

BULLETIN NUMBER:	INS-10-001
TITLE:	INSURING RISKS IN BRITISH COLUMBIA – AMENDMENTS TO THE <i>FINANCIAL INSTITUTIONS ACT</i>
LEGISLATION:	<i>FINANCIAL INSTITUTIONS ACT</i>
DATE:	FEBRUARY 2010
DISTRIBUTION:	ALL AUTHORIZED INSURANCE COMPANIES (EXCEPT REINSURERS)

The purpose of this bulletin is to advise insurance companies of recent legislative changes that this province has made to its regulatory framework governing the regulation of insurance business in British Columbia. This bulletin does not apply to insurers whose business is limited to reinsurance.

Recently the federal government has commenced implementing changes to the manner in which it regulates foreign insurers that are insuring risks located in Canada. These changes, made under Part XIII of the federal *Insurance Companies Act* (“ICA”), could allow foreign insurers to insure risks in this province without that business being regulated in Canada. This province believes that this creates an increased risk to the public of this province and has taken steps to address that risk.

This information bulletin will outline the steps taken and their impact upon insurers with a focus primarily upon foreign insurers which are the ones most affected. Separate information bulletins deal with the impact of the change on reinsurers and on insurance intermediaries.

ACTIONS TAKEN

The legislative changes require foreign insurers who are insuring risks in British Columbia to either have a business authorization issued by the Financial Institutions Commission (“FICOM”) or ensure the placement of their insurance is made through licensed insurance brokers. In addition the amendments impose a condition on existing foreign insurers’ business authorizations that they must ensure their British Columbia insurance policies are considered “Made in Canada” under the federal ICA.

An exemption was provided for reinsurance companies on their reinsurance business with insurers that are authorized in the province or to which a specific exemption applies.

Impact upon Federally Regulated Foreign Insurers with a Business Authorization

For federally regulated foreign insurers that currently hold an existing business authorization under the FIA, (other than those limited to the business of reinsurance), the new rules have the following impacts:

- The insurer must continue to treat as Canadian business all existing risks that it has been treating as British Columbia risks under the old Part XIII and FIA rules. It is not permitted to transfer those risks outside Canada even if it would otherwise be permitted to do so by the Office of the Superintendent of Financial Institutions Canada (“OSFI”);
- Any new business that the insurer undertakes either within the province or that is located in the province must be written in a manner that will qualify it as “In Canada” business under the new federal regime. It cannot be written in such a manner as to make it eligible to be considered to be “Not in Canada” business under the new Part XIII rules. Statements must be included in all documents (i.e., premium notices, applications for policies and policies) related to their British Columbia risks that the document was issued or made in the course of their insurance business in Canada;
- The insurer must continue to vest and maintain in trust in Canada, sufficient assets to support its British Columbia risks regardless of where the underwriting occurs or the policy is issued; and
- Insurers wishing to revoke their business authorization for this province in order to withdraw from Canada will be asked to demonstrate how the existing policyholders will be protected after the revocation. There is an expectation that upon the revocation, the insurer will either make arrangements to transfer the business to another Canadian regulated entity that will continue to treat the business as “In Canada” business, or will otherwise maintain sufficient assets vested in trust in Canada until such time that its policy obligations are completed.

Impact upon Federally Regulated Foreign Insurers without a Business Authorization

For federally regulated foreign insurers, (other than those limited to the business of reinsurance), that do not currently hold a business authorization under the FIA, the new rules have the following impacts:

- If the insurer was not currently authorized in this province because it was not conducting insurance activity in the province but was otherwise insuring risks or perils located in the province, the insurer must now obtain a business authorization under the FIA in order to write any new risks in the province, including renewal of existing risks; and

- Once authorized, the conditions noted above would likely apply to both the existing risks and to the new risks.

Non-federally Regulated Foreign Insurers

For foreign insurers, (other than those limited to the business of reinsurance), that are not currently regulated in Canada the new FIA rules have the following impacts:

- The insurer must not write or accept any insurance business, involving a British Columbia risk or peril, until such time it becomes authorized in this province, or
- The insurer may accept insurance business through an appropriately licensed insurance agent in accordance to the rules and guidelines established under section 76(1) of the FIA.

However, it is FICOM's interpretation that these new rules do not apply in the following two situations:

- Group life insurance policies and group employee benefit plans that provide coverage to group insured's provided that:
 - The policy is solicited, negotiated, written and issued outside the province with all of the related insurance activity also occurring outside of British Columbia;
 - The group policyholder is not a resident of, or ordinarily resident in, British Columbia;
 - The only connection the contract has to British Columbia is that it incidentally covers a few employees or other group insured's that would normally be considered to be residents of British Columbia as part of a larger group; and
 - The coverage provided under the policy is compulsory, there is no optional coverage provided to the British Columbia insured.
- Property and casualty insurance policies that provide global coverage of risks or perils, including those located in British Columbia as long as:
 - The policy is solicited, negotiated, written and issued outside of Canada with all of the related insurance activity also occurring outside of British Columbia;
 - The policy is arranged for a non-Canadian business interest, group or parent corporation; and
 - The only connection the policy has to British Columbia is that it covers a risk or peril located in British Columbia solely incidental or insignificant to the overall exposure covered by the policy.

It is recognized that there will be a range of circumstances that do not fall clearly into the situations described above and that it may not be in the public interest to require foreign insurers to become authorized. The legislation does provide the government with the power to exempt insurers. If a foreign insurer wishes to request an exemption, a written request may be made to this office.

Foreign insurers that obtain a ruling from OSFI that indicate that they do not need a federal Order to write risks located in Canada, must not write any risk located in British Columbia unless they first obtain a business authorization under the FIA or a written approval from this office that a business authorization is not required.

Finally, as the federal regulator implements its new regulatory scheme under Part XIII, there may be other modifications that will need to be made to the way in which this province regulates insurance business. We recommend that interested parties periodically check our website at <http://www.fic.gov.bc.ca/> for updates to this bulletin or for related bulletins.

If there are any questions about this bulletin, please contact Insurance Department staff.

Staff of the Financial Institutions Commission periodically issue interpretation bulletins to provide technical interpretations and positions regarding certain provisions contained in the *Financial Institutions Act* and Regulations. While the comments in a particular part of an interpretation bulletin may relate to provisions of the law in force at the time they were made, these comments are not a substitute for the law. The reader should consider the comments in light of the relevant provisions of the law in force at the time, taking into account the effect of any relevant amendments to those provisions or relevant court decisions occurring after the date on which the comments were made. Subject to the above, an interpretation or position contained in an interpretation bulletin generally applies as of the date on which it was published, unless otherwise specified.