

## **Foreign Banks Lending to Canadian Borrowers**

February 29, 2012 by [Scott Horner](#)

From time to time, we receive inquiries from foreign banks that do not have a presence in Canada on whether there are any Canadian banking regulatory restrictions on lending to Canadian borrowers. Under the *Bank Act* (Canada), a foreign bank can lend to Canadian borrowers by:

1. establishing a presence in Canada by creating a Canadian subsidiary or a foreign bank branch pursuant to the *Bank Act* (Canada); or
2. structuring its activities so that it is not considered to be engaged in or carrying on business in Canada.

The focus of this blog entry is option 2. A determination of whether a foreign bank is engaged in or carrying on business in Canada is a question of fact. Generally speaking, it is unlikely that a foreign bank that lends to a Canadian borrower would be found to be engaged in or carrying on business in Canada if:

- the foreign bank does not have a place of business in Canada;
- the foreign bank does not have a phone number in Canada;
- the foreign bank's employees' visits to Canada are for purposes of marketing; and
- the loan documentation is negotiated and signed outside of Canada by the foreign bank.

Tags: [Bank Act](#)