

NEW INSURANCE RULES IN CANADA

GOOD NEWS, BAD NEWS

The good news: Canadians and Canadian operations of multinational companies will be better protected following recent amendments to the national insurance laws.

The bad news: a complicated system that includes various tax and reporting requirements at the federal and provincial levels may be getting more complicated. Foreign companies with risks in Canada have some paper work ahead of them. Most multinationals will need some help in figuring the pros and cons of the various insurance options: local or foreign insurer? Licensed or unlicensed?

The new rules go into effect January 1, 2010, though foreign companies have until the end of 2010 to do their administrative work, by which time they must identify if their risks are located inside or outside of Canada and where the insurance for those risks is written. (Please refer to the [OSFI advisory](#), which outlines the criteria used to determine whether or not a foreign insurer is insuring a risk in Canada.)

The changes also present a good news/bad news scenario for foreign insurers covering risks in Canada. The good: if the business is written through an office that is located outside of Canada, the foreign insurer will no longer be required to record that business in the books of a Canadian branch. In addition, the Canadian branch will no longer need to vest assets in relation to that business. Under these amendments, foreign insurers will have less difficulty when insuring a Canadian risk on an unlicensed basis in terms of how they are regulated by the Insurance Companies Act (ICA).

The bad: There are still numerous statutes and regulations at the federal and provincial/territorial levels governing insurance. A foreign insurer is required to obtain a license to write risks located in Canada under one or more of the provincial or territorial statutes if they are to qualify as a licensed Canadian carrier. Furthermore, foreign insurers unlicensed in Canada may struggle to compete with licensed carriers because their premiums could be subject to various unlicensed taxes and to federal excise tax. (Please refer to the [International Alert](#), “[Canadian Federal Excise Tax on Insurance Programs](#),” for further direction.)



Insurers may have to keep two sets of books: one for insurance regulators (based on location of business in Canada) and another for various tax authorities (based on location of risk).

The new rules were issued by the Office of the Superintendent of Financial Institutions Canada (OSFI) in September 2007, with revisions in December 2008 and May 2009. In updating Part XIII of the ICA, officials reversed a longstanding requirement that foreign insurers needed to be licensed in Canada regardless of where the underwriting activity took place, and that records and reserves were to be maintained with their Canadian branch.

The main purpose of the amendments was to improve the alignment between how assets are vested under the ICA and the ability to claim against those vested assets under the Winding Up and Restructuring Act (WURA). Vesting assets for foreign insurers will no longer be based on location of risk but instead on the location of the business activities of the

foreign insurer. Canadians should have better protection as a result, because insurers will be required to set aside sufficient vested assets to cover all liabilities connected to their Canadian policyholders.

SIGNIFICANCE FOR REINSURANCE

Some reinsurers may no longer be considered to be providing reinsurance in Canada. Business ceded to these reinsurers would no longer qualify for a capital/asset credit on the insurer's balance sheet unless the reinsurer holds funds as specified in the capital/asset adequacy guidelines. When a ceding company is unsure of whether or not the risks were reinsured in Canada, the cedant should not take a credit. In addition, the reinsurance regulations under the ICA limit the reinsurance buyer to ceding a maximum of 25% of their total written premiums to unregistered reinsurers.

Many foreign insurers and reinsurers will want to maintain licenses in Canada even with the amendments to Part XIII of the ICA.

CHANGES FOR MARINE INSURANCE

The ICA exemption for Marine insurance is going away. On January 1, 2010, foreign companies that write marine insurance on a mono-line basis, or along with other lines of cover, will now be regulated by the amendments to Part XIII of the ICA for those risks that are insured in Canada. Foreign insurance companies will either need to update their order to insure Canada risks to include marine insurance, or in the case of a mono-line marine insurer, apply for an order from OSFI to write business in Canada.

There is no provision for grandfathering of policies issued before January 1, 2010 and the amendments will be regulated on a retrospective basis. As of January 1, 2010, foreign insurers will have to vest assets for all marine risks underwritten in Canada.

Effective January 1, 2010, all business written in Canada (regardless of the class of business or the location of the risk or policyholder) must include in premium notices, in applications for policies and in policies (which may include cover notes) a statement that the document was issued or made in the course of conducting insurance business in Canada.

The amendments do not apply to tax systems. Payment of premium tax will continue to be based on the location of risk. Unlicensed taxes and the federal excise tax may apply to premiums for policies placed with unlicensed insurers.

WHAT IT MEANS

Suppose you are a risk manager for a global corporation, and under your global program you plan to insure risks for several countries, including Canada. You must choose between a licensed and an unlicensed placement for Canada. If you opt for a licensed carrier, the placement should be made with a Canadian insurer or at the Canadian branch of a foreign insurer. If, on the other hand, you choose to go unlicensed in Canada, then the amendments to the ICA mean that you can place insurance for risks in Canada with an insurer that is located outside of Canada. In this case, however, your premiums may be subject to federal excise tax and to unlicensed taxes. As an insured you are able to self-file federal excise tax. However, this is not the case with unlicensed insurance tax. In most cases, a broker licensed in Canada must file these taxes on your behalf. If you have used a broker that is not licensed in Canada for the placement, you may be facing additional penalties. We recommend that you factor in all Canadian risks and that you involve a Canadian broker at the outset of the placement process.

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