

MARKET BULLETIN

REF: Y4226

Title	Clarification of Part XIII of the Canadian Insurance Companies Act
Purpose	The clarification of "insurance in Canada of risks" in Part XIII of the act has potential impacts for Lloyd's business in Canada. The bulletin highlights those impacts and invites the market to review its Canadian business models in order to understand the possible effects.
Type	Event
From	Andrew Gurney, Senior Manager, International Licences International Market Access
Date	19 December 2008
Deadline	The clarification is effective from 1 January 2010. There are possible impacts for the 2009 reinsurance renewals process, which are discussed in detail in section 6.
Related links	

1 Purpose

- 1.1 To highlight the possible impacts of the clarification of Part XIII in respect of Canadian insurance and reinsurance business.
- 1.2 Managing Agents should note the content of this bulletin and review their Canadian business models to assess the possible impact of the clarification of Part XIII explained below. We would encourage Managing Agents to contact Lloyd's to discuss this further, either by participation in the market working group (see section 9.5) or individually, in order that Lloyd's can (a) confidently represent to OSFI how Lloyd's writes business in Canada and (b) consult most appropriately on any proposed changes.

2 Executive Summary

- 2.1 A revised interpretation of "insurance in Canada of risks" will be implemented with effect from 1/1/2010. This applies the federal regulatory framework to all risks written in Canada, rather than the current interpretation which applies to all risks located in

Canada. It means that from 1/1/2010 **all business** written in Canada, according to the indicia set out in the advisory issued by the Office of the Superintendent of Financial Institutions (OSFI), and on a company's book at that date, will be subject to federal reporting and funding requirements, regardless of the location of the policyholder or risk or class of business.

- 2.2 This bulletin sets out the potential impact of the clarified definition for writing business, and the likely need for underwriting models and business processes to change.
- 2.3 In addition to reviewing business models, consideration should be given to the need to manage communications with existing cedants to reassure them that they will continue to be able to take credit for reinsurance placed at Lloyd's where they wish to do so.

3 Key issues

- 3.1 Section 573 of the *Insurance Companies Act* (ICA) provides that a foreign entity shall not insure in Canada a risk unless it is authorised by order of the Superintendent to do so and the risk falls within a class of insurance that is specified in the order. Where a foreign entity has been granted an order, every aspect of the insurance business that it carries on in Canada, including the insurance in Canada of risks, is subject to record keeping, vesting of assets and other requirements imposed by Part XIII of the ICA.
- 3.2 Lloyd's is authorised under the ICA to insure risks in Canada, including reinsurance. In addition, it is a federally registered reinsurer. Lloyd's underwriters are licensed to undertake insurance business, including reinsurance, in each province and territory in Canada. Full details of Lloyd's licence position are available on Crystal.
- 3.3 OSFI has issued an advisory providing further guidance as to the revised interpretation of what constitutes "insurance in Canada of risks" under section 573. This revised interpretation is to take effect from 1/1/2010.
- 3.4 The revised interpretation applies the federal regulatory framework to those risks written in Canada, rather than the current interpretation which applies to all risks located in Canada and means that from 1/1/2010 **all business** written in Canada, according to the indicia set out in the advisory and regardless of the location of the policyholder or risk or class of business, will be subject to federal reporting and funding requirements.
- 3.5 The advisory was originally published in September 2007 (http://www.osfi-bsif.gc.ca/app/DocRepository/1/eng/guidelines/regulatory/Adv_insurance_risk_e.pdf). This provided indicia to consider in determining, for the purpose of the ICA, whether a foreign entity is insuring in Canada a risk (paragraph 2) and how OSFI will apply these indicia to a particular business model (paragraph 3). It also sets out certain circumstances where OSFI would generally consider a foreign entity to insure either in or outside Canada a risk (paragraphs 4 and 5).
- 3.6 OSFI has revised this advisory, and the latest version, published on 15/12/2008 is attached to this bulletin as appendix 1.

- 3.7 Lloyd's is working with both Federal and Provincial regulators to understand fully the application of the advisory to Lloyd's.

4 Impact on funding

- 4.1 All risks written in Canada, according to the indicia set out in the advisory and regardless of the class of business or the location of the risk or policyholder, with effect from 1/1/2010, will be subject to federal funding and reporting requirements.
- 4.2 This may result in double funding for risks written in Canada, according to the indicia set out in the advisory, that are also classified as regulated and subject to regulatory funding requirements in other jurisdictions. This may also result in additional tax liabilities.
- 4.3 It should be noted that, where Canadian coverholders write US regulated business, the Canadian funding will be undertaken centrally, but syndicates will be responsible for amending their US packs manually to ensure that the relevant liabilities are also appropriately funded in the US.
- 4.4 OSFI views the re-definition as a clarification and not a change. As a result, as at 1/1/2010, the clarified definition will be applied to all live policies and claims.
- 4.5 OSFI has stated that it will presume all risks reported on the books of a branch as at 1/1/2010 to have been insured in Canada and therefore to be subject to Part XIII requirements.
- 4.6 OSFI has stated that federally regulated entities can review their arrangements in Canada and where assets are held in relation to business which, under the clarified definition, would be deemed to have been written outside of Canada it may be possible for that entity to seek OSFI's approval to move assets from its regulated trust fund.
- 4.7 In addition, Lloyd's is expected to use due diligence in determining whether past business that would, under the clarified definition, be considered to be written in Canada but which was previously exempt from federal reporting and funding requirements (e.g. wet marine business, business written by a Canadian coverholder where the risk/policyholder was situated outside of Canada), should be added to the books and funded and reported accordingly.
- 4.8 Lloyd's is working with both federal and provincial regulators as they continue to refine their views on the interpretation and implementation of the advisory. We will keep the market informed of progress.

5 Impact on Provincial Licences

- 5.1 Provincial regulators are currently assessing the impact of Part XIII from a provincial perspective.
- 5.2 Most provinces currently define a risk by its location or the location of the policyholder. Current indications are that provinces are likely to continue to define risk in this way.

- 5.3 There is a risk that where business is deemed to be outside Canada, according to the indicia set out in the advisory, a province may consider such business to be “unlicensed”.
- 5.4 Many provinces place restrictions on the insurance activities that can be undertaken in a province in connection with unlicensed business, and require additional fees to be paid by the policyholder.
- 5.5 The fees currently vary in quantum and legislative source between provinces. It has been suggested that the provinces may all seek to adopt the fee structure currently applied by Alberta, where 50% of premium is payable by the policyholder.
- 5.6 Furthermore, it has also been suggested that the provinces will look to establish funding requirements to cover any Canadian business not captured and funded by the federal regime.
- 5.7 Lloyd’s is currently in active discussion with federal and provincial regulators on these matters, and is seeking a full and clear understanding of the possible implications for Lloyd’s, the possible steps that Lloyd’s could take to address these, and to determine the best possible outcomes for Lloyd’s.

6 Impact on reinsurance business

- 6.1 OSFI intends to align the definition of “registered reinsurance” with that of “insurance in Canada of risks”. This means that from 1/1/2010 only reinsurance written in Canada, according to the indicia set out in the advisory, will be “registered”.
- 6.2 If Lloyd’s writes reinsurance business that is deemed to be unregistered it is important to note that cedants can take credit providing that the required collateral has been placed in Canada in the prescribed form. It should also be noted that Canadian cedants are currently limited to ceding a maximum of 25% of their total written premium to unregistered reinsurers. Cedants can claim 90% of the reinsurance recoverable where collateral equal to 100% of the gross liability has been placed in Canada (based on cedants taking 100% credit, but being required to place a 10% capital margin in relation to unregistered reinsurance recoveries). Cedants can reduce the 10% margin to 0% of the reinsurance recoverable where further assets are placed in Canada equal to one and a half times the 10% margin.
- 6.3 The standard method for an unregistered reinsurer to provide collateral is an individual cedant Reinsurance Security Arrangement (RSA). These would normally be held cedant by cedant, policy by policy, but may also be required by province and by syndicate in the case of subscription business.
- 6.4 Lloyd’s understands that OSFI will issue a note to Canadian cedants today. This note explains that the amendments to Part XIII do not contain any provision for the grandfathering of reinsurance agreements already in force at 1/1/2010 and that at the same time there will be a change in how OSFI will administer the credit for reinsurance that a cedant can claim.

- 6.5 In the case of Canadian reinsurance business ceded to Lloyd's prior to 1/1/2010 OSFI will presume all risks reported on the books of the Canadian branch of a reinsurer that is a foreign company as at 1/1/2010 to have been insured in Canada. However, in accordance with the implementation instructions OSFI has recently published and which are attached as appendix 2, OSFI will entertain requests made by a foreign company to remove some or all of the liabilities from its branch's books in respect of risks insured outside Canada. This reinsurance would then be deemed to be unregistered, and cedants would only be able to take credit for that cover if collateral was placed in Canada as set out above.
- 6.6 OSFI's note to cedants explains that where a reinsurer that is a foreign company has not made a request to remove some or all of the liabilities from its Canadian branch's books in respect of risks insured outside Canada it believes that it is in the interest of protecting both cedants and their policyholders for cedants to determine whether risks ceded to a foreign company were reinsured outside Canada.
- 6.7 It is possible that cedants will raise questions on this at renewal.
- 6.8 OSFI expects each (re)insurer to use due diligence to identify those risks on its books which are located outside Canada but are "insurance in Canada of risks" according to the new advisory, and which risks already on its books were insured "outside" Canada according to the new advisory. OSFI do not expect (re)insurers to engage in a detailed review of previously issued policies, where the expected benefits are immaterial and the cost of exercising the due diligence is significantly disproportionate. OSFI's expectations appear particularly stringent for those (re)insurers who plan to make an application to remove risks from their books (and remove the related assets from their trust funds).
- 6.9 In relation to its Canadian reinsurance business, the work undertaken by Lloyd's and the market working group that is has established in conjunction with the LMA to review Canadian business processes has led Lloyd's to believe that in most cases there will have been sufficient activity conducted in Canada as to ensure that this business would be considered "insurance in Canada of risks". For these risks written before 1/1/2010, Lloyd's therefore plans to take the most conservative position in order to give its policyholders the greatest level of comfort: Lloyd's intends to treat all reinsurance business written prior to 1/1/2010 (and previously reported as Canadian risks) as "insurance in Canada of risks", and leave these risks on its books at 1/1/2010 and retain the appropriate funding in its Canadian trust funds.
- 6.10 Lloyd's considers that reviewing the information required to identify reinsurance business written prior to 1/1/2010 that was not written in Canada would be disproportionately expensive and that this process would produce no material benefit for cedants. Lloyd's believes that this process is in line with the approach set out as being acceptable to OSFI. We will be working with OSFI to agree the proposed approach.
- 6.11 During 2009, Lloyd's will focus its efforts on determining what assets should be vested in Canada in respect of risks that are not located in Canada but were written according to the clarified definition of "insurance in Canada of risks".

- 6.12 Lloyd's believes that this should provide cedants with sufficient comfort that they can continue to take credit for their risks reinsured with Lloyd's.
- 6.13 Lloyd's will work to ensure that cedants can continue to take credit for reinsurance placed at Lloyd's where they wish to do so.
- 6.14 Lloyd's will continue to work with federal and provincial regulators on these matters, to ensure it has a full and clear understanding of the possible implications for Lloyd's, the possible steps that Lloyd's could take to address these, and to achieve the best possible outcomes for Lloyd's.

7 Impact on contract wordings

- 7.1 All risks written in Canada, according to the indicia set out in the advisory and regardless of the class of business or the location of the risk or policyholder will with effect from 1/1/2010 be required to carry a statement that the contract is "insurance in Canada of risks".
- 7.2 The form of this statement and instructions as to its use are set out in the implementation instructions published this week by OSFI.

8 Impact on Wet Marine business

- 8.1 Business classified by OSFI as "Wet Marine" has previously been exempted from federal reporting and funding requirements. To align the ICA to "insurance in Canada of risks" paragraphs 572(1)(a), (c) and (d) will be removed with effect from 1/1/2010 thus removing the current provision that exempts marine insurance from Part XIII of the Act.
- 8.2 As a result, with effect from 1/1/2010 and where written in Canada according to the indicia set out in the advisory, this business will be subject to federal reporting and funding requirements

9 Next steps

- 9.1 Lloyd's is in continuing discussion with federal and provincial regulators in order to develop a full and clear understanding of the possible implications for Lloyd's and the possible steps to address these.
- 9.2 It is likely that there will need to be changes to both business processes and systems to ensure that Lloyd's continues to enjoy access to the Canadian market and can continue to ensure the accurate reporting and funding of Canadian business at both the federal and provincial levels.
- 9.3 The potential adverse commercial impact likely to result from business being deemed "unlicensed" or "unregistered", and the complex changes that would be required for Xchanging systems to process accurately both business in and outside of Canada at a federal level, and also enable accurate reporting and potentially funding at both federal and provincial levels have led Lloyd's to conclude that it should seek to

transact all Canadian business in such a way as to be deemed “insurance in Canada of Risks”.

- 9.4 This has the advantages of simplicity, the retention of licensed insurer and registered reinsurer status and clarity for all stakeholders regarding the licence and funding position of all Lloyd's business. However, it will likely result in little or no movement of assets out of the regulated trust fund.
- 9.5 Lloyd's will continue to work with the market through the LMA and the market working group that is has established in conjunction with the LMA and with both OSFI and the provincial regulators on the matter of Part XIII. Our goal is to ensure minimal impact on the Lloyd's platform and its ability to trade in Canada. The purpose of the market working group is to discuss the issues set out in this bulletin, to provide feedback and direction, and to help ensure that Lloyd's takes the most appropriate action in the best interests of the market.
- 9.6 If you would like to know more about this group or if you have queries relating to the content of this bulletin, please contact Andrew Gurney on andrew.gurney@loyds.com.

Further Information

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

Lloyd's International Trading Advice

Lloyd's Desk, Ground Floor, Underwriting Room

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www.loyds.com/crystal



Advisory

Category: Regulatory & Legislative **NOTICE***

Subject: Insurance in Canada of Risks

No: 2007 – 01 – R1 **Issued: September 2007**
Revised: [December 15, 2008]

Introduction: Section 573 of the *Insurance Companies Act* (ICA) provides that a foreign entity shall not insure in Canada a risk unless it is authorized by order of the Superintendent to do so and the risk falls within a class of insurance that is specified in the order. Where a foreign entity has been granted such an order, every aspect of the insurance business that it carries on in Canada, including the insurance in Canada of risks, is subject to record keeping, vesting of assets and other requirements imposed by Part XIII of the ICA.

This Advisory provides guidance on indicia to consider in determining, for the purpose of the ICA, whether a foreign entity is insuring in Canada a risk (paragraph 2) and how OSFI will apply these indicia to a particular business model (paragraph 3). It sets out certain circumstances where OSFI would consider a foreign entity to insure either in or outside Canada a risk (paragraphs 4 and 5). It also provides guidance regarding other ICA and provincial and territorial insurance legislation matters (paragraphs 6 to 9).

Legislative Reference: Part XIII of the *Insurance Companies Act*.

Definitions: In this Advisory,

“agent” means, in respect of a foreign insurer, a person with the authority to act on behalf of the foreign insurer in relation to a policy where the foreign insurer bears the risks and receives the rewards related to the person’s actions, and excludes a person who merely has the authority to solicit and transmit an application for a policy in the course of the person’s own business;

“foreign insurer” means an entity incorporated or formed by or under the laws of a country other than Canada that insures risks, including an association and an exchange (as those terms are defined in section 571 of the ICA), and includes an employee, an officer, a director and an agent of the entity; and

“insurance”, “insure” and “insuring” include reinsurance, reinsure and reinsuring, respectively, unless the context requires otherwise;

“policy” means one or more documents evidencing a foreign insurer’s insurance coverage obligations, including a certificate of coverage under a group contract of insurance and, in the



case of a foreign fraternal benefit society (as that term is defined in section 571 of the ICA), a certificate of membership or a contract relating in any way to insurance.

Interpretation:

1. The ICA does not provide guidance on what constitutes “insuring in Canada a risk”. A review of case law indicates that courts have not interpreted this concept, but have interpreted the analogous concept of “carrying on business in Canada”. Based on these interpretations, while each business model must be assessed on the basis of its own components, the location where operations are carried out is of significant importance in determining the location where business is carried on.
2. To determine where a foreign insurer insures a risk, consideration should be given to the location:
 - (a) where the foreign insurer or a person retained by the foreign insurer promotes¹ the foreign insurer or its insurance products (i.e., the location where the medium of communication used to carry out the promotion is circulated, transmitted, broadcasted or otherwise accessible);
 - (b) where the foreign insurer receives an application for insurance coverage;
 - (c) from which the foreign insurer negotiates the terms and conditions of a policy;
 - (d) where the foreign insurer decides to provide or renew insurance coverage;
 - (e) from which the foreign insurer communicates the acceptance of an application for insurance coverage, or an offer to provide or renew insurance coverage;
 - (f) where the foreign insurer receives an acceptance of its offer to provide or renew insurance coverage;
 - (g) from which the foreign insurer issues (e.g., mails, faxes or hands-over) the policy;
 - (h) where the foreign insurer receives the premium payments; and
 - (i) from which the foreign insurer interacts with the policyholder in the performance of activities related to the policy (e.g., provide information about the policy, receive claims, settle and pay claims).
3. While each business model must be assessed on the basis of its own components, OSFI is of the view that:
 - (a) the indicia in paragraph 2 are not necessarily exhaustive;

¹ In *Ruling 2004-07 – Foreign Bank Representative Offices – Asset management services*, OSFI acknowledged that promotion “encompasses activities in furtherance of the sale of a product or service”.

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- (b) where an activity occurs partly in Canada and partly outside Canada, the location where most of the material aspects of that activity occur should be regarded as the location where it occurs;
- (c) where the promotional material contains the key terms and conditions of the insurance coverage (e.g., promotion of a standard form policy), the promotion material is the foreign insurer's offer to provide insurance coverage;
- (d) where, in the course of the negotiations of the terms and conditions of a policy, the foreign insurer and the policyholder reach an agreement, actual or in principle, on most or all of the material terms and conditions, the location from which the foreign insurer conducted the negotiations should be regarded as the location of the activities referred to in subparagraphs 2(c) and (e), or (c) and (f); and
- (e) where a person has been retained to
- (i) communicate the foreign insurer's acceptance of an application for insurance coverage,
 - (ii) communicate the foreign insurer's offer to provide or renew insurance coverage, or
 - (iii) issue the policy, and
- the foreign insurer has the ability to recall the message or the policy prior to the person communicating the message or issuing the policy, the person is considered to be an agent of the foreign insurer in respect of those activities.
4. OSFI considers that a foreign insurer insures in Canada a risk where its business model relating to a policy encompasses:
- Scenario 1: Two or more of the activities referred to in any of subparagraphs 2(b) to (h) occurring in Canada.
- Scenario 2: Any one of the activities referred to in any of subparagraphs 2(b) to (h) and the activities referred to in subparagraphs 2(a) and (i) occurring in Canada.
5. OSFI considers that a foreign insurer is insuring outside Canada a risk where its business model relating to a policy encompasses no more than one of the activities referred to in paragraph 2 occurring in Canada.

Other Guidance:

6. A foreign insurer that is authorized under the ICA to insure in Canada a risk may insure in and outside Canada risks. For example, a Canadian policyholder's risks could be insured in Canada by a foreign insurer while another Canadian policyholder's risks could be insured outside Canada by the same insurer. However, as stated previously, only risks insured in Canada are subject to ICA requirements. In that regard, subsection 578(5) of the ICA will assist policyholders in determining whether they benefit from the protection afforded by the ICA when dealing with foreign insurers. This provision will require a foreign insurer to set out, or cause to be set out, in all premium notices, applications for policies and policies related to its insurance in Canada of risks a statement that the document was issued or made in the course of its insurance business in Canada.

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7. Where a foreign insurer is not insuring in Canada a risk, the ICA does not restrict the foreign insurer from carrying on any activity or business in Canada. For example, it could carry on any insurance business in Canada that does not involve the insurance of a risk by it, such as providing underwriting, policy administration or product development services to other insurers.
 8. A foreign insurer that insures outside Canada a risk may nonetheless be required to obtain a license under one or more of the insurance statutes of the provinces and territories in Canada in respect of that risk. For example, some of these statutes require a foreign insurer to obtain a license merely to promote its products in, insure a person domiciled or resident in, or provide insurance coverage on a property located in the province or territory. Accordingly, OSFI recommends that a foreign insurer consult these statutes and the agencies that administer them.
 9. For more information on how OSFI applies the guidance set out in this Advisory to specific circumstances, please refer to [Rulings](#) relating to insurance in Canada of risks posted on OSFI's website.

* Advisories describe how OSFI administers and interprets provisions of existing legislation, regulations or guidelines, or provide OSFI's position regarding certain policy issues. Advisories are not law; readers should refer to the relevant provisions of the legislation, regulation or guideline, including any amendments that came into effect subsequent to the Advisory's publication, when considering the relevancy of the Advisory.



Implementation Instructions

Subject: Amendments to Part XIII of the *Insurance Companies Act*

Date: December 2008

These instructions are designed to assist in the implementation of the amendments to Part XIII of the *Insurance Companies Act* (ICA) contained in *An Act to amend the law governing financial institutions and to provide for related and consequential amendments*, S.C. 2007, c. 6. The most recent version of the following documents should be consulted along with these instructions:

- OSFI's letters to the industry regarding Part XIII of the ICA, signed by Robert Hanna and dated [August 15, 2007](#) and [February 13, 2008](#); and
- OSFI's Advisory No. 2007-01 entitled *Insurance in Canada of Risks*, hereinafter referred to as the "Advisory".

Insurance in the course of a foreign company's business in Canada

Following the coming into force of the amendments to Part XIII, pursuant to new subsection 578(5) of the ICA, a foreign company will, in respect of risks it **insures** in Canada, be required to set out in legible characters in all premium notices, applications for policies and policies a statement that the document was issued or made in the course of its insurance business in Canada. Attached (Appendix A) is sample wording that, in OSFI's view, would meet the requirements of the ICA¹.

A federally regulated insurance company or society, including a foreign company in respect of its insurance business in Canada, (FRI) that **reinsures** its risks with a foreign company may be eligible for a capital/asset credit only where the foreign company reinsures in Canada those risks or provides collateral as required in the capital/asset adequacy guidelines. In order to help FRIs determine whether they were reinsured in Canada, new subsection 578(5) of the ICA will require a foreign company, in respect of risks it reinsures in Canada, to set out in all premium notices, applications for policies and policies (which may include cover notes) a statement that the document was issued or made in the course of its insurance business in Canada (see Appendix A)².

¹⁻² OSFI is of the view that the requirements of new subsection 578(5) of the ICA would be met where a foreign company includes, in a letter or cover note attached to the premium notice, application for a policy or policy, a statement that the document was issued or made in the course of its insurance business in Canada, provided the subject matter of the letter or cover note deals exclusively with this issue and that it clearly states it is considered as forming part of the document.



In cases where the cover note/offer letter/quotation can neither be considered an application for a policy nor a policy, FRIs will only be permitted a capital/asset credit where the reinsurer includes, in the cover note/offer letter/quotation, a statement that the reinsurer intends to issue the policy under negotiation in the course of its insurance business in Canada, and that it will take measures to ensure that the cedant's risks will be reinsured in Canada in accordance with the Advisory. Appendix B provides sample wording that would meet this requirement. Other statements required by new subsection 578(5) of the ICA must also appear as and when required under that subsection.

As a matter of best practice, a foreign company is encouraged to take these steps prior to the coming into force of the new subsection 578(5) of the ICA, as such statements will provide more certainty for policyholders.

Liabilities in respect of risks on the books at January 1, 2010

As stated in OSFI's [August 15](#) and [February 13](#) letters referred to above, OSFI will presume all liabilities in respect of risks reported on the books of a Canadian branch of a foreign company as at January 1, 2010 to have been insured or reinsured in Canada.

However, OSFI will entertain requests made by a foreign company to remove some or all of the liabilities in respect of risks reported on the books of its Canadian branch (a "Request") where the foreign company satisfies OSFI that those risks were not insured or reinsured in Canada.

Procedures for Request

Following the coming into force of the amendments to Part XIII, and after the filing of the foreign company's audited OSFI Annual Return for 2009, OSFI will entertain a Request where the foreign company completes steps 1) to 7) below.

1. The foreign company supplies its relationship manager (RM) with an affidavit signed by a Senior Officer³ of the foreign company who is directly or indirectly responsible for its Canadian operations, attesting that to the best of his or her knowledge and belief:
 - a) all liabilities in respect of risks on the books of the foreign company's Canadian branch, as reported on the foreign company's audited OSFI Annual Return for 2009, have been kept on its books as of January 1, 2010, and, where applicable, have been reported on its most recent 2010 Interim Return filed with OSFI;
 - b) the foreign company completed the process whereby it exercised due diligence⁴ to identify all liabilities in respect of risks located outside Canada that were insured or reinsured in Canada prior to January 1, 2010, has recorded the liabilities in respect of those risks in its Canadian branch's books and, where applicable, has reported those liabilities on its most recent 2010 Interim Return filed with OSFI.

³ For the purposes of these implementation instructions, a Senior Officer is:

- a) the chief executive officer, chief financial officer, secretary, treasurer or controller; or
- b) any other officer reporting directly to the foreign company's board of directors or chief executive officer.

⁴ Measure of prudence, responsibility and diligence that is expected from, and ordinarily exercised by, a reasonable and prudent company under the circumstances.

OSFI expects foreign companies will have internal controls in place to ensure due diligence is exercised. However, OSFI would not expect the foreign company to engage in a detailed review where the benefits are immaterial and the cost of exercising the due diligence are significantly disproportionate to the benefits;⁵

- c) all other liabilities in respect of risks insured or reinsured in Canada since January 1, 2010, in accordance with the Advisory, regardless of the location of those risks, have been recorded on the books of the foreign company's Canadian branch since January 1, 2010, and where applicable, such liabilities have been reported on the branch's most recent 2010 Interim Return filed with OSFI;
 - d) the foreign company applied the Advisory to its situation as described in an attached Appendix I (see step 2 below); and
 - e) the foreign company has identified all or a portion of the liabilities in respect of the risks mentioned in a) above as having been insured or reinsured outside Canada in accordance with the Advisory, and has accurately reported the liabilities mentioned in a), b) and c) above, as well as the vested assets maintained in respect of those risks, on a statement included as Appendix II (see step 3 below).
2. The foreign company supplies its RM with a detailed description of the process it followed (to be included as Appendix I to the affidavit) to determine:
- a) the liabilities in respect of risks located outside Canada that are added to the books of its Canadian branch on the basis that they were insured or reinsured in Canada, in accordance with the Advisory, prior to January 1, 2010;
 - b) the liabilities in respect of risks on the books of its Canadian branch at January 1, 2010 that could be removed on the basis that they were insured or reinsured outside Canada, in accordance with the Advisory; and
 - c) that all other liabilities in respect of risks insured or reinsured in Canada since January 1, 2010, in accordance with the Advisory, have been reported on the books of its Canadian branch.
3. The foreign company supplies its RM with a statement (to be included as Appendix II to the affidavit):
- a) showing the following six amounts:
 - i) all liabilities in respect of risks located outside Canada that were added to the branch's books in accordance with the Advisory;
 - ii) the amount of vested assets the branch holds for those liabilities;
 - iii) all liabilities in respect of risks located in Canada that were insured or reinsured by the foreign company outside Canada prior to January 1, 2010;
 - iv) the amount of vested assets the branch holds for those liabilities;

⁵ Foreign companies must assess the benefits from the point of view of the policyholders who have a right, under the *Winding-up and Restructuring Act*, to make a claim on the assets that have been vested in Canada in respect of those liabilities.

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- v) all liabilities in respect of risks located in Canada that were insured or reinsured in Canada by the foreign company at the time the Request is made;
 - vi) the amount of vested assets the branch holds for those liabilities.
- b) confirming, with supporting evidence, that the Canadian branch of the foreign company will meet OSFI's Branch Adequacy of Assets Test or Test of Adequacy of Assets in Canada and Margin Requirements, as applicable, if OSFI approves the Request.
4. In respect of reinsurance, the foreign company obtains authorization from its RM to proceed to steps 5 and 6.
5. Where the Request is attributed in whole or in part to risks reinsured outside Canada, the foreign company sends written notification to ceding FRIs that:
- a) it considers the liabilities in respect of those risks to have been reinsured *outside* Canada (and provides the ceding FRI with an explanation of why it arrived at this conclusion);
 - b) it intends to request OSFI's approval to remove the liabilities in respect of those risks from its Canadian books and repatriate assets maintained in Canada in respect of those liabilities;
 - c) if OSFI approves the FRI's Request, OSFI will thereafter consider the foreign company to be an "unregistered reinsurer" with respect to the reinsurance of the ceding FRI⁶ and where the cedant is a provincially or territorially regulated insurance company or society, its primary provincial or territorial insurance regulator may also consider the reinsurer as such with respect to those risks; and
 - d) it requests the ceding FRI to raise with the foreign company, within 30 days of receiving the notification, any objection in respect of (a) above and to copy the RM.
6. Where the Request is attributed in whole or in part to risks reinsured outside Canada, the foreign company sends confirmation to its RM that:
- a) step 5 above has been completed; and
 - b) either:
 - i) no objections were received from any ceding FRI during the 30-day objection period or a reasonable time period thereafter; or
 - ii) any objection received was satisfactorily addressed, including a description of how it was addressed and a copy sent to the ceding FRI.

⁶ A ceding FRI may nonetheless be permitted a capital/asset adequacy credit for the reinsurance as provided under the capital/asset adequacy guidelines (e.g., where a collateral arrangement is in place).

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7. The RM notifies the foreign company and its auditors, in writing, and where steps 5 and 6 are applicable and have been completed, sends a copy of such notice to the ceding FRI, that OSFI approves the Request

Provincial/territorial requirements

FRI is reminded that provincial/territorial and OSFI requirements may differ. As such, FRI is expected to communicate with provincial/territorial authorities in that respect.

Att.

Appendix A

Wording for Statement - Subsection 578(5) of the ICA

English

For purposes of the *Insurance Companies Act* (Canada), this document was issued in the course of **Company X's** insurance business in Canada.

Français

Aux fins de la *Loi sur les sociétés d'assurances* (Canada), ce document a été établi dans le cadre des opérations d'assurance au Canada de la **Société X**.

Wording for Statement
Where Execution of Reinsurance Agreement
Not Completed at Effective Date

English

For purposes of the *Insurance Companies Act* (Canada), **Company X** will take measures to ensure that the cedant's liabilities in respect of risks will be reinsured in Canada in accordance with the criteria set out in OSFI's Advisory (2007-01) entitled "Insurance in Canada of Risks" and that as a result, the related policy be issued in the course of **Company X**'s insurance business in Canada.

Français

Aux fins de la *Loi sur les sociétés d'assurances* (Canada), dans le cadre des opérations d'assurance au Canada de la **Société X** - nous agirons de façon à ce que les risques de la société cédante soient réassurés au Canada suivant les critères énoncés dans le Préavis du BSIF (2007-01) intitulé « Garantie au Canada de risques » et qu'en conséquence la police d'assurance soit établie dans le cadre des opérations d'assurance au Canada de **la Société X**.