

... means a corporation, association, partnership or other institution incorporated or established by, pursuant to or in accordance with the laws of a country other than Canada, or a department or agency of the government of a country other than Canada or a political subdivision of such a country that,

(a) is a bank according to the laws of any country other than Canada where it carries on business,

(b) carries on a business in a country other than Canada that, if carried on in Canada, would be wholly or to significant extent the business of banking,

(c) acquires, adopts or retains a name that, in any language, includes the word "bank", "banks" or "banking", either alone or in combination with other words, or any word or words of import equivalent thereto to indicate or describe its business,

(d) engages in the business of lending money and accepting deposit liabilities transferable by cheque or other instrument,

(e) is an affiliate of a corporation that is a foreign bank within the meaning of this definition, or

(f) controls a corporation that is a foreign bank within the meaning of this definition.

Since AMEX does not operate as a federally regulated bank in the U.S. it obviously does not qualify under category a) above. Perhaps travellers' cheques qualify under d) as an instrument for transferring deposit liabilities or perhaps b) above is the relevant section. In any event, if AMEX is any guide, it would appear that the definition of foreign bank can be quite broad, presumably broad enough to cover GMAC, GE, Ford and Sears among others.

#### ● *Criteria for a Foreign Bank Subsidiary*

If a foreign financial institution is designated as a foreign bank, it may then apply for a charter to establish a foreign bank subsidiary. Whether the application is accepted depends in part on how the application squares with guidelines for establishing foreign bank subsidiaries in Canada. Selected aspects of these guidelines, issued by the Office of the Superintendent of Financial Institutions, appear as Appendix D to this Report. While these provisions include a preference for foreign banks that have widely held parents, there are no specific provisions relating to commercial links. What the guidelines emphasize is that the applicant be in the general business of lending and borrowing money.

Although not included in the provisions listed in Appendix D, elsewhere the document describes the guidelines as "generally desirable" but then states that "the Minister of Finance along with the Governor in Council have ultimate authority for approving applications". The Committee recognizes that some discretion to overrule the guidelines is essential, given the differing structures of financial systems across countries. However, discretion can, as in the AMEX charter, generate concern and confusion among the financial community.

#### ● *Foreign Bank Exemptions*

The federal government can, in effect, exempt a foreign bank from being a foreign bank. In the *Foreign Bank Exemption Order* of May 27, 1981, 101 foreign banks were, in the language of the Order, "exempted from being a foreign bank". Exemption numbers 62 through 88 inclusive all refer to the Ford conglomerate—Ford Credit, Ford Leasing, Ford Consumer Credit, etc.—both in the U.S. and worldwide. What this seems to imply is that Ford could start up a trust company in Canada. If it chartered provincially, say in Quebec which intends to allow the links between the commercial and financial sectors, presumably it would have the latitude of continuing to operate a full range of financial and commercial services in Canada. Were the federal government to revoke this exemption,