

# 2010 changes to the Canadian insurance business in force—Part XIII of the Insurance Companies Act



On January 1, 2010 amendments to Part XIII of the Insurance Companies Act (ICA) came into force. These amendments govern the operations of foreign insurance companies in Canada and were made to increase consistency with the Income Tax Act and the Winding-up and Restructuring Act.

In overall terms, the result is that the Canadian regulatory framework for foreign insurance companies is now generally based on the location of business activities of the insurer, rather than on the location of the risks it insures.

## Background and implications - Branches in Canada and Canadian companies

The new rules will impact the business reported by Branches of foreign insurers in their 2010 quarterly and annual regulatory returns and financial statements.

Business excluded from Canadian branch reporting in the past may be required to be added onto the books. For example, policies written in Canada insuring a risk outside Canada should be included in Canadian business.

OSFI will presume all liabilities for risks reported on the books of a Canadian Branch as at January 1, 2010 to have

been insured or reinsured in Canada. If a Branch wishes to remove some or all of the liabilities in respect of these risks as they no longer meet that definition, the Branch will need to make an application and satisfy OSFI that those risks were not insured or reinsured in Canada. OSFI's approval will only be given if the Branch can demonstrate that sufficient due diligence has been performed to identify any other risks which should be added to the books.

Among the other implications for foreign companies, Canadian branches are required to make statements that certain documents were issued or made in the course of its insurance business in Canada.

Canadian companies are also impacted if they have reinsurance treaties with Canadian branches of foreign insurance companies. Treaties which were previously considered to have been written in Canada may no longer satisfy that definition, which may impact compliance with limits for unlicensed reinsurance and the MCT/BAAT ratio. There is some limited transitional relief outlined in OSFI's letter to the industry dated June 19, 2009 for premiums paid or payable prior to or on December 31, 2009 which will continue to be considered registered for calculating the 25 percent limit of unregistered reinsurance beyond 2009.

## Recent updates from OSFI

OSFI wrote to the industry in a letter dated December 15, 2009 which provides information on changes and additional guidance including the following:

- Changes to OSFI Guidelines, including A: Minimum Continuing Capital and Surplus Requirements / Test of Adequacy of Assets and Margin; E-4A: Role of the Chief Agent and Record Keeping Requirements; and E-14: Role of the Independent Actuary;
- Changes to Reporting Instructions and Life-2 and P&C-2 Returns for 2010;
- Guidance on the requirement for foreign companies to make a statement in premium related notices; and
- Updates to the questions and answers posted to OSFI's website to address situations involving intermediaries such as brokers and agents.

## It's 2010 already! Actions to take for a smooth transition:

1. Review your 2009 quarterly progress reports to OSFI. Are you still on track? Consider and prioritize actions required to meet the 2010 reporting requirements.
2. Are you satisfied that you will be able to demonstrate to OSFI that you

have applied sufficient due diligence to determine whether any business written prior to January 1, 2010 should be added onto the books? This process needs to be completed by December 31, 2010, and could result in additional premiums/liabilities being recorded in the Canadian books.

3. If additional business will be brought onto the Canadian books, consider the implications on capital and solvency – consult with your home office if changes are expected.
4. Assess the pros and cons of removing business that is no longer required to be reported on the Canadian books.
5. If you expect to remove business from the Canadian books, apply to OSFI for approval as soon as possible. Leaving it to the end of the year might mean you don't get approval in time.
6. Review your internal controls over both the transition to the new rules and your ongoing reporting. If the new regulations have impacted the data you are reporting, ensure you have a sound internal control framework in place over the new data set.
7. Talk to your Appointed Actuary to determine the implications over the valuation of claims reserves and any new procedures needed.
8. Talk to your auditor. Get their agreement on your approach so that

they can plan any impact on their audit procedures and you can avoid late surprises or audit adjustments at year-end.

9. If you write marine business, make sure this class is reflected in your order.
10. Check that the required statements are made in premium notices, applications for policies and policies – both those issued directly or through a broker/agent issuing on your behalf.
11. Companies – review your reinsurance arrangements. Consider if any changes are required to your program to stay in compliance with limits on unregistered reinsurance and to minimize the impact on the MCT/BAAT ratio.
12. If you issue reinsurance contracts, assess your ability to respond to customer requests over your registered status for those treaties. These requirements may have direct implications on your process for writing this business.

### For more information, please contact:

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