

Actual reimbursement can proceed after the deposit records, claims and rights have been reconciled. Reimbursements may be simplified if another bank agrees to make the payments. If this option is not available, the deposit insurer must select a method of payment such as: providing cash or issuing some other form of payment; mailing cheques; transferring funds to another bank designated by the depositor; issuing a debit card; or making a postal transfer.

Open communication channels through press releases, the news media, advertisements, posters, the Internet, and other means are crucial in maintaining public confidence in the deposit insurance system. The public should receive practical and accurate information about

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when and how they will receive reimbursement of their claims. Direct communication through letters and telephone calls are necessary to respond to depositors' questions and complaints.

### 4. Claims and recoveries

#### (a) *General issues*

After a troubled bank has been closed, the responsible entity effectively inherits the bank's assets and liabilities. The remaining tasks in winding up the affairs of the bank are the management and liquidation of its assets and settlement of *bona-fide* claims. The ability to accomplish these tasks effectively is an essential part of a country's financial safety net. The powers provided to the entity responsible for the claims-and-recoveries function should be guided by applicable laws and should include control of the failed bank's assets; contract rights and privileges; the ability to allow or disallow claims; the capability to enforce or repudiate certain contractual obligations; and the ability to challenge fraudulent transfers and transactions. At the same time, fiduciary responsibilities imposed on the entity may limit its ability to fulfil other responsibilities.<sup>4</sup>

#### (b) *Asset-management and disposition strategies*

Asset-management and disposition strategies should be guided by commercial considerations and their economic merits, given the quality of the assets, the depth and condition of markets, the availability of expertise in asset management and disposition, legal requirements relating to the disposition of assets, and public-policy objectives. The goal of maximising recoveries may conflict with other goals, such as environmental considerations, or the pursuit of actions to enhance standards of business conduct.

Performing assets may be sold as part of the resolution transaction or as soon as possible thereafter, because they are marketable and have little or no potential for additional value. This also has the advantage of returning assets to the market quickly, thereby, distributing funds earlier to the deposit insurer, minimising carrying costs while assets are in the hands of the receiver/liquidator, and minimising government involvement. Other assets may be sold or otherwise liquidated over a period of time under professional management, with a view to optimising recoveries and reducing costs. Negotiations with borrowers also may be effective in the disposition of hard-to-sell assets. With respect to assets not sold immediately, it is vital

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<sup>4</sup> There is considerable variation in the claims-and-recoveries roles played by deposit insurers and other safety-net participants. Where deposit insurance payments are made upon the liquidation of a bank, the deposit insurer usually is subrogated to the rights of the insured depositors, and is likely to file and actively manage the claim arising from the deposit insurance payment. In some instances, deposit insurers have significant roles in the risk-

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that their value be preserved through effective asset-management procedures in an effort to minimise costs to the financial system.

Effective asset management should include tools for validating assumptions used in valuing assets and developing disposition plans. Risks relating to market fluctuations, particular asset-disposition strategies, and asset-specific and legal issues should be identified, quantified, managed or hedged. The use of discounted cash-flow analysis or other appropriate valuation techniques is required to take into account differences in timing of recoveries and expenses and differences in risk among asset types. Consideration also may be given to differences in valuation among potential purchasers that arise from differences in plans and financing costs.

### *(c) Marketing methods*

Transparency and access to information are key factors in marketing failed-bank assets. The quality of the information may have an important bearing on the price. Therefore, information should be available, complete and arranged in as orderly a manner as possible.

In principle, a wide range of methods is available for disposition of the assets of failed banks. They include: asset-by-asset sales; auctions or sealed bids; asset pools; securitisation; asset-management companies; and equity partnerships.

In some instances, recoveries may be enhanced with seller financing, put-back arrangements that provide the buyer with the option of returning certain assets for refund within a specified period, or limited guarantees against loss. Guarantees will generally result in increased market prices because of the reduced risk to the purchaser, but have the disadvantage of creating contingent liabilities, which may be mitigated by limiting their duration and total value.

### *(d) Claims and litigation*

Claims and litigation advanced by the failed bank or the receiver/liquidator against directors, officers, auditors and other parties related to the bank failure are potentially important assets. These claims may result in significant recoveries and may serve as a tool for fostering discipline in the banking sector. For these reasons, potential claims should be identified and investigated carefully to determine the appropriateness and potential for recovery before being pursued.

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minimisation or recovery processes, for example as a lender, creditor, or possibly receiver. In other cases, these functions are the responsibility of other entities.

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It is important to identify claims and to distribute the proceeds of the liquidation of assets in a fair and cost-effective manner, and in accordance with applicable laws. This involves notifying potential claimants of the reimbursement process, reviewing and resolving asserted claims, distributing dividends to proven claimants, and transferring unclaimed dividends to the appropriate authority. Claims include those of the deposit insurer, uninsured depositors, and other unsecured creditors. They also include legal actions against the failed bank and the cost of any financial assistance that may have been provided by safety-net participants. Litigation instituted by creditors, shareholders, or other claimants and plaintiffs against the failed bank or the liquidator/receiver may result in significant costs and delays. In this regard, it may be advisable to conduct regular evaluation of the claims in order to estimate the potential liability exposure and consider alternative means for resolution.

### **5. Depositor ranking, collateralisation and rights of set-off**

How funds are distributed among claimants is heavily influenced by legal provisions regarding the ranking of depositors and other creditors, collateralisation of the bank's obligations, and the extent to which a creditor's debts to a bank are set-off against the creditor's claims. The rules governing these matters vary among countries, reflecting differences in laws, traditions and public-policy objectives, and are typically not subject to change by the deposit insurance system. Such rules can have important effects on the deposit insurer's costs and on the behaviour of safety-net participants, depositors and other creditors.

#### *(a) Depositor ranking*

Policymakers should be aware of the potential effects of existing depositor priority laws or statutes on failure-resolution costs and the incentive for depositors or other creditors to exert market discipline. If depositors rank equally with other unsecured creditors, they will receive *pro-rata* shares of recoveries from asset liquidation. If depositors and the deposit insurer are accorded some superior right to share in such recoveries, their claims must be paid in full before other unsecured claimants are compensated. However, depositor priority does not necessarily reduce the losses of uninsured depositors or the deposit insurer. Lower-ranking creditors have incentives to protect themselves by collateralising their claims, shortening terms of maturity, exercising early-withdrawal provisions, or imposing additional penalties or charges. Such actions may offset the effects of preferential ranking.

If uninsured depositors believe they will not sustain losses because of their priority ranking, they may have less incentive to exercise market discipline. Also, safety-net participants may have reduced incentives to act promptly in dealing with problem banks. The net effects depend on the characteristics of non-deposit creditors, their ability to utilise the available means of limiting their loss exposure and their willingness to exercise market discipline, legal



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provisions governing these matters, and the existence of strong governance and accountability regimes at the responsible safety-net participant.

### *b) Collateralisation*

Policymakers also should be aware of the effects of collateralisation. In some countries, depositors, the deposit insurer, and other unsecured claimants share only in the unencumbered assets of the failed bank and their recoveries are reduced by the collateralisation of other parties' claims. However, collateralisation may have some offsetting advantages from the standpoint of the payments system and the public-policy objectives. Extensive collateralisation of a bank's liabilities may also increase the deposit insurer's cost and impinge on its ability to provide financial assistance to a troubled bank, because certain assets may not be available. As in the case of depositor priority, collateralisation may give unsecured creditors greater incentives to effect early withdrawals, shorten maturities, or impose additional charges in order to mitigate expected losses.

### *(c) Rights of set-off*

The term "set-off" refers to situations where the claim of a creditor (for example, a deposit) in an insolvent bank is deducted from a claim of the bank (for example, a loan) against the creditor. Where set-off is available or imposed, creditors who are also debtors of the failed bank may increase their recoveries, while other creditors' recoveries are diminished.

Set-off can reduce administrative costs by reducing the number of individual creditors and debtors. Netting of the cross-obligations of members of the payments system lessens the credit risk of the remaining participants in the event of the failure of one or more participants, thus reducing the possibility of contagion. Depending on the jurisdiction, banks that operate in the derivatives-market may be able to effect transactions (for example, a swap transaction) that might not be available (or available only on less-favourable terms) if netting were not assured.

Some countries emphasise the importance of set-off while others believe that it can lead to unequal treatment. If set-off is allowed, a number of issues should be considered, including whether set-off should apply to all loans or only those due or in default. Set-off against a performing loan could result in a "call" on a loan to a viable business; as a result, many countries restrict set-off to cases where the loan is in default. Even where set-off is accepted, the extent to which it should apply may be an issue. Set-off of obligations against loans in good standing may reduce the value of a portfolio of loans as a realizable asset. Coordination of the rules of set-off and the reimbursement of insured depositors also raise issues, such as whether deposit insurance is to be paid on the gross amount of the deposit or the net amount after set-off. Finally, set-off also can be influenced by the priority of claims in a bank failure.

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These issues generally involve trade-offs among public-policy objectives and require country-specific solutions.

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### VII. Key Points of Guidance

The Working Group was asked to develop guidance for the benefit of countries considering the adoption or the reform of an explicit, limited-coverage deposit insurance system. The following points of guidance summarize the main conclusions and suggestions by the Working Group to help policymakers design, implement and continually assess a deposit insurance system. These points are reflective of, and adaptable to, a broad set of circumstances, settings and structures.

#### 1. Contextual issues

- (a) Policymakers have many choices regarding how they can protect depositors. Explicit, limited-coverage deposit insurance (“a deposit insurance system”) is preferable to implicit protection if it clarifies the authorities’ obligations to depositors and limits the scope for discretionary decisions that may result in arbitrary actions. However, such a system needs to be properly designed, well implemented and understood by the public in order to be credible. It also needs to be supported by strong prudential regulation and supervision, sound accounting and disclosure regimes, and the enforcement of effective laws. (pages 7-8)
- (b) A deposit insurance system can deal with a limited number of simultaneous bank failures, but cannot be expected to deal with a systemic banking crisis by itself. (page 8)

#### 2. Moral hazard

- (a) A well-designed financial safety net contributes to the stability of the financial system; however, if poorly designed, it may increase risks, notably, moral hazard. Good corporate governance and sound risk management of individual banks, effective market discipline, and frameworks for strong prudential regulation, supervision and laws, can mitigate moral hazard and these elements are most effective when used in concert. (page 8)
- (b) Good corporate governance and sound risk management of individual banks help to ensure that business strategies are consistent with safe-and-sound operations, and thus can act as the first line of defence against excessive risk taking. Good corporate governance and sound risk management includes standards, processes, and systems for ensuring appropriate direction and oversight by directors and senior managers; adequate internal controls and audits; management of risks and the evaluation of bank performance; the alignment of remuneration with appropriate business objectives; and

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management of capital and liquidity positions. Effective market discipline requires sound accounting and disclosure regimes and the ongoing attention to a bank's soundness by rating agencies, market analysts, financial commentators and other professionals. Regulatory discipline can be exercised through effective regulation covering the establishment of new banks, the imposition of minimum capital requirements, the qualifications of directors and managers, sound business activities, a fit-and-proper test for controlling shareholders, standards for risk management, strong internal controls and external audits. Supervisory discipline can be exercised by ensuring that banks are monitored for safety and soundness as well as compliance issues and that corrective actions are taken promptly when problems surface, including the closure of banks when necessary. (pages 8-9)

- (c) Ensuring that a deposit insurance system contains certain design features can also mitigate moral hazard. These features may include: placing limits on the amounts insured; excluding certain categories of depositors from coverage; using certain forms of coinsurance; implementing differential or risk-adjusted premium assessment systems; minimising the risk of loss through early closure of troubled banks; and demonstrating a willingness to take legal action, where warranted, against directors and others for improper acts. (page 9)

### 3. Public-policy objectives

- (a) The first step in designing a deposit insurance system is to identify the public-policy objectives that it is expected to achieve and these objectives must be well understood. The principal objectives for deposit insurance systems are to contribute to the stability of the financial system and to protect less-financially-sophisticated depositors. The choice of how a deposit insurance system is to be operated depends on many factors that are unique to each country and its governmental and financial systems. (page 11)
- (b) A continuous-improvement process should exist for reviewing the extent to which a deposit insurance system is meeting its public-policy objectives and its mandate. (page 12)

### 4. Situational analysis

- (a) Policymakers should conduct a situational analysis when adopting or reforming a deposit insurance system. This analysis should examine conditions and factors such as: the level of economic activity; current monetary and fiscal policies; the state and structure of the banking system; public attitudes and expectations; the legal

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framework; prudential regulatory, supervisory, accounting and disclosure regimes. (page 12)

- (b) Where existing conditions and factors are not ideal, it is important to identify gaps and thoroughly evaluate the options available since the establishment of a deposit insurance system is not a remedy to deal with major deficiencies. If actions are necessary, they can be taken before, or in concert with, the adoption or reform of a deposit insurance system. (page 12)
- (c) Deposit insurance systems cannot be effective if relevant laws do not exist or if the legal regime is characterised by inconsistencies. (page 13)
- (d) The strength of prudential regulation and supervision will have implications for the effectiveness of a deposit insurance system. Strong prudential regulation and supervision should allow only viable banks to operate. Banks should be well capitalised and follow sound-and-prudent risk management, governance and other business practices. (page 13)

### **5. Transitioning from a blanket guarantee to a deposit insurance system**

- (a) When transitioning, policymakers should pay particular attention to public attitudes and expectations. Countries with a high level of capital mobility, and/or a regional-integration policy, should consider the effects of different countries' protection levels and other related policies. (page 14)
- (b) If a country decides to transition from a blanket guarantee to a deposit insurance system, the transition should be as rapid as a country's circumstances permit. A country considering such a transition should undertake the same type of situational analysis as a country moving from implicit protection to a deposit insurance system. In addition, three special issues will need to be considered. First, how to allay fears because protection for depositors and other creditors is being reduced. Second, policymakers should consider the capacity of the banking system to fund a new deposit insurance system. The third issue concerns how fast the transition should proceed. (page 14-15)

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### 6. Self-assessment methodology (SAM)

Policymakers should consider the use of an iterative self-assessment methodology to assist them in the design, implementation, modification and continuous assessment of a deposit insurance system. (pages 15-16)

### 7. Mandate and powers

- (a) There is no single mandate or set of mandates suitable for all deposit insurers. Existing deposit insurers have mandates ranging from narrow, so-called “paybox” systems to those with broader powers and responsibilities, such as risk minimisation with a variety of combinations in between. Whatever the mandate selected, it is critical that there be consistency between the stated objectives and the powers and responsibilities given to the deposit insurer. (page 17)
- (b) Formally specifying the mandate of a deposit insurer (either in law, in a formal policy statement, an agreement or by private contract) clarifies the role of deposit insurance within the financial safety net. Clarity of the mandate reinforces the stability of the financial system and contributes to sound governance and greater accountability. (page 17)
- (c) As a general principle, a deposit insurer should have all powers necessary to fulfil its mandate. All deposit insurers require the ability to enter into contracts, set appropriate requirements, and access timely and accurate information to ensure that they can meet their obligations to depositors promptly. (page 18)

### 8. Structure

Policymakers must determine whether the deposit insurance function should be assigned to an existing organisation or whether a separate entity should be established. Regardless of how the deposit insurance system is structured, it is vitally important to set clearly the responsibility and accountability of each safety-net function. (page 18)

### 9. Governance

- (a) The form of governance utilised in a deposit insurance system should reflect the mandate and the degree to which the deposit insurer is legally separated from the other financial safety-net participants. The governing body of the deposit insurance system should include individuals with requisite knowledge to understand the organisation’s activities and the environment in which it operates, and they should have the authority

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to make decisions. The deposit insurer should have access to the input and views of the other safety-net participants and relevant interested parties. Members of the governing body and management of the deposit insurer should be subject to a fit-and-proper test, and they should be free from conflicts of interest. (page 18)

- (b) Governance systems and practices should be developed on the basis of sound strategic planning, risk-management processes, and good internal-control and audit systems. The governance structure should be transparent and subject to clear oversight and accountability. Rules specifying corporate governance practices should be developed. (page 18)

### **10. Human resources and statutory indemnification**

- (a) The ability to attract and retain qualified employees is a key challenge for most deposit insurers. Deposit insurers may meet this challenge by: the use of dedicated resources, access to the resources of other financial safety-net participants and/or reliance on outside service providers. (page 19)
- (b) The importance of statutory indemnification should be recognised and employees of the deposit insurance system should receive legal protection against lawsuits for their actions taken in good faith. The lack of legal protection for employees can reduce incentives to be vigilant in carrying out their responsibilities, particularly in cases where mandates emphasise early detection, intervention and closure of troubled banks. (page 19)

### **11. Interrelationships among safety-net participants**

- (a) When a single organisation performs all of the safety-net functions the smooth resolution of potential tensions is dependent on clarity of mandates and an adequate accountability regime among the relevant departments. However, when the functions are assigned to different organisations, issues related to information sharing, allocation of powers and responsibilities, and coordination of actions among the different functions is more complex and need to be addressed clearly and explicitly. (page 19)
- (b) A deposit insurer's information needs vary significantly according to its mandate and powers, but the need for close coordination and information sharing among safety-net participants is essential in all cases. Rules regarding confidentiality of information should apply to all safety-net participants. (pages 19-20)

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- (c) It is highly desirable to formalise information-sharing arrangements either through legislation, memoranda of understanding, legal agreements, or a combination of these techniques. These arrangements also may be useful in providing a general framework for safety-net participants to coordinate their related activities. (page 20)

### 12. Membership

- (a) Banks that are to be included in a deposit insurance system should be subject to strong prudential regulation and supervision. (page 20)
- (b) In general, membership should be compulsory to avoid adverse selection. (page 21)
- (c) Policymakers should determine whether eligible banks will be given membership automatically or whether they should be required to apply for entry. The latter option provides a degree of flexibility for the deposit insurer to control the risks it assumes by establishing entry criteria. It can also serve to enhance compliance with prudential requirements and standards. In such cases, an appropriate transition plan should be in place that details the criteria, process and time frame for attaining membership and the criteria should be transparent.(page 21)
- (d) Appropriate mechanisms are necessary to ensure that membership requests are handled expeditiously and effectively, and that eligible banks are required to meet minimum prudential standards and entry requirements. (page 21-22)
- (e) Policymakers take different approaches in deciding which financial institutions should be covered by deposit insurance. Domestic banks are the principal members of most deposit insurance systems; in some countries, foreign banks and branches, non-bank financial institutions, and state-owned banks also are members. Such entities might be included to enhance the stability of the financial system, to ensure competitive equity, to diversify the deposit insurer's risks, and to apply prudential regulatory and supervisory rules to non-bank financial institutions that accept deposits and deposit-like products. (pages 22-23)

### 13. Coverage

- (a) Policymakers should define clearly in law or by private contract what is an insurable deposit. In doing so, they should consider the relative importance of different deposit instruments, including foreign-currency deposits and the deposits of non-residents, in relation to the public-policy objectives of the system. (page 23)



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- (b) The level of coverage can be set through an examination of relevant data, such as statistical information describing the size distribution of deposits held in banks. Whatever coverage level is selected, it must be credible and internally consistent with other design features, and meet the public-policy objectives of the system. (page 23)
- (c) Given the importance of effectively limiting coverage and contributing to financial system stability, as well as keeping the requirement for information reasonable, it is preferable to apply deposit insurance on a per depositor per bank basis. (page 24)
- (d) One approach to foster market discipline and to reduce somewhat the costs of deposit insurance is the use of coinsurance. If coinsurance is adopted, it should be applied above a certain amount. This will provide individuals holding small account balances full protection against the risk of loss, while maintaining the incentive for depositors holding larger account balances to monitor banks. In order for coinsurance to be effective, extensive information needs to be provided to the public regarding the financial condition of banks. (page 24)
- (e) Coverage limits may need to be adjusted periodically because of inflation, the growth of real income, the development of new financial instruments, and the way in which these factors influence the composition and size of deposits. (page 25)
- (f) The decision whether to cover deposits denominated in foreign currencies depends heavily on a country's usage of foreign currency. When usage is high, it would be of little value to institute a deposit insurance system without covering these deposits. An important decision is whether to reimburse insured deposits in local or in foreign currency when a bank fails. Policymakers should ensure that banks have sound foreign-exchange risk-management systems and controls in place. Furthermore, the deposit insurer should develop sound policies and procedures to manage prudently any foreign-exchange risk it faces. In designing such policies and procedures, the deposit insurer may wish to draw on the expertise residing in banks. (page 25)

### 14. Funding

- (a) Sound funding arrangements are critical to the effectiveness of a deposit insurance system and the maintenance of public confidence. A deposit insurance system should have available all funding mechanisms necessary to ensure the prompt reimbursement of depositors' claims. Inadequate funding can lead to delays in resolving failed banks, to significant increases in costs and to a loss of credibility of a deposit insurance system. (page 26)

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- (b) Member banks should pay the cost of deposit insurance since they and their clients directly benefit from having an effective deposit insurance system. However, policymakers should consider the effect of premium levels on the financial health of the banking industry. (page 26)
- (c) Policymakers should choose an assessment base against which a given premium rate will be applied. (page 26)
- (d) The deposit insurer should ensure that funds are well managed and readily available to cover losses as they arise. This can be accomplished by implementing appropriate investment policies and procedures, and by instituting sound internal controls, disclosure and reporting systems. (page 26)
- (e) In practice, deposit insurance systems often are funded on a combined *ex-ante* and *ex-post* basis. The advantages and disadvantages with *ex-ante* and *ex-post* funding are generally applicable to hybrid funding arrangements. (page 27)
- (f) In principle, there are two approaches available to establishing a deposit insurance fund. One approach is to assess a steady premium rate over a long period, while the other involves developing a premium system designed to maintain a target fund ratio or range. If the target fund ratio method is chosen it should be sufficient to reduce the probability of the fund's insolvency to an acceptable minimum, although estimating probabilities of loss is very complicated in practice. (page 27)
- (g) A case can be made either for establishing and maintaining one fund or for establishing and maintaining separate funds for different types of financial institutions that accept deposits from the public. If separate funds are established, policymakers should ensure that distinctions among the institutions and their funds do not contribute to competitive distortions. (page 28)
- (h) Policymakers have a choice between a flat-rate premium system or a premium system that is differentiated on the basis of individual-bank risk profiles. The bases and criteria used in a risk-adjusted differential premium system should be transparent to all participants. As well, policymakers who adopt risk-adjusted differential premium systems should ensure that necessary resources are in place to administer the system appropriately. If policymakers choose to adopt risk-adjusted differential premiums, consideration should be given to the advantages and disadvantages of keeping the risk profiles of individual banks confidential. (pages 28)

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### 15. Public awareness

In order for a deposit insurance system to be effective, it is essential that the public be informed about its benefits and limitations. Experience has shown that the characteristics of a deposit insurance system need to be publicised regularly so that its credibility can be maintained and strengthened. (page 29)

### 16. Cross-border issues

- (a) If the host-country system provides supplementary coverage, multiple reimbursements of insured depositors should be avoided. The deposit insurance already provided by the home-country system should be recognised in the determination of levies and premiums. (page 30)
- (b) Provided confidentiality is ensured, all relevant information should be exchanged between deposit insurers in different jurisdictions and possibly between deposit insurers and other foreign safety-net participants when appropriate. In any case, deposit insurers should receive all information necessary to enable a prompt reimbursement of depositors' claims and to enable them to meet their mandate. (page 30)

### 17. Failure resolution

- (a) Cooperation among the various financial safety-net participants, both before and after a failure, is essential if troubled banks are to be handled in a timely and effective manner. (page 31)
- (b) The determination and recognition of when a bank is in serious financial difficulty should be made on the basis of well-defined and transparent criteria by a safety-net participant with authority to act. Prompt and decisive actions are crucial to reduce the cost of a bank failure, but care needs to be taken to address confidentiality issues to protect the exchange of information among financial safety-net participants. (page 31)
- (c) An effective failure-resolution process should: meet the deposit insurer's obligations, ensure that depositors are reimbursed promptly and accurately, minimise resolution costs and disruption of markets, maximise recoveries on assets, settle *bona-fide* claims on a timely and equitable basis, and reinforce discipline through legal actions in cases of negligence or other wrongdoings. (page 31)
- (d) Three basic failure resolution options exist: liquidation and reimbursement of depositors' claims; purchase-and-assumption transactions (sales); and open-bank

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financial assistance. Bankruptcy/insolvency and other laws may heavily influence the choice of resolution methods since such laws vary considerably among countries and, in some cases, may make a particular resolution method difficult to implement. Because of the special significance of banks and bank failures, policymakers may wish to review whether bankruptcy/insolvency laws facilitate the orderly exit of troubled banks. (page 32)

### 18. Reimbursing depositors

- (a) Systems and processes should be developed in order to undertake preparatory reviews of deposit liabilities held by troubled banks. This requires development of administrative practices and procedures and the ongoing review of the quality and security of bank deposit records. (page 34)
- (b) The deposit insurer should know, as soon as possible, when a bank will be closed. Access to the necessary deposit data before the bank is closed lessens the risk of manipulation of records, shortens the time for completing the reimbursement process, and helps preserve public confidence. (page 34)
- (c) The reimbursement process should be evaluated *ex-post* to incorporate lessons learned. (page 35)

### 19. Claims and recoveries

- (a) The powers provided to the entity responsible for the claims-and-recoveries function should be guided by applicable laws and should include control of the failed bank's assets; contract rights and privileges; the ability to allow or disallow claims; the capability to enforce or repudiate certain contractual obligations; and the ability to challenge fraudulent transfers and transactions. (page 36)
- (b) Asset-management and disposition strategies should be guided by commercial considerations and their economic merits, given the quality of the assets, the depth and condition of markets, the availability of expertise in asset management and disposition, legal requirements relating to the disposition of assets, and public-policy objectives. (page 36)
- (c) Transparency and access to information are key factors in marketing failed-bank assets. In principle, a wide range of methods is available for disposition of the assets of failed banks, including: asset-by-asset sales; auctions or sealed bids; asset pools; securitisation; asset-management companies; and equity partnerships. (page 37)

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- (d) Claims and litigation advanced by the failed bank or the receiver/liquidator against directors, officers, auditors and other parties related to the bank failure are potentially important assets. These claims may result in significant recoveries and may serve as a tool for fostering discipline in the banking sector. For these reasons, potential claims should be identified and investigated carefully to determine the appropriateness and potential for recovery before being pursued. (page 37-38)

### **20. Depositor ranking, collateralisation and rights of set-off**

- (a) Policymakers should be aware of the potential effects of existing depositor priority laws or statutes on failure-resolution costs and the incentive for depositors or other creditors to exert market discipline. (page 38)
- (b) Policymakers should be aware of the effects of collateralisation. Extensive collateralisation of a bank's liabilities may affect the deposit insurer's cost and impinge on its ability to provide financial assistance to a troubled bank. (pages 39)
- (c) Some countries emphasise the importance of set-off while others believe that it can contribute to unequal treatment. If set-off is allowed, a number of issues should be considered, including whether set-off should apply to all loans or only those due or in default. Set-off also can be influenced by the priority of claims in a bank failure. These issues generally involve trade-offs and require country-specific solutions. (page 39)

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## Annex II: Approach to Developing Discussion Papers

### 1. Research Plan

The Working Group developed a research plan on topics relating to guidance on deposit insurance that was made available at [http://www.cdic.ca/international/guidance\\_topic.cfm](http://www.cdic.ca/international/guidance_topic.cfm). Subgroups were formed for the 16 guidance topics, with a Working Group member acting as the coordinator. A member of the research committee assisted each subgroup.

### 2. Outreach Sessions and Conferences

The Working Group held meetings in Switzerland, the United States of America, Mexico, Hungary, Malaysia, Argentina, Italy and Chile. It also provided a number of *fora* for people interested in deposit insurance issues to exchange ideas and benefit from the experience of others. The Group met with over 400 people from over 100 countries. In addition to the presentations by Working Group members, there were over 90 presentations delivered at the conferences and seminars from individuals who were not directly associated with the Working Group.

The format consisted of a two-day Working Group meeting, followed by an outreach session hosted by one of the members and a two-day conference on specific guidance topics. Outreach sessions and conferences were supported financially and otherwise by the Working Group members, other organisations and, in some cases, the Financial Stability Institute (FSI). As well, the Working Group cooperated with a number of the regional development banks.

The Working Group's Web site includes copies of presentations, the text of the remarks provided by many of the speakers, and videos of each conference. The Web site also includes copies of the Working Group's business plans and discussion papers. Messages *via* e-mail were sent regularly to over 600 individuals and there have been over 40,000 visits to the Web site.

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### Outreach Sessions, Conferences and Seminars

Location	Host	Date
Basel, Switzerland	Financial Stability Institute (FSI) and Federal Deposit Insurance Corporation	May 2000
Washington D.C., United States	The World Bank Inter-American Development Bank (IADB)	June and October 2000 July 2000
Cancun, Mexico	Instituto para la Proteccion al Ahorro Bancario (IPAB)	October 2000
Budapest, Hungary	National Deposit Insurance Fund of Hungary (NDIF), European Bank for Reconstruction and Development and FSI	November 2000
Chicago, IL United States	Federal Reserve Bank of Chicago	December 2000
Kuala Lumpur, Malaysia	Philippine Deposit Insurance Corporation, FSI and South East Asian Central Banks (SEACEN)	January 2001
Berlin, Germany	Federal Ministry of Finance, Germany	March 2001
Paris, France	Organization for Economic Cooperation and Development (OECD)	March 2001
Buenos Aires, Argentina	Seguro de Depósitos Sociedad Anónima (SEDESA)	March 2001
Rome, Italy	Banca d'Italia	April 2001
Lusaka, Zambia	Common Market for Eastern and Southern Africa (COMESA)	April 2001

### 3. Business Plans

The focus for each subgroup was articulated in a business plan (published on the Internet at [www.cdic.ca/international](http://www.cdic.ca/international)), which outlined objectives, methodology, and methods for generating feedback. The Web site, outreach sessions and the conferences were the main vehicles that were used to implement the approach.

### 4. Discussion Papers

The Working Group took a non-prescriptive approach to developing the discussion papers on the guidance topics. The discussion papers drew on existing academic research, examined the pertinent elements of effective deposit insurance systems and explored the trade-offs and implications associated with particular approaches to deposit insurance.

Copies of the discussion papers also were published for consultation and are included as Volume II to this Report. This information can be downloaded from the following Web address [www.cdic.ca/international](http://www.cdic.ca/international).

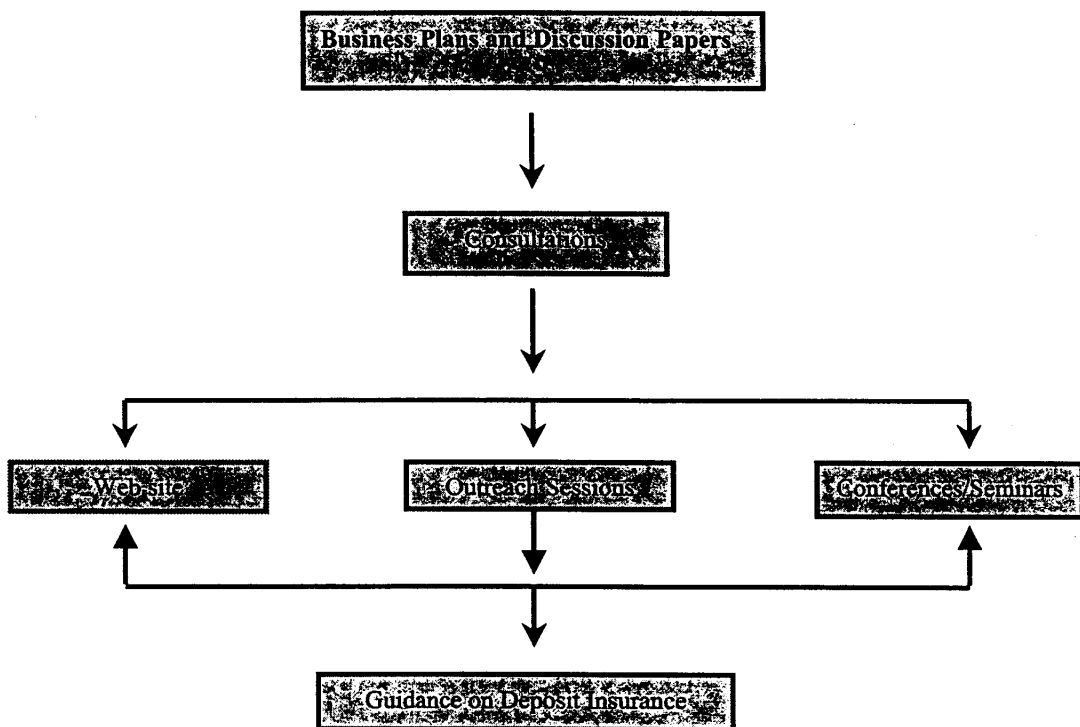


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### 5. Final Report – Guidance on Deposit Insurance

The Working Group's activities culminated in this Final Report to the Financial Stability Forum. It draws together the issues presented in the discussion papers, and the views provided during the outreach sessions and *via* the Web site.

The process used is shown below:



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**Annex III: Organisations that Assisted the Working Group**

**Outreach Sessions, Seminars and Conferences**

Asian Development Bank	Federal Reserve Bank of Chicago
Banca d'Italia	Financial Stability Institute
Bank for International Settlements	Instituto para la Proteccion al Ahorro Bancario, Mexico
Canada Deposit Insurance Corporation	Inter-American Development Bank
Canadian Bureau for International Education	National Deposit Insurance Fund of Hungary
The Canadian High Commission in Malaysia	Organization for Economic Cooperation and Development
Common Market for Eastern and Southern Africa	Philippine Deposit Insurance Corporation
Embassy of Canada in Rome, Italy	Seguro de Depósitos Sociedad Anónima, Argentina
European Bank for Reconstruction and Development	South East Asian Central Banks
Federal Deposit Insurance Corporation	The World Bank
Federal Ministry of Finance, Germany	

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Albania	Hong Kong, SAR	Panama
Algeria	Hungary	Paraguay
Argentina	Iceland	Peru
Armenia	India	Philippines
Austria	Indonesia	Poland
Azerbaijan	Iran	Portugal
Bahamas	Ireland	Romania
Bahrain	Isle of Man	Russian Federation
Barbados	Israel	Rwanda
Belgium	Italy	Saudi Arabia
Bolivia	Jamaica	Singapore
Bosnia and Herzegovina	Japan	Slovak Republic
Botswana	Jersey	Slovenia
Brazil	Jordan	South Africa
Bulgaria	Kazakhstan	Spain
Burundi	Kenya	Sri Lanka
Cambodia	Korea	Sudan
Canada	Kuwait	Swaziland
Chile	Kyrgyz Republic	Sweden
China	Latvia	Switzerland
Colombia	Lebanon	Taiwan
Congo	Lithuania	Tajikistan
Côte d'Ivoire	Luxembourg	Tanzania
Croatia	Macau, SAR	Thailand
Cyprus	Macedonia, Republic of	Trinidad & Tobago
Czech Republic	Madagascar	Tunisia
Denmark	Malawi	Turkey
Egypt	Malaysia	Turkmenistan
El Salvador	Malta	Uganda
Eritrea	Mauritius	Ukraine
Estonia	Mexico	United Kingdom
Ethiopia	Moldova, Republic of	United States of America
European Commission	Mongolia	Uruguay
Finland	Morocco	Uzbekistan
France	Mozambique	Venezuela
Germany	Namibia	Vietnam
Gibraltar	Netherlands Antilles	Yugoslavia
Greece	New Zealand	Zambia
Guernsey	Norway	Zimbabwe
Haiti	Oman, Sultanate of	

## Glossary of Terms

**adverse selection** - The tendency for higher-risk banks to opt for deposit insurance and lower-risk banks to opt-out of deposit insurance when membership in a deposit insurance system is voluntary.

**bank run** - A rapid loss of deposits precipitated by fear on the part of the public that a bank may fail and depositors may suffer losses.

**benchmark** - A standard or guideline to which other items or processes can be compared.

**blanket guarantee** - A declaration by the government that all deposits and perhaps other financial instruments will be protected.

**bridge bank** - A temporary bank established and operated to acquire the assets and assume the liabilities of a failed institution until final resolution can be accomplished.

**coinsurance** - An arrangement whereby depositors are insured for a pre-specified portion, less than 100 percent of their deposits.

**collateralisation** - The taking of a mortgage, pledge, charge or other form of security by a creditor over one or more assets of a debtor.

**contagion** - The spread of an individual bank run to several other financial institutions.

**corporate governance** - The processes, structures, and information used for directing and overseeing the management of an organisation.

**depositor priority** - The granting of preferential treatment to depositors such that their claims must be paid in full before remaining creditors can collect on their claims.

**differential premium/risk-adjusted differential premium** - A levy on a bank assessed on the basis of that bank's risk profile.

**disclosure** - A fact, condition, or description that is revealed clearly and publicly.

**ex-ante funding** - The accumulation of a fund to cover deposit insurance claims in anticipation of the failure of a member bank.

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**ex-post funding** - An assessment levied after the failure of a member bank to provide funds to cover deposit insurance claims.

**financial safety net** - Usually comprises the deposit insurance function, prudential regulation and supervision, and the lender-of-last-resort function.

**forbearance** - To grant an extension of time to certain distressed banks from minimum regulatory requirements.

**foreign bank** – A foreign-bank subsidiary is incorporated as a separate entity in the host country. A foreign-bank branch, on the other hand, is an extension of the foreign bank itself into a host country. Foreign-bank branches and subsidiaries may be subject to different rules and supervised differently by a host country.

**least-cost resolution** - A procedure that requires the deposit insurer or other designated entity to implement the resolution alternative that is determined to be less costly to the system than all other resolution alternatives, including the liquidation of the failed bank.

**lender-of-last-resort function** - The provision of liquidity to the financial system by a central bank.

**limited-coverage deposit insurance** - A guarantee that the principal and the interest accrued on protected deposit accounts will be paid up to a specified limit.

**mandate** - A mandate is a set of official instructions or statement of purpose of a firm.

**market discipline** - A situation where depositors or creditors assess the risk characteristics of a bank and act upon such assessments to deposit or withdraw funds from a bank.

**moral hazard** - The incentive for additional risk taking that is often present in insurance contracts and arises from the fact that parties to the contract are protected against loss.

**netting/netting arrangements** – This refers to the reduction of an accountholder's insured deposits by the amount of outstanding loans in a failed institution or the reduction of an accountholder's outstanding loans by the amount of deposits above the coverage limit.

**open-bank assistance** - A resolution method in which an insured bank in danger of failing receives assistance in the form of a direct loan, an assisted merger, or a purchase of assets.

**paybox** - A deposit insurer with powers limited to paying off the claims of depositors.

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**purchase-and-assumption transaction (sales)** - A resolution method in which a healthy bank or group of investors assume some or all of the obligations, and purchase some or all of the assets of the failed bank.

**receiver** - The legal entity that undertakes the winding down of the affairs of an insolvent bank.

**recovery** - The amount of net collections of a bank's assets.

**regulatory discipline** - Governs the establishment of new banks; qualifications of directors and managers; business activities; change of control; and standards for risk-management, internal controls, and external audits.

**risk minimiser** – A deposit insurer with the powers to reduce the risks it faces. These powers may include the ability to control entry and exit from the deposit insurance system, assess and manage its own risks and may conduct examinations of banks, or request such examinations.

**set-off** - Refers to situations where the claim of a creditor in an insolvent bank (for example, a deposit) is deducted from a claim of the bank against the creditor (for example, a loan).

**situational analysis** – An examination that policymakers undertake to assess factors such as: the state of the economy; current monetary and fiscal policies; the state and structure of the banking system; public attitudes and expectations; the state of the legal, prudential regulatory and supervisory; accounting and disclosure regimes.

**supervisory discipline** - Requires that banks are monitored for safety and soundness as well as compliance issues and that corrective actions are taken promptly, including the closure of a bank when necessary.

**suspense account** – A suspense account is used when not enough information is available to post a transaction with the right offset. For example, dividends and interest are “paid” to a trust account on their payable date even if all of the money from depositors and paying agents is not received on time.

**systemic risk** – A risk that has implications for the general health of the financial system and can have serious adverse implications for financial stability and overall economic conditions.

Financial Stability Forum

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September 2009

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September 2001



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## FINANCIAL STABILITY FORUM

### Preface

At its March 2000 meeting in Singapore, the FSF endorsed the report of a study group and concurred that, in light of the fact that many countries were considering implementing some form of deposit insurance, it would be desirable to set out some form of international guidance. Forum members underscored that the development of such guidance should be undertaken through a consultative process that would include all the parties that are interested in deposit insurance issues, so as to ensure that the guidelines are reflective of, and adaptable to, the broadest set of circumstances, settings and structures.

The Forum asked Jean Pierre Sabourin, President and Chief Executive Officer of the Canada Deposit Insurance Corporation, to chair a working group that would carry out the task of setting out guidance for effective deposit insurance systems. The final report of the Working Group on Deposit Insurance was discussed and endorsed by the Forum in London, on September 7, 2001.

The FSF report on deposit insurance is built on three general findings. First, explicit and limited deposit insurance is preferable to implicit coverage if it clarifies obligations to depositors and creditors and limits the scope for discretionary decisions that may result in arbitrary actions. Second, deposit insurance systems must be properly designed, well implemented and understood by the public to be credible and avoid moral hazard. Third, to be effective, the deposit insurance function needs to be part of a well-designed financial safety net, supported by strong prudential regulation and supervision, effective laws that are enforced, and sound accounting and disclosure regimes.

The report proposes a general method for the benefit of countries considering the adoption or the reform of an explicit, limited-coverage deposit insurance system. It first presents the contextual issues related to different forms of depositor protection and identifies the issues that need to be addressed when adopting or reforming a deposit insurance system. It then sketches out the design features that help to ensure the effectiveness and credibility of a system, and finally outlines the key issues and considerations involved in resolution options, the reimbursement of depositors, and claims and recoveries.

It is the conviction of the FSF that this report, with such a pragmatic approach, will serve its role as a useful tool for policymakers who want to design deposit insurance systems that preserve the benefits of heightened financial stability and small depositors' protection, without at the same time increasing moral hazard or reducing market discipline.

Andrew Crockett  
Chairman