ANNEX I

Synopsis of select country practices on licensing of new banks in the private sector as per information obtained from the respective regulators

CANADA

I. Institutional and Legal Framework

The Office of the Superintendent of Financial Institutions (OFSI) is the authority to assess applications for incorporation of banks or a federal trust or loan company [collectively referred to as federally regulated financial institution (FRFI)] in Canada and makes recommendations to the Minister of Finance (called as the Minister) who has the ultimate responsibility for approving the incorporation of financial institutions under the Bank Act, 1991.

The applicants for incorporation of FRFIs that intend to take deposits are also required to become members of the Canada Deposit Insurance Corporation (CDIC). However, if the proposed FRFI is a bank that will only be taking wholesale deposits (deposits greater than $ 1,50,000), it may apply to CDIC for authorisation to accept deposits in Canada without being a CDIC member. The banks on incorporation are also required to register with the Canadian Payments Association (CPA) for membership.

For establishing a FRFI in Canada, there are two parts to the application process. The first part deals with requirements to obtain "letters patent of incorporation", which are issued by the Minister upon recommendation of the Superintendent of Financial Institutions (the Superintendent). The second part sets out the requirements to obtain an "Order to Commence and Carry on Business". This Order is issued by the Superintendent after letters patent of incorporation have been issued.

II. Criteria for Issuance of Letters Patent of Incorporation

(1) Eligible Applicants: Any entity or person is eligible to own a FRFI. However, applicants who do not meet the following statutory criteria and those who fall in the ineligible category as mentioned below, are not eligible to apply:

Statutory criteria

i. the nature and sufficiency of the financial resources of the applicant/s as a source of continuing financial support for the FRFI;
ii. the soundness and feasibility of the plans of the applicant/s for future conduct and development of the business of the FRFI;
iii. the business record and experiences of the applicant/s;
iv. the character and integrity of the applicant/s or, if the applicant or any of the applicants is a body corporate, its reputation of character and integrity;
v. whether the FRFI will be operated responsibly by persons with the competence and experience suitable for involvement in the operation of a financial institution;

vi. the impact of any integration of businesses and operations of the applicant/s with those of FRFI;

vii. the opinion of the Superintendent regarding the extent to which the proposed corporate structure of the applicant/s and their affiliates may affect the supervision and regulation of the bank, having regard to nature and extent of the proposed financial services activities to be carried out by the bank and its affiliates, as also the nature and degree of supervision and regulation applying to the proposed financial services activities to be carried out by the affiliates of the bank; and

viii. the best interest of the financial system in Canada.

Category not eligible to apply:

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

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

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

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

(2) Minimum initial capital requirement:

Subsection 485(1) of the *Bank Act* (BA), 1991 of Canada requires banks to maintain adequate capital. For this purpose, the OSFI has established two minimum standards: assets to capital multiple, and risk-based capital ratio. The first test provides an overall measure of the adequacy of an institution's capital. The second measure focuses on risk faced by the institution. Under Assets to capital multiple, total assets should not be greater than 20 times capital, although this multiple can be exceeded with the Superintendent's prior approval to an amount not greater than 23 times. Institutions are expected to meet minimum risk-based capital requirements for exposure to credit risk, operational risk and, where they have significant trading activity, market risk. The minimum capital requirements, which must be maintained on a continuous basis, are a tier 1 capital ratio of 4% and a total capital ratio of 8%.

(3) Ownership Criteria: The ownership criterion is based on the size of the FRFI, i.e. Small Bank, Medium Bank, Large Bank and Trust or Loan Company. If a financial services group wishes to establish a FRFI, it is required to select, as the applicant, through which most of the group's banking business or financial activities is conducted.

(a) In case of a **Small Bank**, the shareholders' equity is less than $ 2 billion and there is no restriction on ownership other than (i) the requirement for Ministerial approval to own more than 10% and up to 100% of any class of shares, and (ii) if the bank is controlled by a large

Canadian bank or by a Canadian bank holding company[1] and the bank has equity in excess of $ 250 million, no other person may be a major shareholder[2] of the bank.

(b) In case of a **Medium Bank**, the shareholders' equity is more than $ 2 billion but less than $ 8 billion and there is no restriction on ownership other than (i) the requirement for Ministerial approval to own more than 10% of any class of shares, (ii) at least 35% of the voting shares must be listed on a recognized Canadian Stock Exchange and owned by persons who are not major shareholders, and (iii) if the bank is controlled by a large Canadian bank or by a widely held Canadian bank holding company, no other person may be a major shareholder of the bank.

(c) In case of a **Large Bank**, the shareholders' equity is $ 8 billion or more, which is required to be widely held. While any person can own less than 10% of any class of shares without any approval, for owning more than 10% of any class of shares and up to 20% of any class of voting shares or up to 30% of any class of non-voting shares, approval of the Minister is required, provided the person does not control the bank. However, if a large bank is a subsidiary of a widely held bank holding company, the bank holding company may own 100% of the shares of the large bank. Certain eligible institutions (e.g. widely held insurance holding companies, widely held Canadian financial institutions, eligible foreign institutions), which control banks with shareholders' equity of less than $ 8 billion, will be able to continue to closely hold those banks as the equity grows through the $ 8 billion threshold.

(4) Limitation on shareholding: No person can be a major shareholder of a bank with equity of $ 8 billion or more, except for cases mentioned above. However, if a person is a major shareholder of a bank with equity of less than eight billion dollars and the bank's equity reaches eight billion dollars or more, the person is required to reduce the same within a period of three years from the date of bank's equity reaching eight billion dollars so as to ensure that he is not a major shareholder of the bank.

(5) Information requirements: The applicant is required to submit various types of information for assessing the principal shareholders' commitment to the FRFI and in ensuring that the new FRFI has, and will continue to have sufficient capital, and that it has adequate risk management controls in place to support its operations thereby reducing the likelihood of failure. These, inter-alia, include current organization chart (with percentages owned) for the applicant and its ultimate parent, if any, and all entities in the corporate group; entities in which the applicant beneficially owns 10% or more of the voting rights; names and details of all persons owning more than 10% of any class of shares or ownership interest in the applicant and the percentage of shares or ownership interest held; summary of the financial and other activities carried on by the applicant and its affiliates; etc. OSFI also required

---

[1] bank holding company" means a body corporate that is incorporated or formed under Part XV of Bank Act, 1991.

[2] Major shareholder is generally defined as a person who beneficially owns more than 20% of any class of voting shares or 30% of any class of non-voting shares.

personal information from each of those individuals that demonstrates clearly that they have, or have access to, the necessary financial resources to provide ongoing financial support to the FRFI. Each individual is also required to provide details of any material regulatory actions, criminal convictions or breaches of statutory or other administrative/regulatory enactments against the individual.

Business Plan: The applicant is required to submit a three-year business plan indicating the reasons for establishing FRFI, analysis of target markets and opportunities that the FRFI will pursue in Canada, analysis of competitors showing both threats and opportunities and plans to address them. The business plan should address the reasons as to why the applicant believes that the FRFI would be successful and the overall strategy to achieve this success. It should also give an overview of each line of business to be conducted by the FRFI and the products and services to be offered as well as a summary of the FRFI's businesses as a whole and how they interrelate, pro-forma initial base financial statement and balance sheet & income statement for the first three years of operations, contingency plans resulting from variations associated with key assumptions used in developing the plan and also provide sensitivity analysis showing the results of changes in key assumptions under the worst case scenario. The applicant is also required to submit a break-up of all elements used to calculate the risk based tier I and total capital ratios, and the assets to capital multiple including a description of any off-balance sheet activities, as also source of initial and future capital provided for in the base case and the worst case scenarios in the form of a capital plan and funding policies. The business plan must also address the risks that the use of information technology could pose upon the customers, employees and vendors, etc.

Governance: As part of the incorporation process, applicants are required to provide a description of the major risk management and control processes and policies for the new FRFI. A review of these processes would enable OSFI to assess the FRFI's ability to manage and mitigate the risks inherent in its business activities and comply with the governing statutes, regulations and OSFI guidelines. Accordingly, the applicant is required to submit an overview of the investment and lending policies and standards and procedures adopted; draft policies and procedures in respect of FRFI's funding and liquidity risk management; detailed provisioning policies and description of general allowances anticipated in executing the FRFI's business plan; capital management policy giving outline of the targeted levels of capital and describing on-going monitoring procedures to ensure compliance with OSFI's minimum capital requirements; major risk areas and policies and control procedures to monitor risk tolerance and risk management; details of any risk management and control processes that would be integrated with those of other entities in the applicant's group.

OSFI's framework for assessing the effectiveness of governance is based on a two-fold approach: 1) an assessment of the governance process against a range of characteristics, and 2) an assessment of the institution's performance or effectiveness in carrying out its governance responsibilities. The board characteristics are assessed and rated on the following elements:

- composition of the board;
- the board's role and responsibilities;

• the nature and operations of board committees;
• board practices; and
• board self-assessment programs.

OSFI looks not only for evidence that institutions have appropriate policies and processes in place but also for indicators that these policies and processes are understood, are being followed and that, as a result, they are effective. In OSFI's view, the hallmarks of effective corporate governance by the board and its members include:

(a) Judgement: decisions that strike a reasonable balance between business objectives and risk management and control functions.

(b) Initiative:

i. proactive exercise of responsibilities by members, while respecting the responsibility of the CEO and senior management to manage the institution;
ii. readiness to both advise and challenge management;
iii. an adequate commitment of time by members for board responsibilities;
iv. involvement in determination and review of the institution’s business objectives and strategies.

(c) Responsiveness:

i. responsiveness to issues or deficiencies identified by management, the independent oversight functions and regulators;
ii. involvement in management's response to regulatory recommendations and requirements;
iii. responsiveness to issues identified in board evaluations of itself or management.

(d) Operational Excellence:

i. processes and ways of operating that permit discussion and advance consideration of important matters and transactions, based on appropriate and timely information and analysis;
ii. periodic review of the adequacy and frequency of information the board needs to fulfill its responsibilities.

As a part of assessing the quality of risk management, OSFI has identified six Oversight Functions that should exist in a bank. 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.

III. Requirements for Making of an Order to Commence and Carry on Business by the Superintendent

In terms of Bank Act, 1991 of Canada, a bank cannot carry on any business until the Superintendent has, by order, approved the commencement and carrying on of business by the bank. Before issuing an Order to Commence and Carry on Business, OSFI must be satisfied that the FRFI has the necessary systems, management structure, control processes and compliance managements systems in place. An on-site review is also done to assess the control processes and management systems and to ensure that the FRFI is capable of producing the required statutory and supervisory information in an accurate and timely fashion as soon as it starts operations.

IV. Limiting asset size

On considering the Superintendent's opinion on the nature and extent of the financial services activities carried out by entities affiliated with the bank and its impact on the supervision and regulation of the bank, the Minister may, in the best interests of the financial system in Canada, could stipulate additional restrictions on the Assets to capital multiple in the order of Commencing and Carrying on Business. (Please refer para II (2) on Minimum initial capital requirement).

V. Can Industrial Companies own banks

Any entity or person is eligible to own a FRFI, provided they satisfy the statutory criteria.

AUSTRALIA

I. Institutional and Legal Framework

In terms of Section 9 (3) of Banking Act, 1959, the Australian Prudential Regulation Authority (APRA) is the designated authority to grant authorisation to a body corporate to carry on banking business in Australia. Institutions granted an authority to carry on banking business in Australia are referred to as 'authorised deposit-taking institutions' or 'ADIs'. The fact that a body corporate is granted an authority to carry on banking business in Australia does not entitle the ADI to call itself a bank, except consent is granted by APRA under Section 66 of the Banking Act. The Banking Act only allows corporations to carry on banking business in Australia, which means APRA cannot consider applications from partnerships or unincorporated entities.

APRA may refuse an application for authority to carry on banking business in Australia where an applicant is a subsidiary of a non-operating holding company (NOHC) that does not hold a NOHC authority under the Act. Where relevant, an applicant should submit to APRA a written application by its NOHC for a NOHC authority under Section 11AA of the Act concurrently with its application for authority to carry on banking business.

Foreign banks can also apply to establish locally incorporated subsidiaries or branches to carry on banking business in Australia. A foreign bank may simultaneously hold an authority to operate as a foreign ADI and be the parent of a locally incorporated subsidiary authorised as an ADI.

II. Criteria for granting authorisation to carry on banking business

APRA only authorises suitable applicants with the capacity and commitment to conduct banking business with integrity, prudence and competence on a continuing basis. APRA may refuse an application on, in addition to non-fulfilment of the minimum criteria required, other prudential grounds.

(1) Minimum start-up capital requirements: The minimum start-up capital for applying for authorisation to carry on banking business is fixed by APRA after assessing the adequacy for an applicant on a case-by-case basis based on the scale, nature and complexity of the operations as proposed in the business plan. However, applicants proposing to operate as banks are required to have a minimum of $ 50 million in Tier 1 capital. Otherwise, no fixed amount of capital is required for an authority to carry on banking business. Foreign ADIs are not required to maintain endowed capital in Australia and are not subject to any capital-based large exposure limits.

Applicants must satisfy APRA that they are able to comply with APRA's capital adequacy requirements for the commencement of their banking operations. All locally incorporated ADIs are required to maintain, at all times, a prudential capital ratio (PCR) of 8 per cent (as set by APRA in accordance with Prudential Standard APS 110 Capital Adequacy) of total risk weighted assets, of

which at least half must be made up of Tier 1 capital (a minimum tier 1 capital ratio of 4%). Further, an ADI is, at all times, required to maintain a risk-based capital ratio in excess of its PCR.

Newly established ADIs may be subjected to a higher minimum capital ratio in their formative years, depending on the risk profile of the proposed operations. Mutually owned ADIs are permitted to have start-up capital made up entirely or mostly of Tier 2 capital.

(2) Ownership criteria: Ownership of ADIs *[governed by the Financial Sector (Shareholdings) Act (FSSA), 1998]* is limited to the extent that the shareholdings of an individual shareholder or group of associated shareholders in an ADI cannot exceed 15 per cent of the ADI's voting shares. A higher percentage limit may be approved by the Treasurer on national interest grounds. Non-Operating Holding Companies (NOHCs) with a 100 per cent shareholding in the proposed ADI and foreign bank parents must also have a wide spread of ownership unless exempted from the provisions of FSSA.

(3) Governance: Applicants are required to satisfy the requirements set out in *Prudential Standard APS 510 Governance* in respect to composition and functioning of the Board. Applicants must also satisfy APRA that they have policies in place to ensure that persons who hold the key positions within the proposed ADI are fit and proper, in accordance with *Prudential Standard APS 520 Fit and Proper*.

All substantial shareholders of an applicant are required to demonstrate to APRA that they are 'fit and proper' in the sense of being well established and financially sound entities of standing and substance.

The proposed ADIs are also required to have adequate and appropriate risk management and internal control systems, compliance processes and systems, information and accounting systems, and external and internal audit arrangements to enable APRA.

(4) Business Plan: The applicant is required to submit a business plan incorporating the goals of first three years of operations of the ADI and its group including all controlled entities. The Plan should include business structure (outline of proposed activities and scale of operations, borrowing and lending activities, off-balance sheet activities, etc.); financial projections of balance sheets, cash flow and earnings, key financial and prudential ratios for the proposed ADI and its subsidiaries on a consolidated basis.

III. Can Industrial Companies Own Banks

Notwithstanding that there are no statutory provisions governing who may or may not own an ADI in Australia (i.e. there are no statutory provisions excluding ownership of an ADI by an industrial company), Government policy had until 1998 precluded the ownership of ADIs other than by widely diversified shareholders or by other approved financial institutions (including foreign banks). Similarly, ADIs were precluded from having any substantial ownership interest in non-financial institutions. With

the passage of amendments to the Banking Act in 1998 extending APRA's prudential powers, in particular, providing for the authorisation of NOHCs, policy now permits ADIs to be owned by a wider range of institutions (including potentially industrial companies), provided that the ultimate holding company for the group including the ADI is an authorised NOHC. In addition, ADIs may now own substantial interests in non-financial companies.

Thus, whilst an industrial company might be the dominant company in a group including an ADI, such an industrial company can only be a sister company of the ADI (and not its holding company) or a subsidiary of an ADI. As a member of a group headed by an ADI or authorised NOHC, the industrial company would be subject to the provisions in the Banking Act (see above) dealing with ADIs, authorised NOHCS, their subsidiaries and groups headed by an ADI or authorised NOHC.

Although it is possible for ADIs to belong to groups which include dominant non-financial entities (such as industrial companies) no such groups currently exist in Australia.

APRA has recently, vide a discussion paper, made proposals to extend its current prudential supervision framework to conglomerate groups (containing APRA-regulated entities) that have material operations in more than one APRA-regulated industry and/or have one or more material unregulated entities. APRA is already supervising banking and general insurance groups on a group basis. APRA's proposed Level 3 supervision framework aims to ensure that prudential supervision adequately captures the risks to which APRA-regulated entities within a conglomerate group are exposed and which, because of the operations or structures of the group, are not adequately captured by the existing prudential frameworks at Level 1 (Supervision that applies to individual operating entities authorised by APRA) and (where it applies) Level 2 (Group supervision that applies to groups headed by an ADI, general insurer or authorised NOHC). Group supervision at Level 3 will involve not only assessing both capital adequacy and compliance with governance and risk management requirements, but also ensuring that the structure of the group does not give rise to excessive unmitigated risks. Supervision will take into account the individual structure and character of each group.

HONG KONG

I. Institutional and Legal Framework

Hong Kong Monetary Authority (HKMA) is, in terms of Section 16 (1) (a) of the Banking (Amendment) Ordinance, 1997, authorized to issue authorizations to a company to carry on banking business[1] or business of taking deposits as a deposit-taking company; or business of taking deposits as a restricted licence bank, in Hong Kong. An applicant must be a body corporate. As such, the HKMA cannot consider applications from partnerships or unincorporated entities.

Hong Kong maintains a three-tier system of authorized institutions, namely, banks, restricted licence banks (RLBs) or deposit-taking companies (DTCs). Only banks can carry on "banking business" in terms of Section 11(1) of Banking Ordinance and thus can operate current and saving accounts, accept deposits of any size and maturity from the public and pay or collect cheques drawn by or paid in by customers. Banks are, therefore, permitted to engage in the full range of retail and wholesale banking business. RLBs are not eligible to carry on "banking business", but may take call, notice or time deposits from the public in amounts of HK$ 5,00,000 and above without restriction on maturity. RLBs generally engage in activities such as merchant banking and capital market operations. DTCs are restricted to taking deposits of HK$ 1,00,000 or above with an original term to maturity, or call or notice period, of at least three months. They are generally engaged in a range of specialized activities, including consumer finance, trade finance, or securities business.

As per the extant policy followed by HKMA since 1981, the applicants for RLB and DTC status for incorporation in Hong Kong should have at least 50% owned by a bank (or, exceptionally, another financial institution) which is adequately supervised.

An overseas applicant seeking a banking licence in Hong Kong can in practice enter only in the form of a branch. An RLB presence may be in the form of either a branch or a subsidiary. Since 1977, it has been the practice to grant DTC registrations only in respect of locally incorporated subsidiaries. However, subject to the MA's approval, an overseas incorporated bank may convert its branch operations in Hong Kong into a subsidiary provided that it has been authorized to conduct banking business in Hong Kong for not less than three continuous years and its Hong Kong operations meet the balance sheet criteria for local bank applicant.

II. Criteria for grant of authorisation for conducting banking business

Under section 16(2) of the Banking Ordinance, the MA is required to refuse to authorize if any one or more of the criteria specified in the Seventh Schedule of the Ordinance ("the Schedule") are

[1] "banking business" is defined in section 2 of Banking Ordinance as the business of either or both of the following - (a) receiving from the general public money on current, deposit, savings or other similar account repayable on demand or within less than 3 months or at call or notice of less than 3 months; or (b) paying or collecting cheques drawn by or paid in by customers.

not fulfilled with respect to the applicant. The criteria apply to institutions not only at the time of authorization but also thereafter. It follows that failure to meet the criteria by existing authorized institutions would be a ground for revocation of authorization.

(1) Minimum Start-up capital requirements:

In terms of Section 6 of Schedule VII of the Banking Ordinance, the applicant company, seeking authorisation to carry on banking business in Hong Kong, is required to have a start-up capital with the aggregate amount of its paid-up share capital and the balance of its share premium account not less than HK$ 300 million[1]. In the case of a company seeking authorization to carry on a deposit-taking business as a deposit-taking company, the aggregate amount of its paid-up share capital and the balance of its share premium account should not be less than HK$ 25 million. However, in the case of a company seeking authorization to carry on a deposit-taking business as a restricted licence bank, the aggregate amount of its paid-up share capital and the balance of its share premium account should not be less than HK$ 100 million.

It is also necessary that the Monetary Authority should be satisfied that the applicant company will, on authorisation, continue to have adequate financial resources (whether actual or contingent) depending on the nature and scale of its operations.

Further, in the case of a company incorporated in Hong Kong, the company, on and after authorization, is also required to have and maintain a capital adequacy ratio which complies with the provisions of Part XVII of the Banking Ordinance. Under section 98, an authorized institution incorporated in Hong Kong must maintain a minimum capital adequacy ratio of 8%; while under section 101, the MA can raise this statutory minimum for particular institutions to not more than 12% in the case of banks and not more than 16% in the case of RLBs and DTCs. At present, the minimum capital adequacy ratios to be observed by all authorized institutions incorporated in Hong Kong have been raised to 10% or above. In addition to the statutory minimum ratio, the MA has set a non-statutory trigger ratio generally at least 1% above the minimum ratio. The trigger ratio is intended to provide a cushion to reduce the risk of breaches of the minimum ratio and to provide an early warning signal of deterioration in capital adequacy. If the capital ratio of a locally incorporated institution falls below the statutory minimum set for it, the institution is immediately asked to take remedial action. Locally incorporated institutions are generally required to meet the minimum and trigger ratio requirements on both an unconsolidated and consolidated basis.

(2) Balance Sheet size:

The applicant institution, whether incorporated in or outside Hong Kong, applying for authorisation to carry on banking business, must have total customer deposits (subject to certain specified exclusions) and total assets (less contra items) of not less than HK$ 3 billion and HK$ 4 billion, respectively, only at the time of authorisation. Thus, the institution incorporated in Hong Kong should have been a DTC or RLB (or any combination thereof) for not less than three continuous

[1] The minimum capital requirement for banks was increased from HK$150 million to the present level in May 2002. Existing banks have been given a grace period of two years to comply with the increased requirement.

years; or a subsidiary of a bank incorporated outside Hong Kong or a subsidiary of a holding company of such bank, and that the bank has been authorized to carry on banking business in Hong Kong for not less than three continuous years, with the MA being satisfied that the bank will transfer from its Hong Kong operations to the subsidiary amounts of customer deposits and assets not less than the respective amounts mentioned above.

(3) Governance:

The HKMA must be satisfied that each person who is, or is to be, a director, controller, chief executive or executive officer of the company incorporated in Hong Kong, is a fit and proper person to hold the particular position which he holds or is to hold. If the company is incorporated outside Hong Kong, the HKMA must be satisfied that each person who is, or is to be a chief executive, or executive officer, of the business in Hong Kong of the company; as also the director, controller or chief executive of the business of the company in the place where it is incorporated, is a fit and proper person to hold the particular position which he holds or is to hold.
The Monetary Authority should also be satisfied that the company has, and will if it is authorized, continue to have adequate systems of control to ensure that each person who is, or is to be, a manager of the company is a fit and proper person to hold the particular position which he holds or is to hold.

The MA must be satisfied that the institution presently maintains, and will on authorization continue to maintain, adequate liquidity, i.e. a minimum liquidity ratio of not less than 25% on average during each calendar month. The institution should also comply with necessary control systems to guard against concentration risks (large exposures and risk concentration), maintain adequate provision for depreciation or diminution in the value of its assets (including provision for bad and doubtful debts), for liabilities which will or may fall to be discharged by it and for losses which will or may occur. The institution should show that it presently has, and will if authorized continue to have, adequate accounting systems and adequate systems of control, disclosure of adequate information about the state of its affairs and profit and loss account in its audited annual accounts and in other parts of its annual report, and carryon the business (which includes any business that is not banking business or the business of taking deposits) with integrity, prudence and the appropriate degree of professional competence and in a manner which is not detrimental to the interests of depositors or potential depositors.

Regarding RLBs and DTCs incorporated in Hong Kong, the MA also expects that an appropriate number of independent, or at least non-executive, directors should be included in their boards. With regard to a person who is, or is to be a director or chief executive, the relevant considerations include whether he has sufficient skills, knowledge, experience, and soundness of judgement properly to undertake and fulfil his particular duties and responsibilities. The MA also takes into account the factors such as, the person's reputation and character, the person’s knowledge and experience, competence, soundness of judgement and diligence, person's record of non-compliance with various non-statutory codes or has been reprimanded or disqualified by professional or

regulatory bodies, the person's business record and other business interests, and his financial soundness and strength, etc.

Further, the MA must be satisfied in respect of the identity of each controller[1] of the institution. If necessary, the MA will seek the assistance of the home supervisor of an institution incorporated outside Hong Kong.

If, for example, the applicant is a part of a financial conglomerate, the MA may require information to enable him to assess any risks arising from the operations of other companies within the group.

(4) Business Plan:

Applicants are required to submit a business plan for the first three years of operation of the proposed branch or subsidiary in Hong Kong. The business plan should describe the nature and scale of business to be undertaken and business strategies to be adopted, as well as details of the proposed management, organizational structure and control systems. It should also include financial projections for the first three years of the operation, including the projected balance sheet, capital adequacy and liquidity ratios and profitability. While the financial projections are not intended to be precise forecasts, they should give a realistic picture of the proposed scale of business of the applicant and the expected financial performance. In general, applicants are not expected to depart radically from their business plans in the first years of operation as an authorized institution; if such a departure is proposed, the authorized institution should consult with the MA in advance.

III. Fees payable by authorised institutions:

An authorized institution is required to pay banking licence fee (HK$ 0.47 million) /registration fee (HK$ 0.11 million) / restricted banking licence fee (HK$ 0.38 million) depending on the type of licence received, i.e. bank, deposit taking company, or restricted licence bank respectively, to the Director of Accounting Services. These institutions are also required to pay renewal fee on an annual basis.

IV. Maximum percentage of shares a promoter/individual can hold in an AI

There is no restriction on the maximum percentage of shares that an individual can hold in an Authorised Institution. However, the HKMA's policy indicate that a person who intends to hold 50% or more of the share capital of an AI *incorporated in Hong Kong* should be a well established bank or other supervised financial institution in good standing in the financial community and with appropriate experience.

---

[1] "Controller" is defined as: (a) indirect controller - a person in accordance with whose directions or instructions, the directors of the institution or of another company of which it is a subsidiary are accustomed to act; (b) minority shareholder controller - a person who either alone or with associates controls 10% or more, but not more than 50%, of the voting rights of the institution or of another company of which it is a subsidiary; and (c) majority shareholder controller - a person who either alone or with associates controls over 50% of the voting rights of the institution or of another company of which it is a subsidiary.

There is no concept of promoter in Hong Kong. However, HKMA has a statutory responsibility to approve each prospective controller of an institution under Section 70 of the Banking Ordinance.

V. Dilution of shareholding of the promoters:

There is no such condition in the Banking Ordinance.

VI. Can Industrial Companies Own Banks

No specific restrictions on ownership of banks by industrial houses.

MALAYSIA

I. Institutional and Legal Framework

The Minister of Finance of Government of Malaysia is the authority, in terms of Section 6 (4) of Banking and Financial Institutions Act (BAFIA), 1989, to grant licence to a person to carry on business of banking, finance company, merchant banking, or discount house business. The applicant is required to be a public company. However, before granting the licence, the Minister takes into consideration the recommendations of the Bank Negara Malaysia in respect of whether the licence should be granted or refused and the conditions, if any, to be imposed on the licence. A bank or a finance company licensed under subsection 6(4) is deemed to be a member institution under the Malaysia Deposit Insurance Corporation Act 2005.

II. Criteria for grant of licence to carry on banking business

The Bank Negara Malaysia provides recommendation to the Minister for grant of banking licence only if the applicant satisfies the criteria set out in the Second Schedule of BAFIA Act, 1989.

(1) Minimum Start-up capital requirements:

All banking institutions are required to maintain, in terms of Section 14 of the BAFIA Act, 1989, a certain amount of capital funds unimpaired by losses as a condition for granting and continuing a licence. The minimum capital funds requirement for domestic banking groups is RM 2 billion and in cases of locally incorporated foreign banks and stand alone investment banks, it is RM 300 million and RM 500 million respectively.

Capital funds for domestic banking groups are calculated based on the aggregate capital funds of the commercial bank and investment bank in each group. These banking groups are given the flexibility to determine the relative size of each entity within their groups as long as the aggregate capital funds of all the entities amounts to at least RM2 billion. In addition to this minimum capital requirement, each banking institution within the banking group is also required to comply with the minimum regulatory capital requirement as a part of “Capital Adequacy Requirement Risk-Weighted Capital Ratio”.

(2) Governance:

Bank Negara Malaysia ensures that every person who is, or is to be, a director, controller or manager of the applicant institution is a fit and proper person to hold the particular position which he holds or is to hold. In determining whether a person is a fit and proper person to hold any particular position, focus is given to his probity, competence and soundness of judgement for fulfilling the responsibilities of that position, as also to the diligence with which he is fulfilling or likely to fulfil those responsibilities and to whether the interests of depositors or potential depositors, if any, of the institution are, or are likely to be, in any way threatened by his holding that position. Reliance on the previous conduct and activities in business or financial matters of the person in question and, in particular, to any adverse evidence, are also taken into account for granting licence to the institution.

For grant of licence, it is required that the business of the applicant institution should be directed by at least two individuals.

III. Fees payable by licensed institutions:

Every licensed institution is required to pay a certain amount of licence fee upon being licensed, a fee for opening any office in Malaysia other than the office at the principal place of business; and an annual fee for continuance, to the Minister.

IV. Maximum percentage of shares a promoter/individual can hold in an AI

There is no restriction on the maximum percentage of shares that an individual can hold in a licensed bank or licensed finance company.

V. Dilution of shareholding of the promoters:

There is no such condition in the BAFIA 1989.

VI. Can Industrial Companies Own Banks

No information is available.

GERMANY

I. Institutional and Legal Framework

The responsibilities for German banking supervision are shouldered commonly by the Deutsche Bundesbank and the Bafin (Federal Financial Supervisory Authority (FFSA)). The Deutsche Bundesbank and the Bafin have spelled out the details of their respective roles in day-to-day supervision, as laid down by Parliament, in an agreement. Under the agreement, the Bundesbank is assigned most of the operational tasks in banking supervision. In the ongoing monitoring process, the Bundesbank's responsibilities notably include evaluating the documents, reports, annual accounts and auditors' reports submitted by the institutions as well as regular audits of banking operations. It holds both routine and ad-hoc prudential discussions with the institutions. On the other hand, the Bafin is responsible for all sovereign measures. Bafin carries out audits of banking operations, either together with the Bundesbank or on its own only in exceptional cases.

The Bafin is the authority to issue licence to anyone wishing to conduct banking business or to provide financial services in Germany commercially or on a scale which requires a commercially organised business undertaking, in terms of Sections 32 and 33 of the Banking Act, 1989. Credit institutions requiring a licence in accordance with section 32 (1) may not be operated in the form of a sole proprietorship.

II. Criteria for granting licence for conduct of banking business

Anyone wishing to conduct banking business or to provide financial services in Germany requires written authorization from BaFin.

(1) Minimum initial capital requirement:

The minimum initial capital required for deposit-taking credit institutions should be at least 5 million Euros and that for investment banks, it should be at least 730,000 euros. Investment advisers, investment brokers, contract brokers and portfolio managers, as well as operators of multilateral trading facilities or companies carrying out security placement business, which are not authorized to obtain ownership or possession of funds or securities of customers and which do not trade in financial instruments for their own account must have an amount equivalent to at least 50,000 euros.

(2) Governance:

Credit and financial services institutions, which in the course of providing financial services are authorized to obtain ownership or possession of funds or securities of customers, must have at least two senior managers (executive directors), who must be "fit and proper persons". Being "fit" persons means that the persons concerned have acquired during their professional careers to date sufficient theoretical knowledge and practical experience to enable them to carry out their new jobs properly. BaFin consults the Federal Central Register for criminal offences and the Central

Commercial Register for business offences in order to verify whether they are "proper" (i.e. reliable) persons.

The applicant must also declare any holders of significant participating interests[1] in the proposed institution and the size of any such interests. Any such persons must also be "proper" persons. If they are not, or if they fail to meet the standards required in the interests of sound and prudent management of the institution for any other reasons, BaFin may refuse to grant the licence.

(3) Business Plan:

The authorisation application must contain a viable business plan indicating the nature of the proposed business, the organisational structure, planned internal monitoring procedures and the proposed internal control systems, projected balance sheets and projected profit and loss accounts for the first three full financial years after the commencement of business operations. BaFin checks whether the applicant is ready and able to take the necessary organisational measures in order to be able to conduct its business in a proper manner.

III. Fees payable by licensed institutions:

Applicants are charged for the licensing procedure. The amount charged depends on the individual processing time required and on the scale of the business of the enterprise concerned. In general, the minimum amount charged is two thousand euro. Payment of a charge may also be required if the applicant withdraws the application for a licence or if the Federal Financial Supervisory Authority refuses to grant the licence.

IV. Maximum percentage of shares a promoter/individual can hold

The holder of a qualified participating interest is required to notify the Bafin and the Deutsche Bundesbank immediately if he intends to increase the amount of the qualified participating interest in such a way that the thresholds of twenty per cent, thirty-three per cent or fifty per cent of the voting rights or capital are reached or exceeded, or that the institution comes under his control. As such, there is no bar in holding of shares in a banking institution.

V. Can Industrial Companies Own Banks

Yes, industrial companies are allowed to own banks in Germany. Illustratively, Volkswagen Group has a Volkswagen Bank in its Group’s shareholdings, initially set up as finance corporation and got converted into universal bank in 1970.

---

[1] A qualified participating interest is deemed to exist if at least ten per cent of the capital of, or the voting rights in, an enterprise is held directly or indirectly through one or more subsidiaries or a similar relationship or through collaboration with other persons or enterprises, or if a significant influence can be exercised on the management of the enterprise in which a participating interest is held. Participating interests which are held indirectly are to be attributed in full to the persons and enterprises holding the indirect participating interest.

FRANCE

I. Institutional and Legal Framework

Under the Monetary and Financial Code, the pursuit as a regular business of activities qualifying as "banking operations" is restricted to legal entities authorised as credit institutions. Banking operations include the receipt of funds from the public, credit operations, and the banking payment services. In France, there are two broad categories of undertakings *viz*., credit institutions[1] – comprising banks, mutual or cooperative banks, municipal credit banks, financial companies and specialized financial institutions - and investment firms. Undertakings wishing to carry on a regulated banking or financial activity must be authorised as a credit institution (providing investment services or not) or as an investment firm. Under the terms of the Monetary and Financial Code and as laid down in the Banking Act and the Financial Activity Modernization Act, the Credit Institutions and Investment Firms Committee [also called the Prudential Supervision Authority (ACP)] is vested with the powers for taking the decisions and granting the individual authorisations or exemptions applying to credit institutions, with the exception of those within the competence of the *Commission Bancaire (Banking Commission)*. The ACP is a Committee which is chaired by the Governor of the Banque de France, who is also the chairman of the *Commission Bancaire*. The ACP is an independent public authority having legal personality and financial independence.

The Committee do not favour a single natural person owning a credit institution's entire share capital.

II. Criteria for Grating License for Conduct of Banking Business

(1) Minimum Initial Capital Requirement

The authorized undertakings, i.e. credit institutions and investment firms, having their registered office within the territory of French Republic are required to maintain minimum levels of paid-up capital at least equal to a sum determined by the Minister for the Economy. The minimum capital required for credit institutions (banks, mutual and cooperative banks, savings and provident institutions, specialised financial institutions, municipal credit banks that carry out all types of operations) should be 5 million euros. However, for undertakings with restricted operations, the minimum paid-up capital requirements are lower. Illustratively, Municipal Credit Banks whose Articles of Association allow them to grant loans secured by pledge or loans to natural persons but do not authorise them from receiving funds from the public should have a minimum paid-up capital of 2.2 million euro. Municipal Credit Banks which confine their activity to lending against physical collateral, financial companies whose authorisation is confined to the provision of guarantees and those financial companies whose banking activity is confined to leveraged spot foreign exchange transactions should have 1.1 million euro.

(2) Governance:

[1] Only the banks, mutual or cooperative banks and municipal credit banks are generally authorised to receive on-demand deposits or term deposits of less than two years from the public. Banks may carry out all banking transactions. Mutual or cooperative banks and municipal credit banks may carry out all banking transactions consistent with the limitations that result from the laws and regulations that govern them.

The ACP takes account of the company's activities schedule, the technical and financial facilities it intends to implement, and also the suitability of its legal form for the business of a credit institution. The committee also assesses the applicant company's ability to realise its development plans in conditions compatible with the proper functioning of the banking system and adequate customer security. In determining its approval criteria, the Committee may take the specificity of certain credit institutions in the social economic sector into account. It assesses, inter alia, the significance of their activities in regard to the public interest functions associated with combating exclusion or the effective recognition of a right to credit.

In order to assess specific suitability of persons investing capital in a credit institution, the ACP must be satisfied about the quality, identity, economic, financial, social and suitability of contributors of capital and, wherever applicable, their guarantors, and also their experience in the banking sector. Since the introduction in 1990 of various measures to increase banking safety, this information is collected for any person who holds or intends to hold, directly or indirectly, at least 10% of the voting rights. Contributors of capital are also required to send a letter to the *Banque de France* in which they undertake to provide all relevant information in the event of a change to their own situation. In addition, credit institutions are required each year to file financial information on persons who own at least 10% of their capital or incur personal unlimited liability for corporate debts. However, this obligation does not apply to shareholders or partners that are themselves credit institutions authorised in France or in another EU Member State.

The effective determination of the general orientation of a credit institution's business must be decided by at least two persons, who must at all times meet the conditions laid down in the Monetary and Financial Code. The committee may, moreover, refuse approval if the persons referred to above do not possess the necessary respectability and competence or suitable relevant experience. In particular, this concern reflects the specific responsibilities of a credit institution's shareholders, including minority shareholders.

The undertaking seeking authorization shall ensure that Headquarters of the proposed credit institution will be located on the same national territory as the registered office. Further, ACP will also verify to satisfy that assets of credit institution effectively exceed its liabilities to third parties by an amount at least equal to the required minimum capital.

(3) Viable Business Plan

The undertaking seeking authorization is required to submit a viable business plan indicating an effective direction of business policy by at least two fit and proper persons giving the main activities of the institution, nature and amount of planned transactions giving a detailed breakdown for the projected three year flow of transactions, an organisation chart, number of employees likely to be on payroll over the next three years.

III. Conversion of non-banks into Banks

No material is available.

IV. Limiting Asset Size

No details are available about *ACP* imposing an upper limit on the asset size of the proposed bank.

V. Can Industrial Companies Own Banks

a) A shareholder or several shareholders acting in concert may hold a controlling interest in a credit institution only if they have financial resources and banking and financial experience appropriate to the nature and also rated by a rating agency. If they do not satisfy both conditions, they are asked to link up in a sponsorship arrangement with an institution authorised in the European Economic Area that does.

Because of the need to protect funds received from the public, a sponsor is required when the majority shareholders are, in global terms, medium-sized or small foreign banks (i.e., banks from outside the European Economic Area). For non-bank investors that are nonetheless regulated financial institutions of considerable size and impeccable creditworthiness or situated in the European Economic Area, sponsorship is in principle not required. The same applies to very large industrial or retail groups with extensive financial experience which request banking authorisation limited to operations stemming from those of the group.

b) When the majority shareholder or shareholders are undertakings not subject to supervision by the banking authorities, the Committee also ensures that the amount of the proposed investment represents a reasonable fraction of their total fixed assets and available own funds. For group banks in particular, the Committee asks for all precautions to be taken to ensure that they have the utmost independence from their parent undertaking in all aspects of their operations and organisation. When a shareholder base of this type does not include a banking sponsor, the Committee generally makes the authorisation conditional on a letter of intent from the majority shareholder containing undertakings authorised by its senior corporate body that it will keep its shareholding in the long term, regularly monitor the institution's management, ensure that the institution can comply with banking regulations at all times, and provide financial support when called upon by the Governor of the *Banque de France*.

c) In order to avoid any ambiguity about the identity of responsible shareholders, the Committee prefers them to hold their equity interest in the credit institution directly. However, if for particular reasons one or more holding companies are interposed between the investors and the institution, they are asked to give an undertaking not to transfer control of the holding companies without first obtaining the Committee's authorisation.

UNITED STATES OF AMERICA

I. Institutional and Legal Framework

In USA new banks may be chartered for full service (as national banks) or special purpose operations (as special purpose or narrow focus banks), such as trust banks, credit card banks, bankers' banks, community development (CD) banks, and cash management banks. The Office of the Comptroller of the Currency (OCC) is the designated authority for granting approval to the organizing groups (compulsorily composed of five or more persons, normally the bank's initial board of directors) for establishing a national bank.

The OCC grants approval of charter applications in two steps: preliminary conditional approval and final charter approval. Preliminary conditional approval permits the organizers to proceed with organizing the bank. The organization phase for a national bank is the time period between the preliminary conditional approval and the day the bank opens for business. During the organization phase, the organizing bank's officers and directors start the process of hiring management team and staff, continue or begin to raise capital, establish bank premises, develop policies and procedures, test the information technology architecture, and establish management information and control systems. A national bank can begin the business of banking or engage in fiduciary activities only when the OCC grants final approval.

II. Criteria for Grating License for Conduct of Banking Business

(1) Minimum Initial Capital Requirement

The OCC does not mandate a minimum dollar level of capital for national bank charter applications because of the varying degrees of complexity of the charter proposals. Instead, consistent with the OCC's philosophy for supervising all national banks on the basis of risk, the OCC evaluates sufficiency of the proposed capital level in light of the risks present. The OCC expects projected capital for a new bank to remain at or above the "well capitalized" level as defined in 12 CFR 6.4(b)(1)[1] for the first three years of operations and until the bank is expected to achieve stable profitability. These are "minimum capital standards." The OCC may determine that higher amounts of capital from those the organizers proposed are warranted based on local market conditions or the proposed business plan.

Generally, the OCC requires higher levels of capital to support the operations of more complex bank proposals. In addition, the FDIC also has capital requirements for obtaining federal deposit insurance that are similar to the OCC's requirements. The FDIC requires that initial capital should be sufficient to provide a Tier 1 capital-to-assets leverage ratio of not less than 8 per cent throughout the first three years of operations.

---

[1] In terms of Code of Federal Regulations (CFR) 6.4(b)(1), the bank shall be deemed to be well capitalized if it: (i) has a total risk-based capital ratio of 10.0 per cent or more; and (ii) has a Tier 1 risk-based capital ratio of 6.0 per cent or more; and (iii) has a leverage ratio of 5.0 per cent or more; and (iv) is not subject to any written agreement, order or capital directive, or prompt corrective action directive to meet and maintain a specific capital level for any capital measure.

An organizing group is required to complete raising capital within 12 months of the OCC's preliminary conditional approval or the approval expires. For raising capital, the organizing group is required to become a body corporate on filing the Articles of Association and Organization Certificate.

Generally national banks have only one class of common stock. National banks may not create classes of common stock with different or no voting rights. Federal banking law provides that common shareholders are entitled to one vote per share in all matters. If a bank proposes to issue more than one class of common stock, legal, supervisory, and policy issues must be considered. A bank should consult with the OCC prior to issuing more than one class of common stock. A national bank may be organized as a Subchapter S corporation, which generally has a limited number of shareholders as determined in 26 USC 1361. However, all members of a family may elect to be treated as one shareholder to determine the total number of shareholders of an S corporation.

(2) Governance:

OCC requires that the organizing groups and senior management teams must demonstrate its collective ability to establish and operate a national bank successfully in the economic and competitive conditions of the market the bank will serve. The OCC also considers whether the proposed bank (i) has organizers who are familiar with national banking laws and regulations, (ii) has competent management, including the board of directors that has ability and experience relevant to the type of products and services to be provided and the size and scope of projected risks, (iii) has capitalisation, access to liquidity and risk management systems to support the projected volume and type of business. The OCC grants a charter application only to a management team, including both the proposed management and directorate, that it considers strong in terms of experience necessary to implement the proposed business plan, exercise corrective action in response to changing internal and external factors.

OCC must be satisfied that the directors, Chief Executive Officer and Executive Officers have sufficient experience, competence, willingness and ability to be active in overseeing the safety and soundness of the bank's affairs.

The OCC requires each national bank to adopt a written insider policy addressing its code of conduct and conflicts of interest governing conduct and transactions between the bank and its directors and principal shareholders and their related interest and with its officers and employees. This policy must detail business practices the board of directors deems acceptable. The OCC requires this policy in writing for each bank, regardless of its complexity or the degree of sophistication of its systems.

The OCC expects all organizers and directors to exhibit substantial personal (contribution of time and expertise) and financial commitment (contribution of initial funding and stock subscriptions) to a new national bank.

The organizers should establish compensation plans that are in the best interest of the bank and commensurate with the services the organizers propose to offer. A new bank may include a stock benefit or compensation plan (stock benefit plan), including stock options, stock warrants, and similar stock based compensation, in its overall compensation for organizers, directors and officers, provided that it structures the plans appropriately. The OCC evaluates each proposed bank's total compensation package, including its stock benefit plan, to determine if it is reasonable considering each person's contribution of time, expertise, and financial commitment.

(3) Viable Business Plan:

Organizers of a proposed national bank must submit a business plan that adequately addresses regulatory and policy considerations. The plan must reflect sound banking principles. The organizing group's business plan, including its financial projections, analysis of risk, and planned risk management systems and controls, is critical to OCC's decision of whether to grant approval to the group's charter proposal. The plan should cover the greater of three years or the time period until the bank is expected to achieve stable profitability. It should realistically forecast market demand, customer base, competition and economic conditions. The plan should contain sufficient information to give realistic assessments of risk related to economic and competitive conditions in the market the bank will serve.

The organizing group should integrate an alternative business strategy into its business and strategic plans and bank policies, so as to manage potential scenarios prudently, efficiently, effectively when the asset or deposit mixes, interest rates, operating expenses, marketing costs, or growth rates differ significantly from the original plan.

In addition to submission of the financial information and business plan, the OCC requires each application sponsored by a holding company, including a Bank Holding Company, to provide consolidated financial projections.

(4) Responsibility under the Community Reinvestment Act (CRA):

Each national bank has a responsibility under the CRA to help meet the credit needs of its entire community, consistent with the safe and sound operations of such institution. The CRA regulation requires each bank to delineate at least one assessment area, comprising of one or more metropolitan statistical area or areas or one or more contiguous political subdivisions (such as countries, cities or towns), It must include the geographies (a census tract or block numbering area delineated by the United States Bureau of the Census in the most recent decennial census) in which

the bank has its main office, branches and deposit-taking ATMs, if any, as well as the surrounding geographies in which the bank has originated or purchased a substantial portion of its loans.

The organizing group must demonstrate in the application its knowledge of and plans for serving the proposed bank's assessment area or areas. The organizing group must evaluate the banking needs of the community, including its consumer, business, nonprofit, and government sectors.

(5) Electronic Banking (e-banking) concerns:

The OCC approves proposals to establish national banks that will use and electronic delivery channel when the bank reasonably may be expected to operate successfully and in a safe and sound manner.

(6) Publication:

Each organizing group or sponsor must publish a notice of its charter application in a general circulation newspaper in the community in which the proposed bank will be located, on the date the application is filed or as soon as possible before or after submission of the filing. Any interested person may participate in the OCC licensing process by commenting in writing on any filing during the applicable public comment period (30 days from the initial date of publication). This publication process allows the public to give written comments to the OCC in support of, or in opposition to, the application or to recommend that the OCC grant approval subject only to certain conditions. Generally, public notice does not apply to conversions unless the OCC determines that the application presents a significant or novel policy, supervisory, or legal issue where a public notice is considered necessary.

III. Application Fees

An applicant is required to pay the appropriate filing fee, if any, in connection with its filing for grant of licence as a national bank charter, or for conversion to a national bank, etc. to the Comptroller of the Currency. In case of individual and non-bank holding company sponsored, the fees for a new national bank charter is $ 25,000 and in case of bank holding company sponsored, it is $ 10,000.

IV. Conversion of Non-banks into banks

Under applicable federal and state law, certain types of depository institutions (state commercial banks, state savings associations, state savings banks, state trust companies, federal savings banks and federal savings associations) may convert to become national banks, provided they demonstrate the ability to operate safely and soundly and are in compliance with applicable laws, regulations and policies, and are consistent with the National Bank Act and applicable OCC regulations and policies. A mutual depository institution may need to convert to a stock form of ownership prior to converting to a national bank. Shareholders owning not less than 51 per cent of the institution’s capital stock or a greater amount if required by applicable federal or state law, must

approve the proposed conversion. The applicant should submit a list of directors and shareholders owning 10 per cent or more of capital stock (deemed to be 'controlling shareholders') with the application to convert.

In determining action on a conversion application, the OCC normally considers the applicant's condition and management, including compliance with regulatory capital requirements; conformance with statutory criteria, including many of the same standards applicable to chartering a de novo national bank; adequacy of policies, practices, and procedures; CRA record of performance, etc. The OCC may impose special conditions for approvals to protect the safety and soundness of the bank; prevent conflicts of interest; provide customer protections; ensure that approval is consistent with the statutes and regulations; or provide for other supervisory or policy considerations.

Special supervisory conditions may be used depending on whether the particular circumstances warrant it. The OCC tailors special supervisory conditions to specific situations, such as:

(a) Maintaining a specified minimum capital floor;
(b) Executing a written agreement between the proposed bank and its holding company that provides for capital maintenance, liquidity support, or other assurances to the bank, if and when necessary;
(c) Developing a contingency business plan agreement between the proposed bank and the OCC setting forth certain actions that the bank will take if the bank does not achieve the business plan results; and
(d) Requiring all final third-party relationship contracts to stipulate that the performance of services provided by the vendors to the bank are subject to the OCC's examination and regulatory authority.

A converting institution may retain existing branches as a national bank, if such retention is consistent with applicable law. The applicant must identify all branches that will be retained following the conversion. The applicant should certify that the resulting branch structure complies with applicable state and federal branching laws. Certification of the institution's compliance with law, where applicable, must include consideration of geographic limitations and any quantitative and qualitative factors.

V. Can Industrial Companies own banks

A new bank may be owned directly by individuals or a holding company. A new bank may be affiliated with another organization, called a sponsor, rather than choose to operate independently. A sponsor is usually an existing holding company, regardless of whether it is a bank holding company (BHC). However, the OCC does not consider as a sponsor a new BHC that is established at the same time as the new national bank.

When a new bank proposal has a sponsor, the OCC considers primarily the financial and managerial resources of the sponsor and the sponsor's record of performance, rather than the financial and managerial resources of the organizing group. When the sponsor serves as a substantial source of strength, the OCC may approve an application, even in a market in which economic conditions are marginal or competitive conditions are intense. However, in such cases, the OCC may require the bank to execute a written agreement with its holding company that provides for capital maintenance and liquidity support from the holding company. Conversely, the OCC may deny a sponsored new bank application, if the condition of the parent company or any affiliate is subject to supervisory concern or otherwise detracts from the application.

To enhance the corporate separateness of the organizations, the sponsor should evaluate the bank's activities and operations closely and address on the need for bank directors to act primarily in the best interest of the bank rather than the bank's sponsor and to exercise objective judgement in carrying out their duties, independent of undue influence from sponsor management and affiliates.

UNITED KINGDOM

I. Institutional and Legal Framework

Firms (partnerships or unincorporated associations) seeking authorization to carry on banking business are required to apply for Part IV permission by the Financial Services Authority in terms of Financial Services and Markets Act, 2000. Section 40(1) of the Act (Application for permission) allows an application to be made to the FSA for Part IV permission by an individual, a body corporate, a partnership or an unincorporated association. However, in the case of the regulated activities of accepting deposits, the applicant seeking Part IV permission can be a body corporate or a partnership.

II. Criteria for granting license for conduct of banking business

Before carrying on a regulated activity by a firm, the FSA must be satisfied that the firm can meet and continue to meet the minimum standards, called Threshold Conditions, and that the persons running the firm are fit and proper. There are essentially five threshold conditions, which are related to legal status of the applicants, location of offices, applicant's close links with other firms or individuals, adequate resources and suitability of the applicants.

(1) Adequate Resources

The applicant must demonstrate to the FSA that it has adequate resources in relation to the specific regulated activity or regulated activities that it seeks to carry on, or carries on. In this context, the *FSA* interprets the term 'adequate' as sufficient in terms of quantity, quality and availability, and 'resources' as including all financial resources, non-financial resources and means of managing its resources; for example, capital, provisions against liabilities, holdings of or access to cash and other liquid assets, human resources and effective means by which to manage risks.

When assessing this threshold condition, the FSA may consider any person appearing to it to be in a relevant relationship with the firm, in terms of section 49 of the Act; for example, a firm's controllers, its directors or partners, other persons with close links to the firm, and other persons that exert influence on the firm. The FSA may also take into consideration the impact of other members of the firm's group on the adequacy of its resources. For example, the FSA may assess the consolidated solvency of the group.

While assessing the firm's compliance for adequate resources, the FSA will also consider other relevant matters, such as:

(a) whether the firm may have difficulties if the application is granted, at the time of the grant or in the future, in complying with any of the FSA's prudential rules;
(b) whether the firm will not be able to meet its debts as they fall due;
(c) whether there are any implications for the adequacy of the firm's resources arising from the history of the firm;

(d) whether the firm has taken reasonable steps to identify and measure any risks of regulatory concern that it may encounter in conducting its business and has installed appropriate systems and controls and appointed appropriate human resources to measure them prudently at all times; and

(e) whether the firm has conducted enquiries into the financial services sector in which it intends to conduct business that are sufficient to satisfy itself that:

(i) it has access to adequate capital to support the business including any losses which may be expected during its start-up period; and

(ii) Client money, deposits, custody assets and policyholders' rights will not be placed at risk if the business fails.

The applicant seeking authorization for carrying on banking business is required to have an initial capital of not less than 5 million euro. The bank is also required to maintain, at all times, capital resources equal to or in excess of the sum of the credit risk capital requirement, market risk capital requirement and the operations risk capital requirement.

(2) Governance:

The proposed firm must satisfy the FSA that it is fit and proper to have Part IV permission having regard to all circumstances, including its connection with other persons, the range and nature of its proposed or current regulated activities that it carries on or seeks to carry on, and the overall need to ensure that its affairs are and will be conducted soundly and prudently.

The FSA assesses all relevant matters relating to firm's commitment to conduct business with integrity and in compliance with proper standards, competence and ability of management, and conduct of affairs with due skill, care and diligence. The FSA expects the firm's business plan or strategy plan to take into account the interests of consumers and demonstrate that it is ready, willing and organized to comply with the relevant requirements. In this context, the FSA assesses the business integrity of the firm in terms of (i) whether the firm or any person connected with the firm has been convicted of any criminal offence including offences of dishonesty, fraud, financial crime, insider dealing, market manipulation, money laundering, etc.; (ii) whether the firm has been subject to any investigation or enforcement proceedings; (iii) whether the firm has contravened, or is connected with a person who has contravened any provisions of the Act or any preceding financial services legislation, regulatory system or the rules, regulations, principles of code or practice, etc.; (iv) whether the firm or a person connected with the firm has been refused registration, authorisation, membership or licence to carry out a trade, business or profession; (v) whether the firm or a person connected with the firm has been dismissed from employment or a position of trust, or a fiduciary relationship, or has been disqualified from acting as a director.

As regards having competent and prudent management and exercising due skill, care and diligence, relevant matters for assessment by FSA include (i) whether the governing body of the firm

is made up of individuals with an appropriate range of skills and experience to understand, operate and manage the firm's regulated activities; (ii) whether the firm has made arrangements for an adequate system of internal control to manage the financial and other risks in a prudent manner; (iii) whether the firm has developed human resources policies and procedures that are reasonably designed to ensure that only honest individuals, which are committed to high standards of integrity in conduct of their activities, are employed;

(3) Viable Business Plan:

The firm seeking Part IV permission must satisfy itself and the FSA that (a) it has a well constructed business plan or strategy plan for its product or service which demonstrates that it is ready, willing and organised to comply with the relevant requirements; (b) its business plan or strategy plan has been sufficiently tested; and (c) the financial and other resources of the firm are commensurate with the likely risks it will face. The plan should also detail the complexity of the firm's proposed regulated activities and unregulated activities and the risks of regulatory concern it is likely to face. Notes on the contents of a business plan are given in the business plan section of the application pack for Part IV permission.

III. Can Industrial Companies own banks

The Threshold Condition with regard to close links is somewhat relevant in this context. According to this condition, the applicant firm, having close links with another person[1], must satisfy the FSA that those links are not likely to prevent its effective supervision. The FSA takes into consideration the structure and geographical spread of the applicant firm, the group to which it belongs and other persons with whom it has close links. The FSA also examines whether the firm and the group to which it belongs will be subject to supervision on a consolidated basis and whether it is possible to assess the overall financial position of the group at any particular time.

[1] the applicant firm is considered to have close links with another person, if the another person is a parent undertaking/subsidiary undertaking/ parent undertaking of a subsidiary undertaking/ subsidiary undertaking of a parent undertaking/ owns or controls 20% or more of the voting rights or capital, of the applicant firm. If the applicant firm owns or controls 20% or more of the voting rights or capital of the another person, it is considered to have close links.

European Union

I. Institutional and Legal Framework

The Capital Requirements Directive (CRD), set out by the European Parliament and the Council of the European Union, deals comprehensively with the taking up and pursuit of the business of credit institutions *(an undertaking the business of which is to receive deposits or other repayable funds from the public and to grant credits for its own account)* and their prudential supervision in the Member States of the European Union. In terms of Article 6 of the Directive, the Member States are required to issue authorisation to the credit institutions for commencing their business activities. The Member States are also required lay down the requirements for such authorisation and notify them to the European Commission.

II. Criteria for Granting License for Conduct of Banking Business

Without prejudice to other general conditions laid down by the national law of the Member States of the European Union, the competent authorities can grant authorisation to the credit institutions before commencing their activities, only on the credit institutions satisfying certain minimum conditions.

(1) Minimum Initial Capital Requirement

The applicant credit institution should possess separate own funds and initial capital (capital and reserves) should be 5 million euro or more. However, the Member States can grant authorisation to particular categories of credit institutions whose initial capital is less than 5 million euro, provided their initial capital is not less than 1 million euro, the concerned Member States notifies the Commission the names of such credit institutions and their reasons for exercising this option.

(2) Governance

An authorisation will be granted for taking up the business of credit institution only when there are at least two persons who effectively direct the business of the credit institution. In other words, authorisation will not be granted if these persons are not of sufficiently good repute or lack sufficient experience to perform such duties.

The competent authorities must be informed, on a continuous basis, about the identities of the shareholders or members, whether direct or indirect, natural or legal persons, that have qualifying holdings (a direct or indirect holding in an undertaking which represents 10% or more of the capital or of the voting rights or which makes it possible to exercise a significance influence over the management of that undertaking), and of the amounts of those holdings. The shareholders or members must be suitable, so as to ensure the sound and prudent management of the credit institution.

Where "close links"[1] exist between the credit institutions and other natural or legal persons, the competent authorities must be satisfied that such relationships would not prevent the effective exercise of their supervisory functions.

The competent authority, before granting authorisation to a credit institution, also consults the competent authorities of the other Member States in cases where (a) the credit institution concerned is a subsidiary[2] of a credit institution authorised in another Member State; (b) the credit institution concerned is a subsidiary of the 'parent undertaking'[3] of a credit institution authorised in another Member State; or (c) the credit institution concerned is controlled by the same persons, whether natural or legal, that are controlling a credit institution authorised in another Member State.

The relevant competent authorities also consult each other when assessing the suitability of the shareholders and the reputation and experience of directors involved in the management of another entity of the same group.

The Home Member State competent authorities are required to ensure that every credit institution has robust governance arrangements, which include a clear organisation structure with well defined, transparent and consistent lines of responsibility, effective processes to identify, manage, monitor and report the risks it is exposed to, and adequate internal control mechanisms, including sound administrative and accounting procedures.

III. Publication

The Member States are required to notify the details of every authorisation granted to the credit institutions or withdrawal of the same, to the Commission, which will publish the list in the Official Journal of the European Union and keep it up to date.

IV. Limiting Asset Size

No details are available about CRD imposing an upper limit on the asset size of the proposed credit institution.

V. Can Industrial Companies own banks

There is nothing specific in CRD to prevent credit institutions being owned or controlled by another industrial undertaking or another kind of financial institution (including a hedge fund). The EU rules do not prohibit particular classes of institution from controlling or owning a bank.

---

[1] "Close Links" means a situation in which two or more natural or legal persons are linked in any of the following ways: (a) participation in the form of ownership, direct or by way of control, of 20 % or more of the voting rights or capital of an undertaking; (b) control; or (c) the fact that both or all are permanently linked to one and the same third person by a control relationship.

[2] a subsidiary undertaking is any undertaking over which, in the opinion of the competent authorities, a parent undertaking effectively exercises a dominant influence.

[3] a parent undertaking is any undertaking which, in the opinion of the competent authorities, effectively exercises a dominant influence over another undertaking.

The relevant provisions in this case are the conditions relating to the suitability of owners and to close links. A supervisory assessment must be made in each individual case, taking into account the specific characteristics of the relevant shareholders or controllers, their ability to ensure the sound and prudent management of the bank, and their impact on the ability of the authorising authority to supervise the bank effectively. Nevertheless, in this context, a mention needs to be made with regard to change of control. Any natural or legal person or such persons desirous of acquiring, directly or indirectly, a qualifying holding in a credit institution or to further increase such holding so as to reach 20%, 30% or 50% or more of the total voting rights or of the capital held, which would render it to become a subsidiary of the credit institution, are required to seek and obtain supervisory approval from the competent authority of the concerned Member State. In approving such acquisition, the competent authorities assess the suitability of the proposed acquirer and the financial soundness of the proposed acquisition, in order to ensure the sound and prudent management of the credit institution. The Member States should neither impose any prior conditions in respect of the level of holding that is proposed to be acquired nor allow their competent authorities to examine the proposed acquisition in terms of the economic needs of the market.

JAPAN

I. Institutional and Legal Framework

The Banking Law of Japan, 1981 provides that any person seeking permission to carry on business of banking is required to take a licence from the Prime Minister. The Prime Minister reviews the application for bank licence in terms of compliance of certain criteria.

II. Criteria for Granting License for Conduct of Banking Business

(1) Minimum Initial Capital Requirement

The bank should be a joint-stock corporation and the minimum capital should be 1 billion yen or more.

(2) Governance

The Prime Minister must be satisfied that the applicant has the financial basis sufficiently to perform the business of bank soundly and effectively, and a prospect for income and expenditure relating to the business is good. The applicant, in its personal composition, should be possessing knowledge and experience capable of performing accurately, fairly and effectively the business of bank, and the person having sufficient social credit.

A person owning voting rights, which exceed five-hundreds of voting rights of all the shareholders of a bank or of all the shareholders of a bank holding company (considered to be the person holding large-scale voting rights of bank), is required to furnish information regarding the ratios of retained voting rights, matters concerning funds to obtain, the purpose of retention, etc., to the Prime Minister.

Any person who intends to acquire voting rights equal to or more than standard value of main shareholders of a bank, should seek prior approval in advance from the Prime Minister.

III. Can Industrial Companies own banks

There is no specific information on this aspect. However, the Banking Law specifies that a bank holding company cannot perform any other business than administration of operations of banks which are its subsidiaries and of companies, such as long-term credit bank, securities specialising company, insurance company, foreign company engaged in banking business, securities business or insurance business, companies engaged in financial related business.