

OSFI application process for incorporating as a Bank or Trust Company

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Businesses seeking to apply for incorporation as a bank or a trust company should become familiar with the requirements of Canada's federal financial regulator - the Office of the Superintendent of Financial Institutions (OSFI). Here's what you need to know about the three-phase application process:

In general, the application process to incorporate a federally regulated institution takes between 18 and 24 months



Phase 1 Pre-application

Prior to initiating discussions with OSFI, applicants must conduct an assessment of the feasibility of becoming a Federally Regulated Financial Institution (FRFI). This includes articulating the reasons for establishing an FRFI, business strategy, proposed business model and management team, and potential impediments in connection with ownership structure and sources of capital. Applicants are required to prepare a written submission of this information prior to any discussions with OSFI.

— Together with the applicant's assessment, the pre-application phase consists of:

- 1 Initial discussion with OSFI, facilitated by applicant's written submission
- 2 Submission of Phase 1 Information Requirements to OSFI for assessment, which include information on ownership and financial strength, business plan, and other information concerning proposed credit products, trading and investment strategy, information technology, and an exit strategy should the business plan fail
- 3 Meeting with OSFI to discuss submissions and business plan
- 4 Issuance of an Expectations Letter by OSFI assessing preliminary views and expectations for the application



Clearing the first regulatory hurdle

In Phase 2, applicants must:

- 1 Give notice of intention to apply for Letters Patent (Notice) prior to submitting their formal application. Notice must be given in the *Canada Gazette* and in one other newspaper in a format prescribed by OSFI
- 2 Prepare and submit formal application to OSFI. OSFI may request additional information and/or documents, and/or a meeting
- 3 OSFI recommends issuance of Letters Patent to the Minister of Finance*

*Note that after a company is issued Letters Patent, it cannot carry on doing business until it is issued the Order after Phase 3. For businesses that are ongoing, it is important to keep this in mind and structuring advice should be sought from experienced counsel.

**Letters Patent issued****Phase 3 Order**

Following the issuance of Letters Patent, OSFI must verify that the applicant has the necessary systems, management structure, control processes and regulatory compliance systems in place. Prior to making an Order:

- 1 OSFI assesses the formal application and makes additional requests for information
- 2 OSFI conducts onsite review and interviews
- 3 Applicants resolve any material issues or concerns identified in onsite review and interviews
- 4 OSFI issues an Order, which may include conditions or limitations
- 5 Applicant and OSFI publish notice of the making of the Order

**FRFI commences business on the date stated in the Order**

Source:
<http://www.osfi-bsif.gc.ca/eng/fi-if/app/aag-gad/Pages/instguide.aspx>

The licensing application process is very complex and applicants are advised to seek help of experienced counsel. Osler has broad experience with such applications.

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