

# MARKET BULLETIN

REF: Y4518

<b>Title</b>	Update regarding the clarification of Part XIII of the Canadian Insurance Companies Act – Implementation of AIF Signing Process
<b>Purpose</b>	Update on the development and implementation of the AIF Signing Process in respect of Canadian business.
<b>Type</b>	Event
<b>From</b>	Andrew Gurney, Senior Manager, International Licences International Regulatory Affairs
<b>Date</b>	26 September 2011
<b>Deadline</b>	<b>December 2011</b>

## 1 Purpose

- 1.1 To provide the market with further information regarding the development and implementation of the Attorney in Fact (AIF) Signing Process in respect of Canadian open market, reinsurance and non-Canadian domiciled coverholder and service company business as advised in Market Bulletin Y4456.
- 1.2 To highlight that Managing Agents and Brokers Compliance Officers should review their Canadian business models in light of the content of this bulletin to ensure readiness to use the AIF Signing Process for risks incepting on or after **1 January 2012**.
- 1.3 To advise that the Canadian regulator the Office of the Superintendent of Financial Institutions (OSFI) expects all Lloyd's reinsurance renewals incepting from **1 January 2012** to be processed using the AIF system in order for Canadian Cedants to take credit for reinsurance purchased from Lloyd's.
- 1.4 To advise that all Canadian business incepting from **1 January 2012** will require an AIF signature in order to be processed by Xchanging. The AIF system will be available from **5 December 2011**.
- 1.5 To outline key steps and timeframes.

## 2 Executive Summary

- 2.1 A clarified interpretation of “insure in Canada a risk” was issued by OSFI with effect from 1 January 2010 (the effective date).
- 2.2 This applies the Canadian federal regulatory framework to all risks *insured* in Canada, as defined in OSFI Advisory 2007-01-R1, rather than to all risks *located* in Canada. All business insured in Canada from the effective date, and any such business already on a company’s books at that date, is subject to the clarified definition and to federal reporting and funding requirements – regardless of the location of the policyholder or risk, or of the class of business.
- 2.3 Further to the process changes set out in Market Bulletin Y4329, published 6 November 2009, ongoing dialogue with OSFI has made it clear that additional amendments to our business models are needed to ensure that open market, reinsurance, non-domiciled coverholder and service company business will be considered “insure in Canada a risk”.
- 2.4 Following a review of options and consultation with the Canadian Legislation Market Working Group, it has been agreed with OSFI that implementing an AIF Signing Process will meet the requirements of “insure in Canada a risk”. This is a process whereby the AIF for Lloyd’s Underwriters in Canada will bind risks and endorse contracts made in London with a statement confirming that contract is issued in the course of Lloyd’s Underwriters insurance business in Canada<sup>1</sup>. The AIF will sign and issue each Canadian open market and reinsurance contract as appropriate.
- 2.5 Lloyd’s has been working with the market and other key stakeholders to design and build an appropriate AIF Signing Process. Lloyd’s Underwriters (in accordance with the procedures to be adopted) will need to direct all relevant new and renewal Open Market and reinsurance contracts through the new process from **1 January 2012**. **XIS will not process Canadian business incepting 01 January 2012 and thereafter which has not been signed by the AIF.**
- 2.6 This process will be supported by a web based system infrastructure that will allow brokers to submit contractual documentation to the Canadian AIF for signing electronically.
- 2.7 Lloyd’s will be piloting the system with selected market participants during November 2011 and will make the system available to the market from **5 December 2011**. **OSFI has explicitly outlined an expectation that all Lloyd’s reinsurance renewals incepting from 1 January 2012 will have been signed in Canada under the AIF Signing Process.**
- 2.8 Lloyd’s is working with the market and other relevant stakeholders to ensure readiness for **1 January 2012** implementation date. It is Lloyd’s intention to publish detailed procedural guidance and training materials to support a smooth transition to the new process in late October or early November subject to satisfactory system testing.

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<sup>1</sup> The statement as required by section 578(5) of the Insurance Companies Act (ICA)

- 2.9 Managing Agents and Brokers should not amend their existing practices in respect of Canadian open market and reinsurance contracts until such time as the AIF Signing Process is operational.
- 2.10 OSFI has agreed that Lloyd's may continue to reflect all Lloyd's Canadian business written prior to the introduction of the AIF signing process and the associated liabilities in the Lloyd's Underwriters P&C2 return and vest assets in the Lloyd's Canadian Trust Funds in order to meet any associated liabilities.
- 2.11 OSFI has agreed that Lloyd's Canadian Cedants whose risks were reinsured prior to the introduction of the new AIF Signing Process may continue to take capital/asset credit for reinsurance purchased from Lloyd's Underwriters given Lloyd's commitment to OSFI to both reflect these risks and their associated liabilities in the Lloyd's Underwriters P&C2 return and vest assets in the Lloyd's Canadian Trust Funds in order to meet any associated liabilities.
- 2.12 There will be a new suite of LMA approved wordings for Canadian business that will be provided to the market. The 'made in Canada' clause in the London wording will need to be replaced with an 'intention to bind in Canada' wording and the 'made in Canada' wording will be incorporated in the contract formed in Canada and signed by the AIF. Global contracts that cover Canadian risks will include the 'intention to bind in Canada' wording in respect of the Canadian element and there will be additional specific wordings to meet the regulatory requirements for global placements. French versions of wordings will be produced for use in Quebec.

### 3 AIF Signing Process

- 3.1 Lloyd's is introducing a new business process for risks incepting **1 January 2012** or thereafter by which an insurance contract written in London in respect of risks located in Canada or a reinsurance contract in respect of a Canadian cedant will be replaced by a contract made in Canada.
- 3.2 This will entail Lloyd's underwriters' AIF and chief agent in Canada on behalf of the members of the syndicates writing such risks, endorsing the contract made in London with the 'made in Canada' statement complying with section 578(5) of the ICA and signing that contract in Canada on behalf of the syndicate members. The AIF will then send the new contract so endorsed and signed to the policyholder or his agent (i.e. his broker).
- 3.3 The Canadian contract as signed by the AIF in Canada will, once communicated by the AIF from Canada to the policyholder or his agent, replace the original contract made in London in accordance with the typical Lloyd's market placement procedures as described in Market Bulletin Y4456 published 21 December 2010. The AIF signed contract will thus be a contract bound on behalf of Lloyd's Underwriters in Canada and will be the governing document. The terms of the new contract as signed by the AIF shall be, apart from the addition of the section 578(5) statement, in exactly the same terms as the prior contract concluded in London.
- 3.4 It is intended that those acting on behalf of the relevant parties in the placement of the risk (the brokers acting for the policyholder/cedant and the managing agent acting for the underwriters) will agree with the process, and in particular, agree that the contract signed in Canada by the AIF will replace the original London made contract.

- 3.5 There will be no gap in coverage arising on the replacement of the original contract made in London with that signed by the AIF in Canada as the terms of the two contracts will be identical. In the event of a claim, this will be dealt with under whichever is for the time being the governing document. Initially this will be the slip scratched in London but once this is followed by the AIF signed slip, the contract will be contained exclusively in this later contract which the parties have agreed, or intended, should replace the earlier contract. Thus, once the subsequent contract is made, it will prevail and any claim will be made under the contract made in Canada and this will be the case regardless of whether the loss occurs, or a claim is notified, prior to the making of this subsequent contract.
- 3.6 The effect of the subsequent Canadian contract signed by the AIF replacing the original London bound contract will be to ensure that the business in question is Canadian regulated business and the Canadian policyholder will be a beneficiary of the Lloyd's trust funds in Canada.

3.7 **Global contracts**

Global contracts with a Canadian element present a particular challenge as the market needs a mechanism to ensure that only the Canadian element of the contract is bound and communicated from Canada to the policyholder or the policyholder's agent and to ensure that element is regulated and funded in Canada. Lloyd's has worked with both direct and reinsurance participants of the Canadian Legislation Market Working Group and internal and external Canadian lawyers to develop a process which achieves this.

Direct and reinsurance versions of a separate model contract for the Canadian element of a global contract are being created which references the terms and conditions of the main global contract. This model Canadian contract will be capable of being submitted into the AIF Signing Process. This creates the necessary contract bound in and communicated from Canada, terms and conditions remain the same as the main global policy with no duplication of cover or limits. As this is funded business the current requirement to raise a separate LPAN and process the premium allocated to the Canadian exposure in US or Canadian dollar remains.

3.8 **Non-Domiciled Coverholder or Service Company Business**

Canadian business written under a delegated authority by a coverholder or service company not domiciled in Canada also needs to be bound in and communicated from Canada. Lloyd's has been working with stakeholders from the Canadian Legislation Market Working Group to effect a solution.

Lloyd's will make the AIF Signing Process available to sign insuring documentation issued by non-domiciled coverholders and service companies. We believe that this is the most appropriate and efficient method of ensuring such risks are regarded as "insure in Canada a risk". However, there may be alternative options that would achieve the result of making such documentation "insure in Canada a risk" such as the managing agent delegating the authority to bind contracts to a local Canadian intermediary. If any broker or managing agent wishes to use an option other than the AIF signing process they should contact Lloyd's International Licences team in order that the appropriate steps can be taken with Xchanging to ensure that liabilities under

these contracts will be Permitted Canadian Trust Outgoings as defined in the LCTD.

### 3.9 **Canadian Domiciled Coverholder or Service Company Business**

The nature of the activity undertaken in Canada for and on behalf of Lloyd's by Canadian domiciled coverholders or service companies is such that business written via underwriting authority delegated to such entities is considered by OSFI to be "insure in Canada a risk".

As a consequence, such business is unaffected by the introduction of the AIF signing process, and no amendments to current business practices are required.

### 3.10 **Mandates**

Mandates have been received from all managing agents in respect of syndicates wishing to write Canadian business. A list of these will be made available on Crystal and will be updated if mandates are withdrawn or created.

## 4 **Using the AIF Process**

### 4.1 A further Bulletin will be published providing detailed guidance on how to use the AIF process and IT infrastructure, however the basic steps will be as follows:

The placing process will remain the same with the exception of the wording changes set out above and discussed in Market Bulletin Y4456. Once placing is complete the placing broker will complete an e-form provided on a web based browser with some basic information and upload the MRC or Slips to the Canadian AIF workflow.

When completing the e-form the broker will be required to check two boxes to confirm that all syndicates writing the risk have a mandate in place and that the documentation includes the appropriate Canadian wordings.

Lloyd's Canada will manage the process to sign and communicate the Canadian contract to either the policyholder or the policyholder's agent and any other relevant parties as directed by the submitting broker.

Where there is a subsequent fully cloused policy this will also need to be processed through AIF procedure as it is necessary that the final contractual document has been signed and issued by the AIF in order to ensure it is considered to be "insure in Canada a risk".

Where there is a global placement the global contract and the model Canadian contract identifying the Canadian element of the risk should be submitted in to the AIF process. The AIF will sign and communicate to the policyholder or his agent the model Canadian contract (but **not** the global contract). The AIF will hold records of both the global contract and the Canadian model contract to meet with OSFI record keeping requirements.

## 5 Next steps

- 5.1 Users of the AIF Signing Process will need to ensure Flashplayer version 9 or a later version is installed and will need to be able to produce documentation in PDF format in order to submit documents for signing.
- 5.2 Lloyd's will continue to develop the AIF Signing Process infrastructure with a view to piloting the system in November, going live in early December 2011 to facilitate the 1 January 2012 renewals.
- 5.3 Lloyd's will be contacting brokers and managing agent's service companies who transact Canadian business in October to request the name of a super-user who will have the administration rights for their company. Super-users can be designated by company or department, will be registered and provided with the necessary training to manage system administration for the company and provide support to other users.

Further market bulletins will be issued shortly to provide detailed procedural guidance and implementation activities.

### Further information

If you require additional information or wish to discuss this matter in more detail, please contact:

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