

Date	May 9, 2023
Recipient	All Lloyd's stakeholders conducting business in Québec (via Binding Authority, the Open Market or Reinsurance)
Subject	Instructions to Lloyd's Market for compliance with Bill 96, " <i>An Act respecting French, the official and common language of Québec</i> "
Attachments	Appendix A: Sample Letter of instruction Appendix B: Decision process Appendix C: Sample Broker attestation

Purpose:	Provide instructions to stakeholders for compliance with Bill 96: <i>An Act respecting French and the Enhance use of the French Language</i>
Affects:	All Lloyd's stakeholders conducting business in Québec (via Binding Authority, the Open Market or Reinsurance)
Line of Business:	All
Jurisdiction :	Province of Québec
Effective:	June 1, 2023

Background and Scope of this Guidance

In May of 2022 Québec's National Assembly passed Bill 96 "An Act respecting French, the official and common language of Québec", to promote the use of the French language in the Province of Québec.

Effective June 1, 2023, standard-form contracts (contracts of adhesion), must be presented in French first, before the recipient can elect to be bound by a version drawn up in a language other than French, (the "French First Rule").

Contracts of Adhesion are contracts whose main clauses have been stipulated by one party and could not be negotiated. Where material terms and conditions of an insurance contract are negotiated, such contracts will not be considered contracts of adhesion, and are not subject to the requirements of Bill 96 and the French First Rule.

Where Bill 96 is applicable, there are specific exceptions that allow for insurance contracts, and related documents, to be drawn up in a language other than French.

The following guide is intended to assist managing agents and Lloyd's brokers in navigating Bill 96, the French First Rule, where certain exceptions may apply, and how best to document the applicable exceptions in the underwriting file.

This guidance focuses on the requirements related to the issuance of insurance contracts and the French First Rule. Bill 96, and French Language requirements may also apply to other aspects of your business and marketing initiatives if you are operating, or soliciting customers, in Québec. In those cases, it is recommended that you review all aspects of Bill 96.

The guidance provided from Lloyd's will continue to evolve as practice and industry standards are defined and further guidance is issued by the Québec government.

Relevant Sections of Bill 96

Section 55 states: Contracts pre-determined by one party, contracts containing printed standard clauses, and the related documents, must be drawn up in French. They may be drawn up in another language as well at the express wish of the parties.

Section 21 states: Contracts entered into by the Québec based party, including the related sub-contracts, shall be drawn up in French. Such contracts and the related documents may be drawn up in another language when the [Québec based party] enters into a contract with a party outside Québec.

Section 21.5 states: Despite section 21, a contract may be drawn up only in a language other than French where the Québec based party enters into a contract outside Québec.

In addition, the following contracts may be drawn up only in a language other than French if in the case of:

(2) an insurance policy, if it has no French equivalent in Québec; AND

- a) it comes from outside Québec; OR
- b) its use is not widespread in Québec

Request to transact in English only

To validly provide English only documentation, and avoid the application of the French First Rule, the underwriter must be in possession of a written request from the policyholder that they are aware of their rights under Bill 96 and are affirmatively requesting to transact in English only.

A template of a standard instruction to transact in English only can be found in Appendix A to this Guidance.

Application of the French First Rule to open market and reinsurance transactions

(Re)insurance contracts obtained in the open market, by definition, originate from outside of Québec.

The Lloyd's open market is globally known as the market where parties obtain coverage not readily available in their home jurisdiction (i.e. Québec). As such, in many cases insurance policies obtained in the open market have no equivalent in Québec and their use is not widespread in Québec.

In those cases where the contract of insurance obtained in the open market constitutes a contract of adhesion and the coverage in question is readily available in Québec, to avoid the French First Rule, the contract of insurance would have to qualify under the section 21.5(2) exceptions.

As reinsurance contracts obtained in the open market are typically highly negotiated, they would not likely be considered a contract of adhesion.

Therefore, when parties request insurance coverage from the Lloyd's open market, in a language other than French, Lloyd's has recommended to the OQLF that it is permissible to do so pursuant to Bill 96, without first delivering a French version of documentation because:

1. open market/reinsurance contracts are not contracts of adhesion (s. 55); and/or
2. open market/reinsurance contracts are entered into with a legal person located outside Québec (s. 21); and/or
3. open market/reinsurance contracts qualify pursuant to the exceptions listed in Section 21.5(2) of Bill 96 and French language Charter.

Application of the French First Rule to Delegated Authority Transactions

It is Lloyd's expectation that Coverholders, who are located and/or operating in Québec, should comply with all relevant aspects of Bill 96 and transact in French with customers who prefer to transact in French.

There may be instances where the coverage that Coverholders provide to Québec policyholders has no French equivalent in Québec, and the use is not widespread in Québec. Examples may include:

- Challenging industry sectors: mining; forestry; pulp and paper mills; etc.
- Specialty COB's: aviation; political risk; terrorism; Specie (art collection, jewelry); firearms

Therefore, when policyholders request coverage from a Lloyd's Coverholder in a language other than French, without first delivering a French version of documentation, it is permissible to do so only when the coverage in question qualifies under the exceptions in Section 21.5 (2) of Bill 96.

For policies that do not qualify pursuant to Section 21.5(2), Coverholders must first provide French language versions of all documentation regardless of customer/broker requests for English documentation.

For further guidance regarding how the relevant sections of Bill 96 apply to any given contract of insurance, see Appendix B for Decision Making Process to Provide English Only Documentation.

How can Lloyd's parties demonstrate compliance?

Additional Considerations:

1. Consider if the coverage in question is included on the [Annual Export List](#) which sets out a list of coverages not readily available or available in limited capacity from Canadian registered (re)insurers. When a contract of insurance pertains to a coverage on the Export List that may constitute sufficient evidence that the coverage is not "widespread" in Québec. It is recommended to keep an updated copy of the Export List available for reference.
2. A contract is not a contract of adhesion if substantive terms of contract are negotiated. The use of LMA/LWR wordings should not result in a negotiated contract being re-characterized as a contract of adhesion.

Maintaining documentation:

1. Underwriters must collect and maintain a “Letter of Instruction” from the policyholder evidencing the desire to transact in English only. (ALWAYS obtain and keep in underwriting file) ***See Appendix A for sample Letter of instruction.***
2. The AIF signing page, which should appear on all open market and reinsurance contracts will act as de facto evidence that the contract originated in the Lloyd’s open market and from outside of Québec.
3. To evidence that the coverage obtained in a contract of insurance meets the requirements that it “has no equivalent in French in Québec” and “not widely available in Québec”, an attestation from the Québec based broker should be obtained and kept in the underwriting file. ***See Appendix C for sample Broker Attestation.***

Existing Contracts and Contract Renewals

Bill 96 contains no retroactive provisions. Therefore, English language insurance contracts in force as of June 1, 2023, need not be translated into French.

Bill 96 does not expressly address if the new provisions apply to a renewal of an insurance contract that incepted pre June 1, 2023 and renews thereafter.

However, it is highly likely that any changes to material terms and conditions would constitute a “new” contract in eyes of the OQLF and would therefore be subject to a full French First Rule analysis, before the contract could be renewed in English exclusively.

Any renewal of a contract of insurance in English only post June 1, 2023, should only occur subsequent to obtaining written instructions from the policyholder, confirming the desire to transact in English only (see Appendix A for a sample Letter of Instruction).

Consequences of a Violation

In the event that a Québec court of law finds a policyholder was inappropriately denied a French version of the contract of insurance (or related documents) pursuant to the requirements of Bill 96, and as a result suffered prejudice due to one more clauses in the contract that were not properly understood, the court has the right to void all such clauses in the contract of insurance.

Bill 96 also increases the potential fines for a violation of Bill 96 and the French language Charter:

- Companies are liable to fines of \$3,000 to \$30,000.
- Bill 96 also provides that, when an offence continues for longer than one day, it will constitute a separate offence for each day it continues.

Fines are doubled for a second offence and tripled for subsequent repeat offences. Separate offences by different managing agents/coverholders are all deemed part of Lloyd's Underwriters in Canada and will result in the doubling and tripling of fines.

For further information, please communicate with lloydscanda@lloyds.com.

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Appendix A
Sample Letter of instruction
(English and French versions)

CLIENT'S CONSENT
In accordance with Section 55 of the
Charter of the French Language (C-11), as amended by Bill 96

I, the undersigned, _____, acting in my capacity with _____
[the "**Insured**"], affirm the following:

1. I have retained the services of _____ [the "**Broker**"] in order to purchase insurance products suitable for the needs of the Insured;
2. I acknowledge that the Broker has informed me that the product(s) that suit(s) the insurance needs of the Insured do(es) not have an equivalent in French in Québec and either comes from outside of Québec, or is not widely available in Québec; or the product(s) that suit(s) the insurance needs of the Insured does(do) not constitute a contract(s) of adhesion pursuant to Section 55 of the *Charter of the French Language (C-11)*;
3. I hereby expressly agree to be bound by the English version of the insurance product(s) offered by the Broker;
4. I also acknowledge that I have received all necessary explanations from the Broker and that I am not prejudiced by the fact that no French version of the insurance contract(s) is available.

Signed on _____ in _____.

[Name of Insured or Representative]

[Name of Insured Entity]

CONSENTEMENT DU CLIENT
Conformément à l'Article 55 de la
Charte de la langue française (C-11), tel que modifié par le projet de loi 96

Je, soussigné(e), _____, agissant en ma qualité de _____
[« **L'Assuré** »], affirme ce qui suit :

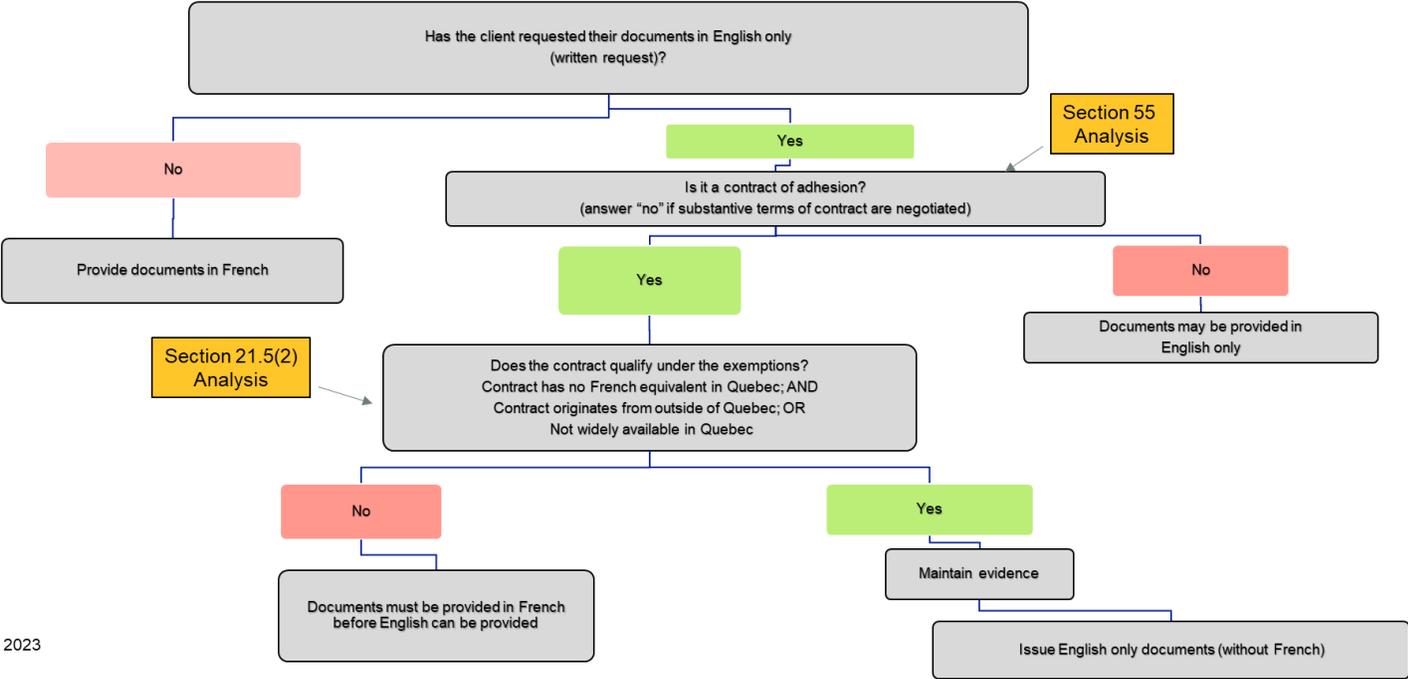
5. J'ai retenu les services de _____ [le « **Courtier** »] afin de souscrire des produits d'assurance adaptés aux besoins de l'assuré ;
6. Je reconnais que le Courtier m'a informé que le(s) produit(s) qui répond(ent) aux besoins d'assurance de l'Assuré n'a (n'ont) pas d'équivalent en français au Québec et soit provient(nt) de l'extérieur du Québec, ou est (sont) peu disponible(s) au Québec ; ou que le(s) produit(s) qui répond(ent) aux besoins d'assurance de l'Assuré ne constitue(nt) pas un contrat d'adhésion en vertu de l'Article 55 de la *Charte de la langue française (C-11)* ;
7. Je déclare expressément accepter de conclure le contrat d'assurance par la version anglaise du (des) produit(s) d'assurance proposé(s) par le Courtier ;
8. Je reconnais également avoir reçu toutes les explications nécessaires de la part du Courtier et ne pas être lésé(e) par le fait qu'il n'existe pas de version française du (des) contrat(s) d'assurance.

Signé le _____ à _____.

[Nom de l'Assuré ou du Représentant]

[Nom de la société assurée]

Appendix B Decision Process When can an underwriter offer English only documentation?



Appendix C
Sample Broker Attestation
(English and French versions)

BROKER'S ATTESTATION

In accordance with Sections 55 and 21.5 of the
Charter of the French Language (C-11), as amended by Bill 96

I, the undersigned, _____, a duly certified representative in the Province of Québec, acting in my capacity with _____ [Licenced Brokerage Firm], do solemnly affirm the following:

1. As part of my insurance needs assessment for _____ [the "**Client**"], I have conducted research to identify the appropriate product(s) for the Client's insurance needs.
2. After conducting a commercially reasonable investigation of the Québec property and casualty insurance marketplace, my investigation has led me to reasonably conclude the following:

The insurance product suitable for the Client's needs has no equivalent in French in Québec; and

- a) The insurance product suitable for the Client's needs comes from outside Québec; or
- b) The insurance product suitable for the Client's needs is not widely available in Québec.

Signed on _____ in _____.

[Name of Broker]

[Coverholder – Licenced Coverage Firm]

ATTESTATION DU COURTIER
Conformément aux Articles 55 et 21.5 de la
Charte de la langue française (C-11), tel que modifiés par le projet de loi 96

Je soussigné(e), _____, représentant(e) dûment certifié(e) dans la province de Québec, agissant en ma qualité de _____ [Société de Courtage Agréée], affirme solennellement ce qui suit :

3. Dans le cadre de mon évaluation des besoins en assurance pour _____ [le « **Client** »], j'ai effectué des recherches afin d'identifier le(s) produit(s) approprié(s) pour répondre aux besoins du client en matière d'assurance.
4. Après avoir mené une enquête commercialement raisonnable sur le marché de l'assurance de dommages au Québec, mon enquête m'a amené à conclure de manière raisonnable ce qui suit :

Le produit d'assurance adapté aux besoins du client n'a pas d'équivalent en français au Québec ; et

- a) Le produit d'assurance adapté aux besoins du client provient de l'extérieur du Québec ; ou
- b) Le produit d'assurance adapté aux besoins du client est peu disponible au Québec.

Signé le _____ à _____.

[Nom du Courtier]

[Courtier Mandataire – Cabinet d'assurance agréé]
