

MARKET BULLETIN

REF: Y4329

Title	Implementation instructions regarding the clarification of Part XIII of the Canadian Insurance Companies Act
Purpose	To highlight the implications that the clarification of “insure in Canada a risk” in Part XIII of the Insurance Companies Act has for Lloyd’s business models and processes for Canadian business.
Type	Event
From	Andrew Gurney, Senior Manager, International Licences International Regulatory Affairs
Date	6 November 2009
Deadline	The clarification is effective from 1 January 2010.

Related links

1 Purpose

- 1.1 To highlight the impact of the clarification of Part XIII of the Canadian Insurance Companies Act (Part XIII), and the practical implications for Lloyd’s business practices and processes.
- 1.2 Managing Agents and Brokers should note the content of this bulletin and review their Canadian business models to ensure that they meet the requirements set out in the following key areas:
 - Mandatory use of appropriately licensed, Canadian domiciled intermediaries – See Appendix 2;
 - Mandatory use of “made in Canada” wording – See Appendix 3;
 - Mandatory use of Canadian or US dollars for settlement of relevant business – See Appendix 4;
 - Removal of the Wet Marine exemption from the Insurance Companies Act (the act) – See Appendix 5;
 - Obligatory federal reporting and funding for all business that is “insure in Canada a risk” regardless of the nature or location of the risk and possible

double funding where business is regulated in more than one territory – See Appendix 6; and

- Introduction of new Canadian Foreign Insurance Legislation codes to ensure appropriate reporting and funding going forward – See Appendix 7.

2 Executive Summary

- 2.1 A clarified interpretation of “insure in Canada a risk” will be implemented by the Canadian regulator, the Office of the Superintendent of Financial Institutions (OSFI) with effect from 1/1/2010 (the effective date). A copy of the OSFI advisory (the Advisory) which provides further guidance is attached as Appendix 1.
- 2.2 This applies the Canadian federal regulatory framework to all risks *insured* in Canada, rather than to all risks *located* in Canada. This means that **all business insured in Canada from the effective date, and any such business already on a company’s books at that date**, will be 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 It should be noted that this **includes Wet Marine** business, the current exemption for which falls away at the effective date, **and any business where the risk is located outside of Canada but sufficient activity takes place within Canada**.
- 2.4 In December 2008¹ Lloyd’s set out the perceived risks and issues that Part XIII raised for the Lloyd’s market and the resulting intention to seek to have all Lloyd’s Canadian business² to be considered “insure in Canada a risk”.
- 2.5 In May 2009³ Lloyd’s was able to preserve the ability of the market to trade effectively in Canada by securing OSFI’s agreement that Lloyd’s business models are such that sufficient activity is undertaken in Canada by or for and on behalf of Lloyd’s for **all of its Canadian business to be considered “insure in Canada a risk”**. **Lloyd’s will need to conform to the models discussed with OSFI going forward**.
- 2.6 In relation to **Lloyd’s open market business**, the extent to which **Canadian domiciled intermediaries undertake activities on Lloyd’s behalf** sufficient to meet OSFI’s requirements **was critical** in that consent. OSFI were convinced by our arguments that **the activities of receipt of premium and communication of offers of insurance were undertaken in Canada by or for and on behalf of Lloyd’s**. – See Appendix 2.
- 2.7 **As a result from the effective date, all business where the insured or reinsured is domiciled in Canada or where the risk is located in Canada will need to be written in such a way that sufficient activity is undertaken in Canada. This**

¹ Market Bulletin Y4226 published 19 December 2008

² Canadian risk for this purpose is one where either the (re)insured or the risk is ordinarily located in Canada

³ Market Bulletin Y4283 published 26 May 2009.

includes business renewing 1/1/2010. In practice this means that all such business must have an appropriate Canadian domiciled intermediary⁴ in the distribution chain.

- 2.8 Uncertainty still remains with regard to OSFI's view of Lloyd's business written before the effective date – See Appendix 15, and the response of provincial regulators to Part XIII. We have recently seen provincial regulators start moves toward provincial solvency requirements for business written outside of Canada but located in the province, and to require all business located in a province to be “insure in Canada a risk”. Further developments that impact Lloyd's will be advised in further bulletins as required.

3 Practical implications

- 3.1 **Business currently written through a Canadian domiciled coverholder or service company via delegated underwriting authority** – see Appendix 8

Going forward you will need to ensure that the required “**made in Canada wording**” is incorporated in relevant documentation – see Appendix 3. You will also need to ensure that **premiums are presented for settlement only in \$CDN or \$US** – see Appendix 4. Otherwise there is no change.

- 3.2 **Business currently written through a Canadian domiciled intermediary** - see Appendix 9

(e.g. OMC or reinsurance broker) Going forward you will need to ensure that you are dealing with an **appropriate Canadian domiciled intermediary** - see Appendix 2. You will also need to meet the “made in Canada wording” requirement mentioned above – see Appendix 3. You will also need to ensure that **premiums are presented for settlement only in \$CDN or \$US** – see Appendix 4.

- 3.3 **Business currently written without a Canadian domiciled intermediary** - see Appendix 10

Going forward, business where the risk or the insured is located in Canada (e.g. via a non-Canadian domiciled coverholder or “Direct Assured”) will need to have an **appropriate Canadian domiciled intermediary** in the chain, regardless of the fact that the non-Canadian entity involved may be licensed to trade in Canada. You will also need to meet the “made in Canada wording” requirement mentioned above – see Appendix 3. You will also need to ensure that **premiums are presented for settlement only in \$CDN or \$US** – see Appendix 4.

⁴ Canadian domiciled, appropriately licensed, and signed up to the appropriate Lloyd's agreement (see Appendix 2). Going forward, this detail will be available on the Canadian OMC Market Directory on Lloyds.com.

3.4 **Non Canadian risks written in Canada** - see Appendix 11

All risks where sufficient activity takes place in Canada such that it will be considered “insure in Canada a risk” will, from the effective date, be subject to federal regulation in Canada, regardless of the type of risk or where that risk is located.

Where this business is also classified as regulated business in another jurisdiction, this may create double funding requirements. This is most likely to occur where US business is written from Canada. Where this occurs, going forward premiums will be directed to the LCTF and Canadian funding requirements will be calculated centrally. Syndicates will need to continue to ensure that their quarterly US packs reflect properly relevant liabilities in the US.

You will also need to meet the “made in Canada wording” requirement mentioned above – see Appendix 3. You will also need to ensure that **premiums are presented for settlement only in \$CDN or \$US** – see Appendix 4.

3.5 **Global policies** - see Appendices 12 & 13

Global policies with an element of Canadian exposure which are negotiated outside of Canada are discussed at Appendix 12. The requirements for an **appropriate Canadian domiciled intermediary** in the chain (Appendix 2), the required “**made in Canada wording**” (Appendix 3) and that **premiums are presented for settlement only in \$CDN or \$US** (Appendix 4) **apply to the Canadian element of the risk.**

Global policies with an element of Canadian exposure which are negotiated in Canada are discussed at Appendix 13. The requirements for an **appropriate Canadian domiciled intermediary** in the chain (Appendix 2), the required “**made in Canada wording**” (Appendix 3) and that **premiums are presented for settlement only in \$CDN or \$US** (Appendix 4) **apply to the whole of the risk.**

3.6 **Funding position:** From the effective date, Lloyd’s will be required to hold sufficient assets in Canada to meet the liabilities connected to **all business⁵ that is “insure in Canada a risk”**. Lloyd’s will assess these liabilities at year end 2009 and whether an immediate movement of assets from the non-regulated Canadian trust fund is required. Funding calls from Q1 2010 will include this business. See Appendix 6.

3.7 **Impact on currencies used:** Settlement to the Lloyd’s Canadian Trust Fund (LCTF) can only be undertaken in Canadian or US dollars. Any business that is “insure in Canada a risk” where the premium is paid in currencies other than \$CDN or \$US will need to be converted prior to presentation for settlement. See Appendix 4.

⁵ regardless of the location of policyholder or risk, or nature of the risk (e.g. including wet marine business)

- 3.8 **Impact on FIL codes:** FIL codes are the primary trigger to determine which trust fund premiums are posted to and claims are paid from. There will need to be new codes introduced for certain business categories written post 1/1/2010 to ensure settlement to/from the LCTF. Open claims related to this business as at 31/12/09 with a trust fund code “CN” will be cancelled and replaced by 31/3/10 with a new item coded with a “CR” trust fund code. Premium items currently coded “CN” will be amended as new items – such as additional premiums – are processed. See Appendix 7.
- 3.9 **Impact on credit for reinsurance recoverables:** From the effective date, syndicates should only claim credit for “registered” reinsurance where they are certain that the contract is “insure in Canada a risk”. See Appendix 14.
- 3.10 **Impact on pre 1/1/2010 business:** Part XIII applies to all business on an insurer’s books at the effective date. Lloyd’s has informed OSFI that, following a review of its business models, it intends to presume – in accordance with Lloyd’s understanding of OSFI’s publications – that its open market business written via Canadian domiciled brokers prior to the effective date is “insure in Canada a risk” given Part XIII.

This is particularly relevant for reinsurance business, where cedants will want to continue to treat the reinsurance that they have previously purchased from Lloyd’s as “registered” reinsurance, and to take credit for it for solvency purposes. Lloyd’s wishes to enable its cedants to continue to take credit for Lloyd’s reinsurance as “registered” business, and be able to continue to provide assets via its existing trust arrangements.

Lloyd’s intends to leave this business on its books as at 1 January 2010, and retain the associated assets in its trust funds and it believes that this should enable cedants to continue to take credit for the associated reinsurance recoveries. See Appendix 15. Lloyd’s has not received a formal response from OSFI on this approach.

4 Summary of Impacts

<p>Business model</p> <p>Issue</p>	<p><i>Requirement to use Canadian Domiciled Intermediary Appendix 2</i></p>	<p><i>Made in Canada wording Appendix 3</i></p>	<p><i>Settlement in \$CDN or \$US only Appendix 4</i></p>	<p><i>Federal reporting and funding Appendix 6</i></p>	<p><i>New FIL Codes Appendix 7</i></p>
<p><i>Canadian risks* via Canadian Domiciled** Coverholder / Service Company Appendix 8</i></p>	<p>N/A</p>	<p>Yes</p>	<p>Yes</p>	<p>Yes</p>	<p>Yes</p>
<p><i>Canadian risks* via Open Market Business via Canadian Domiciled** Intermediary Appendix 9</i></p>	<p>N/A</p>	<p>Yes</p>	<p>Yes</p>	<p>Yes</p>	<p>Yes</p>
<p><i>Canadian risks* via Non-Canadian Domiciled Coverholder / Service Company, Non-Canadian Domiciled Intermediary, or "Direct Assured" Appendix 10</i></p>	<p>Yes</p>	<p>Yes</p>	<p>Yes</p>	<p>Yes</p>	<p>Yes</p>
<p><i>Non-Canadian risks written in Canada Appendix 11</i></p>	<p>N/A</p>	<p>Yes</p>	<p>Yes</p>	<p>Yes</p>	<p>Yes</p>
<p><i>Global policies with Canadian element Written outside Canada*** Appendix 12</i></p>	<p><i>For Canadian element</i></p>	<p><i>For Canadian element</i></p>	<p><i>For Canadian element</i></p>	<p><i>For Canadian element</i></p>	<p><i>For Canadian element</i></p>
<p><i>Global policies with Canadian element Written in Canada**** Appendix 13</i></p>	<p>N/A</p>	<p><i>For entire risk</i></p>	<p><i>For entire risk</i></p>	<p><i>For entire risk</i></p>	<p><i>For entire risk</i></p>

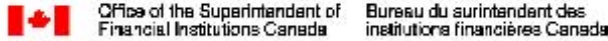
* Canadian risk for this purpose is one where either the (re)insured or the risk is ordinarily located in Canada

** Canadian domiciled, appropriately licensed, signed up to relevant Lloyd's agreement

*** Insufficient activity, as per the Advisory, occurring in Canada

**** Sufficient activity, as per the Advisory, occurring in Canada

Appendix 1 – OSFI Advisory



Advisory

Category: Regulatory & Legislative **NOTICE***

Subject: Insurance in Canada of Risks

No: 2007 – 01 – R1 **Issued: September 2007**
Revised: May 2009

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 its insurance business in Canada, including the insurance in Canada of risks, is subject to record keeping, vesting of assets in trust in Canada and other requirements imposed by Part XIII of the ICA.

This Advisory provides guidance on key indicia to consider in determining, for the purposes 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 (paragraphs 3 to 5). It also provides guidance regarding other ICA and provincial and territorial insurance matters related to foreign entities (paragraphs 6 to 9).

Where a foreign entity is authorized to insure in Canada risks falling within the class of life insurance, this Advisory also applies in determining, for the purposes of the ICA, whether that foreign entity is issuing annuities and/or policies of endowment insurance in Canada. When applying the Advisory to such matters, it should be read with such modifications as the circumstances require (e.g., any reference to “insuring in Canada a risk” is to be read as a reference to “issuing annuities in Canada” and/or “issuing policies of endowment in Canada”).

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

Definitions: In this Advisory,
 “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);
 “insurance”, “insure”, “insurer” and “insuring” include reinsurance, reinsure, reinsurer and reinsuring, respectively; and



“policyholder” means a prospective or an actual holder of an insurance policy, and includes a person acting for, or on behalf of, that prospective or actual holder.

Interpretation:

1. The ICA does not define “insuring in Canada a risk” which, when read in the context of Part XIII of the ICA, falls within the “insurance business in Canada” of a foreign insurer. A review of case law indicates that courts have not interpreted these concepts, but have interpreted the analogous concept of “carrying on business in Canada”. Based on these interpretations, the location where operations are carried on is of significant importance in determining the location where business is carried on.
2. To determine whether a foreign insurer is insuring in Canada a risk, consideration should be given to whether any person acting for, or on behalf of, the foreign insurer¹:
 - (a) promotes² the foreign insurer or the foreign insurer’s insurance products through a medium of communication that is primarily circulated, transmitted, broadcasted or otherwise accessible in Canada (other than in the course of the activity referred to in subparagraph 2(b) below);
 - (b) directly incites a person located in Canada to request insurance coverage (where that person is specifically identified and targeted), and that person is provided with the opportunity and/or means with which to make a request for insurance coverage in the course of that activity (e.g., telemarketing, door-to-door solicitation, direct/targeted mail);
 - (c) receives in Canada a request for insurance coverage from a policyholder;
 - (d) negotiates from Canada the terms and conditions of insurance coverage;
 - (e) decides in Canada to bind the foreign insurer to insurance coverage;
 - (f) communicates from Canada an offer to provide insurance coverage, or the acceptance of a request for insurance coverage³, to a policyholder;
 - (g) receives in Canada an acceptance of the foreign insurer’s offer to provide insurance coverage from a policyholder;
 - (h) receives in Canada payment for insurance coverage from a policyholder; and

1 In determining whether a person is acting on behalf of a foreign insurer, reference should be made to the Canadian common law principles of agency, and where applicable, the *Civil Code of Québec*.

2 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”.

3 If a policyholder is informed of the foreign insurer’s acceptance only upon receiving the policy, then such acceptance is communicated through the issuance of the policy.

-
- (i) interacts in Canada with the policyholder in the provision of services related to the insurance coverage (e.g., providing information about the coverage and receiving 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; and
 - (b) where an activity referred to paragraph 2 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.
 4. OSFI considers that a foreign insurer is insuring in Canada a risk where its business model encompasses:
 - Scenario 1: Two or more of the activities referred to in any of subparagraphs 2(b) to (h).
 - Scenario 2: Any one of the activities referred to in any of subparagraphs 2(b) to (h) and both of the activities referred to in subparagraphs 2(a) and (i).
 - Scenario 3: Reaching an agreement, actual or in principle, on most or all of the material terms and conditions of the insurance coverage in the course of its negotiations in Canada (i.e., this Scenario contemplates that, in addition to 2(d), at least one additional activity referred to in 2(e) through (g) would apply).
 5. OSFI considers that a foreign insurer is not insuring in Canada a risk where its business model encompasses no more than one of the activities referred to in paragraph 2.

Other Guidance:

6. A foreign insurer that is authorized under the ICA to insure in Canada risks operates in Canada on a branch basis. That Canadian operation is not a separate legal entity. Therefore, depending on its business model, that foreign insurer may insure in Canada a risk (through its Canadian branch) or it may insure outside Canada a risk (through its head office or a branch located outside Canada), irrespective of the location of that risk. However, only risks that are insured in Canada are subject to the ICA regime. In the event that a foreign insurer becomes insolvent, the assets it has vested in trust in Canada under the ICA regime would be available to satisfy claims made under the *Winding-up and Restructuring Act* by holders of policies covering risks insured in Canada. 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 legible characters 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.



-
7. Where a foreign insurer is not insuring in Canada a risk, the ICA does not restrict that foreign insurer from carrying on any activity or business in Canada. Subject to other applicable Canadian laws, it could, for example, 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. In Canada, the federal and provincial/territorial governments share jurisdiction over foreign insurers. While a foreign insurer may, for the purposes of the ICA, be considered not to be insuring in Canada a risk, its activities may cause that foreign insurer to require a license under one or more of the insurance statutes of the provinces/territories in Canada. 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 situated in the province/territory. Accordingly, OSFI recommends that foreign insurers 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.



Appendix 2 - Lloyd's Canadian business models.

- 2.1 In May 2009, Lloyd's was able to preserve effective access to the Canadian market by securing OSFI's agreement that business written through its standard business models from 1/1/2010 for Canadian domiciled coverholders (including Canadian domiciled service companies) and open market business (including reinsurance) would be considered "insure in Canada a risk".
- 2.2 OSFI's agreement was based on a review of each standard business model, and the conclusion that in each case activity sufficient to meet the requirements of the advisory was undertaken in Canada either directly or via intermediaries that undertake relevant activities in Canada for and on behalf of Lloyd's.
- 2.3 As a result, from the effective date, all business where the insured or reinsured is domiciled in Canada or where the risk is located in Canada will need to be written in such a way that sufficient activity is undertaken in Canada. This includes business renewing 1/1/2010.
- 2.4 The clarified definition applies to all business written from and also on the books at the effective date. As a consequence, wherever possible, business written up to 31/12/2009 should be transacted in such a way as to ensure it is "insure in Canada a risk".
- 2.5 Business written through a Canadian domiciled coverholder or Canadian domiciled service company via delegated authority contracts will, by definition, have sufficient activity taking place in Canada on Lloyd's behalf to be considered "insure in Canada a risk".
- 2.6 With regard to open market business, particular emphasis was placed on the role undertaken by Canadian domiciled brokers – whether Open Market Correspondents (OMC's) or Reinsurance Brokers – on Lloyd's behalf. It was recognised by OSFI that such Canadian domiciled intermediaries act both on behalf of their client and, for particular activities, for or on behalf of Lloyd's – with the critical activities being receipt of premium and communication of an offer to provide insurance coverage.
- 2.7 In order to provide clarity to all stakeholders, Lloyd's is in the process of having all such Canadian intermediaries sign an agreement stating that they undertake the activities of receiving premium from policyholders and communicating offers to provide insurance coverage (by delivering relevant documentation) to policyholders in Canada for or on behalf of Lloyd's (the Agreement).
- 2.8 Underwriters and brokers must ensure that from the effective date there is a Canadian domiciled intermediary (a Canadian domiciled Open Market Correspondent, or a Canadian domiciled Broker, including reinsurance Broker) with the appropriate licences that has signed up to the relevant version of the Agreement with Lloyd's, involved in every transaction included under 2.3.

- 2.9 A specific OMC agreement for Canada has been created, including the appropriate wording. There are also specific agreements for reinsurance brokers and coverholders acting as OMC's. The Agreements formally delineate the nature and scope of this role, and do not seek in anyway to modify the role that brokers play in Lloyd's Canadian business models or change the relationship between Lloyd's and its brokers. These agreements were distributed to Canadian OMC's and Reinsurance Brokers in September and the majority have already been signed and returned to Lloyd's.
- 2.10 Going forward, details of all intermediaries domiciled in Canada that have signed up to either the OMC or the Reinsurance Broker Agreement will be held on the Canadian OMC Market Directory on Lloyds.com, and underwriters and brokers can use that list to verify that the relevant agreement has been signed before accepting business.
- 2.11 The details of the Canadian domiciled intermediary involved in the transaction (name and address) must be captured in the documentation presented to Xchanging. Lloyd's will be amending the current checks undertaken by Xchanging when processing such business to ensure that this requirement has been met.
- 2.12 Where business presented to Xchanging has come through a Canadian domiciled broker that has not signed up to the appropriate Agreement, this business will not be processed until that broker has signed up to the relevant Agreement.
- 2.13 Underwriters and brokers should implement these requirements as quickly as possible, given the proximity of year end renewals, and no later than 1/1/2010.
- 2.14 Further details of the Agreement and the process for Canadian domiciled intermediaries to register will be available on Crystal and in the OMC section of Lloyds.com.

Appendix 3 - Impact on contract wordings

- 3.1 All business that is “insure in Canada a risk” will, from no later than the effective date, be required to carry a disclosure statement to that effect⁶. From the effective date Lloyd’s will, in respect of risks it insures or reinsures in Canada, be required to set out in legible characters in all premium notices, applications for policies⁷ and policies (including cover notes) a statement that the document was issued or made in the course of its insurance business in Canada.
- 3.2 OSFI has suggested that the following wording would be sufficient for these purposes: “For the purposes of the Insurance Companies Act (Canada), this document was issued in the course of Company X’s [e.g. Lloyd’s] insurance business in Canada”.
- 3.3 In cases where the cover note/offer letter/quotation can neither be considered an application for a policy nor a policy, (re)insurers need to include, in the cover note/offer letter/quotation, a statement that the (re)insurer 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 policyholder’s/cedant’s risks will be (re)insured in Canada in accordance with the Advisory.
- 3.4 OSFI has suggested that the following wording would be sufficient for these purposes: “For the purposes of the Insurance Companies Act (Canada), Company X [e.g. Lloyd’s] will take measures to ensure that the policyholder’s/cedant’s liabilities in respect of risks will be (re)insured in Canada in accordance with the criteria set out in OSFI’s Advisory (2007-01-R1) entitled “Insurance in Canada of Risks” and that as a result, the related policy be issued in the course of Company X’s [e.g. Lloyd’s] insurance business in Canada”.
- 3.5 OSFI is of the view that these requirements would be met where a foreign insurer 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.
- 3.6 For subscription business, these requirements can be met where the broker includes additional material in the signing pack, including the required wording, and seeking confirmation from underwriters that the proposed lines will be “insuring in Canada a risk”. **Lloyd’s business will always be “insure in Canada a risk”**. See suggestions below.
- 3.7 Underwriters can be confident in signing these documents where there is an appropriate Canadian domiciled intermediary involved in the transaction, that has signed the relevant Agreement and which is undertaking the relevant activity.
- 3.8 It is recognised that subscription business placed across different markets – such as Lloyd’s, the London market, or Bermuda - may be placed using different distribution models. It is therefore possible that, for example, the Lloyd’s participation of a risk may be considered “insure in Canada a risk”, whilst another market’s participation may be considered to have been insured outside of Canada. The required wording will need to be specific to the Lloyd’s participation, or to that element of the participation that is “insure in Canada a risk”.

⁶ The form of this statement and instructions as to its use were set out in the implementation instructions published by OSFI in December 2008, which were attached to bulletin Y4226

⁷ Reference to policy comes from the terminology of Canadian legislation, and should be taken to describe any insurer documentation – in practice this will likely take the form of the MRC or similar

CLIENT LEGAL NAME
City, Province, Canada

SIGNING SHEET

attaching to and forming part of

XXXXXXXXXXXX (RE)INSURANCE AGREEMENT
AGREEMENT NO. XXXX – 20YY

For the purposes of the Insurance Companies Act (Canada), the authorised lines specified below are (re)insured in Canada in accordance with the criteria set out in OSFI's Advisory (2007-01-R1).

Yes No

Appendix 4 - Impact on currencies used

- 4.1 Settlement to the LCTF can only be undertaken in Canadian or US dollars.
- 4.2 As a result, any business that is “insure in Canada a risk” where the premium is paid in currencies other than Canadian or US dollars will need to be converted prior to submission for processing and settlement.
- 4.3 This may have particular impact on global policies, and on policies written in Canada where the risks are located outside of Canada.

Appendix 5 - Impact on Wet Marine Business

- 5.1 The amendments to the ICA include the removal of the exemption of wet marine business from Federal regulation.
- 5.2 As a consequence, from the effective date, wet marine business written in such a way that sufficient activity is deemed to have taken place in Canada will be considered to be “insure in Canada a risk”. This will include wet marine business written prior to the effective date that meets the clarified definition.
- 5.3 From the effective date, Lloyd’s will be required to hold sufficient assets in Canada to meet the liabilities connected to this business, and will make an assessment of these liabilities at the 2009 year end. At that time, Lloyd’s will be able to determine whether an immediate movement of assets from the non-regulated Canadian trust fund is required, or whether this can be made as part of the normal trust fund process at quarter end. Funding calls from Q1 2010 will include this business.
- 5.4 The requirements relating to the use of a Canadian domiciled intermediary, contract wording and settlement currencies (Appendices 2, 3 & 4 above) will apply to wet marine business.

Appendix 6 - Impact on funding

- 6.1 From the effective date, all business that is “insure in Canada a risk” will be subject to Federal regulatory and funding requirements. This business will be funded via the LCTF as it is currently.
- 6.2 The revised definition of “insure in Canada a risk” applies to all business on the books at the effective date. From the effective date, Lloyd’s will be required to hold sufficient assets in Canada to meet its liabilities, including relevant business that is not currently funded in the LCTF (e.g. Canadian wet marine business and business written by Canadian domiciled coverholders where the risk is outside of Canada).
- 6.3 Lloyd’s will centrally, where possible, identify this business and report it with effect from Q1 2010. Lloyd’s will make an assessment of these liabilities at the 2009 year end. At that time, Lloyd’s will be able to determine whether an immediate movement of assets from the non-regulated Canadian trust fund is required, or whether this can be made as part of the normal trust fund process at quarter end. Funding calls from Q1 2010 will include this business.
- 6.4 Where this business is also classified as regulated business in another jurisdiction, this may create double funding and possibly, going forward, tax requirements.
- 6.5 Double funding is most likely to occur where US business is written from Canada. In this example, where the nature of the US business would require funding through one of Lloyd’s situs US trust funds as well as in the LCTF, going forward the premiums will be directed to the LCTF and Canadian funding requirements will be calculated centrally. Syndicates will be required to continue to ensure that their quarterly US reporting packs reflect properly relevant liabilities in the US.

Appendix 7 - Impact on FIL codes

- 7.1 The application of FIL codes by Xchanging is the primary trigger to determine the trust fund to which premiums are posted and from which claims are paid.
- 7.2 In order to ensure minimum disruption to Lloyd's and Xchanging processes, there will be new codes introduced for certain business categories processed post 1/1/2010 to ensure that relevant premiums are settled to the LCTF and relevant claims are paid from the LCTF, whereas previously they would have been non-regulated items. The amended set of Canadian FIL codes will be available on Crystal.
- 7.3 It is Lloyd's intention that all open claims related to this business as at 31/12/2009 that have been allocated a "CN" trust fund code will be re-coded so that "CR" code is held against all of these transactions. The affected claims will be cancelled and replaced before 31 March 2010. This includes open claims on items that were originally advised before 1/1/2000.
- 7.4 Underwriters will not be charged for the processing of these correction entries by Xchanging.
- 7.5 This matter will be discussed further with the Cross Market Messaging Group.
- 7.6 Premium items coded "CN" will not be cancelled and replaced. However, as further items on such business are processed – such as additional or return premiums – items will have their FIL codes amended and the subsequent trust fund code amended to "CR" to reflect the new position.

Appendix 8 - Impact on business currently written through a Canadian domiciled coverholder or service company via delegated underwriting authority

- 8.1 Business written via a Canadian domiciled coverholder (including a service company) will be considered “insure in Canada a risk” due to the activities which take place in Canada under delegated authority from Lloyd’s.
- 8.2 It should be noted that the requirements relating to the use of the appropriate contract wording and settlement currencies (Appendices 3 & 4 above) will apply.
- 8.3 It should be noted that all business written by a Canadian domiciled coverholder or service company, regardless of the nature of the risk, the location of the risk or the location of the insured, will be considered “insure in Canada a risk” and from the effective date will be reported as regulated business.
- 8.4 From the effective date, Lloyd’s will be required to hold sufficient assets in Canada to meet the liabilities connected to this business, and will make an assessment of these liabilities at year end. At that time, Lloyd’s will be able to determine whether an immediate movement of assets from the non-regulated Canadian trust fund is required, or whether this can be made as part of the normal trust fund process at quarter end. Funding calls from Q1 2010 will include this business.

Appendix 9 - Impact on business currently written through a Canadian domiciled intermediary

- 9.1 From 1/1/2010 business written via a Canadian domiciled intermediary (e.g. OMC or reinsurance broker) will be considered “insure in Canada a risk” where that intermediary is appropriately licensed, has signed the relevant Agreement, and is performing the activities therein.
- 9.2 It should be noted that the requirements relating to the use of the appropriate contract wording and settlement currencies (Appendices 3 & 4 above) will apply.
- 9.3 It should be noted that all business written by a Canadian domiciled intermediary, regardless of the nature of the risk, the location of the risk or the location of the insured, will be considered “insure in Canada a risk” and from the effective date will be reported as regulated business.
- 9.4 From the effective date, Lloyd’s will be required to hold sufficient assets in Canada to meet the liabilities connected to this business, and will make an assessment of these liabilities at year end. At that time, Lloyd’s will be able to determine whether an immediate movement of assets from the non-regulated Canadian trust fund is required, or whether this can be made as part of the normal trust fund process at quarter end. Funding calls from Q1 2010 will include this business.

Appendix 10 - Impact on business currently written without a Canadian domiciled intermediary

a) Impact on business currently written by Non-Canadian domiciled coverholders

- 10.1 Business where the risk or the insured is located in Canada, written via a non-Canadian domiciled coverholder (including a service company), will need to meet the requirement for there to be an appropriate Canadian domiciled intermediary in the chain, regardless of the fact that the non-Canadian entity may be licensed to trade in Canada (See Appendix 2).
- 10.2 It should be noted that the requirements relating to the use of the appropriate contract wording and settlement currencies (Appendices 3 & 4 above) will apply.
- 10.3 Going forward, details of all intermediaries domiciled in Canada that have signed up to either the OMC or the Reinsurance Broker Agreement will be held on the Canadian OMC Market Directory on Lloyds.com, and underwriters and brokers can use that list to verify that the relevant agreement has been signed before accepting business.
- 10.4 The details of the Canadian domiciled intermediary involved in the transaction (name and address) must be captured in the documentation presented to Xchanging. Lloyd's will be amending the current checks undertaken by Xchanging when processing such business to ensure that this requirement has been met.
- 10.5 This business will continue to be reported and funded as it is currently.

b) Impact on business currently written "Direct Assured"

- 10.6 Business where the risk or the insured is located in Canada, written "Direct Assured" i.e. without the involvement of a Canadian domiciled intermediary will need to meet the requirement for there to be an appropriate Canadian domiciled intermediary in the chain (See Appendix 2).
- 10.7 It should be noted that the requirements relating to the use of the appropriate contract wording and settlement currencies (Appendices 3 & 4 above) will apply.
- 10.8 Going forward, details of all intermediaries domiciled in Canada that have signed up to either the OMC or the Reinsurance Broker Agreement will be held on the Canadian OMC Market Directory on Lloyds.com, and underwriters and brokers can use that list to verify that the relevant agreement has been signed before accepting business.
- 10.9 The details of the Canadian domiciled intermediary involved in the transaction (name and address) must be captured in the documentation presented to Xchanging. Lloyd's will be amending the current checks undertaken by Xchanging when processing such business to ensure that this requirement has been met.
- 10.10 This business will continue to be reported and funded as it is currently.

Appendix 11 - Impact on Non Canadian risks written in Canada

- 11.1 **All risks where sufficient activity takes in place in Canada** such that it meets sufficient indicia as set out in the Advisory to be considered “insure in Canada a risk” **will, from the effective date, be subject to federal regulation in Canada**, regardless of the type of risk or where that risk is located. This will mean, for example, that satellite risks – where sufficient activity set out in the Advisory takes place in Canada – will be considered “insure in Canada a risk” and subject to federal reporting and funding requirements going forward.
- 11.2 As a consequence, from the effective date, such business will be included in Lloyd’s regulatory reporting in Canada, and will need to be funded in the Lloyd’s Canadian Trust Fund (LCTF). **This will include such business written prior to the effective date that meets the clarified definition.**
- 11.3 From the effective date, Lloyd’s will be required to hold sufficient assets in Canada to meet the liabilities connected to this business. Where it is possible to identify this business, Lloyd’s will make an assessment of these liabilities at the 2009 year end. At that time, Lloyd’s will be able to determine whether an immediate movement of assets from the non-regulated Canadian trust fund is required, or whether this can be made as part of the normal trust fund process at quarter end. Funding calls from Q1 2010 will include this business.
- 11.4 Where this business is also classified as regulated business in another jurisdiction, this may create double funding and possibly, going forward, tax requirements.
- 11.5 This is most likely to occur where US business is written from Canada. In this example, where the nature of the US business would require funding through one of Lloyd’s American trust funds as well as in the LCTF, the premiums will be directed to the LCTF and Canadian funding requirements will be calculated centrally. Syndicates will be required to continue to ensure that their quarterly US packs reflect properly relevant liabilities in the US. Lloyd’s will provide as much assistance as possible to identify this business, and further details will be issued during the normal communications related to US reporting.
- 11.6 Where such risks are written through Canadian domiciled intermediaries, but the insured and the risk are not located in Canada, underwriters and brokers may wish to consider whether it would be possible, and more advantageous, to write this business through alternative non-Canadian intermediaries.
- 11.7 It should be noted that the requirements relating to the use of the appropriate contract wording and settlement currencies (Appendices 3 & 4 above) will apply.

Appendix 12 - Impact on global policies – written outside Canada but with a Canadian element

- 12.1 Underwriters need to be aware of the impact that the clarification of Part XIII has for global policies.
- 12.2 Where a global policy is negotiated outside of Canada, and all relevant activity takes place outside of Canada without the involvement of a Canadian domiciled, appropriately licensed intermediary as set out above, this would be considered not to be “insure in Canada a risk”. The consequences of this are significant.
- 12.3 Where this risk is, for example, a reinsurance of a US Insurance Company which includes its Canadian branch, this business would be considered “unregistered” reinsurance, and the Canadian branch of the US insurer could only take credit for that reinsurance for solvency purposes if Lloyd’s were to place assets in Canada in accordance with the relevant capital adequacy regulations – likely to be individual arrangements by cedant, by policy, and possibly by province. This may impact the marketability of the insurance, and would add significant cost and risk to the Lloyd’s business model.
- 12.4 Where this risk is, for example, an insurance of a North American property portfolio, this business may be considered “unlicensed” by provincial regulators, or may be subject to additional provincial reporting and solvency requirements. Where this is not forbidden by statute, this may impact the marketability of the insurance, and would add significant cost and risk to the Lloyd’s business model. Lloyd’s is required to abide with local requirements at all times by the terms of its provincial licences.
- 12.5 As a result of these and the other risks already described, **Lloyd’s must ensure that the Canadian element of such risks is considered “insure in Canada a risk”** and as a consequence **Lloyd’s underwriters and brokers must ensure that sufficient activity is undertaken in Canada in respect of the Canadian element of the risk.**
- 12.6 It is recommended that underwriters and brokers issue separate cover for the Canadian aspects of the risk, and that this is processed using a Canadian domiciled, appropriately licensed intermediary as set out above. Where it is not practical or commercially acceptable to issue separate cover, underwriters and brokers should arrange for appropriate documentation for the Canadian element, including the required contract wording (see Appendix 3) set out above, to be issued and processed, along with the relevant premium, via the Canadian domiciled intermediary.
- 12.7 It should be noted that the requirements relating to the use of the appropriate contract wording and settlement currencies (Appendices 3 & 4 above) will apply to the element of the risk placed through the Canadian domiciled intermediary.
- 12.8 It should be noted that there is a continuing need to break out the Canadian element of global policies under separate PAN’s, to ensure that all appropriate fiscal and regulatory requirements are met.

Appendix 13 - Impact on global policies – written in Canada

- 13.1 Underwriters should be aware that global policies written in Canada, and where at least some of the risks covered are located outside of Canada, will be considered “insure in Canada a risk” and will be subject to federal reporting and funding requirements in their entirety, regardless of the locations of the risks covered.
- 13.2 It should be noted that the requirements relating to the use of the appropriate contract wording and settlement currencies (Appendices 3 & 4 above) will apply.
- 13.3 Where such risks are written through Canadian domiciled intermediaries, but have no Canadian exposures, underwriters and brokers may wish to consider whether it would be possible, and more advantageous, to write this business through alternative, non-Canadian intermediaries.
- 13.4 There is a continuing need to break out the different elements of global policies, for relevant countries/territories under separate PAN’s, to ensure that all appropriate fiscal and regulatory requirements are met.

Appendix 14 - Impact on Lloyd's reinsurance receivables

- 14.1 The clarification of Part XIII of the ICA has to be taken into account when considering whether credit for reinsurance can be taken in Lloyd's solvency calculation in Canada.
- 14.2 Going forward, syndicates should only claim credit for "registered" reinsurance where they are certain that the contract is "insure in Canada a risk".
- 14.3 The Canadian regulator (OSFI) permits credit to be taken for certain reinsurance recoverables. Reinsurance recoverables on outstanding claims and IBNR at the end of each quarter from federally regulated and accredited provincial reinsurers may be allowed as a credit against the amounts to be funded in the LCTF.
- 14.4 Going forward, to be eligible as "registered reinsurance" the reinsurance has to be "insure in Canada a risk". Credit can be taken for "unregistered reinsurance" as long as assets are in place in accordance with the relevant regulatory requirements.
- 14.5 Otherwise the procedure for taking credit remains as it is currently.

Appendix 15 - Impact on pre 1/1/2010 business

- 15.1 As set out above the clarification to the definition of “insure in Canada a risk” applies to all business on an insurer’s books at the effective date. Lloyd’s has informed OSFI that it considers that its open market business, including reinsurance, written through Lloyd’s standard business models before the effective date should be treated as “insure in Canada a risk”. As set out in Appendix 8 business written via a Canadian domiciled coverholder (including a service company), both before and after the effective date, will be considered “insure in Canada a risk” due the activities which take place in Canada under delegated authority from Lloyd’s.
- 15.2 This is particularly relevant for reinsurance business, where cedants will want to continue to treat the reinsurance that they have previously purchased from Lloyd’s as “registered” reinsurance, and to take credit for it as such for solvency purposes. Lloyd’s wishes to preserve the ability of its cedants to take credit for Lloyd’s reinsurance as registered business, and the ability for Lloyd’s to provide assets in Canada via its existing trust fund arrangements.
- 15.3 In order to determine whether this business should be considered “insure in Canada a risk” going forward, Lloyd’s has undertaken a review of its Canadian business models with close reference to the Advisory and OSFI’s other publications on Part XIII. As a result of its review, Lloyd’s has concluded that its standard business models would have included sufficient activity such that business written before the coming into force of Part XIII would be considered “insure in Canada a risk”.
- 15.4 Lloyd’s conclusion is based on the activity undertaken in Canada by Lloyd’s underwriters directly, by Lloyd’s Canada and the Attorney-in-Fact for Lloyd’s underwriters, or by intermediaries for or on behalf of Lloyd’s and is, Lloyd’s believes, further supported by the terms and structure of Lloyd’s trust arrangements in Canada.
- 15.5 Lloyd’s is aware that OSFI has stated that it expects foreign companies to use due diligence in order to determine whether a policy should be added to its books and be reported in Canada after the effective date but does not expect foreign companies 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 disproportionate. The review that Lloyd’s has undertaken has demonstrated that a policy by policy review would be disproportionately expensive and would likely produce the same conclusion, and therefore no material benefit to any stakeholder. Such a review would require Lloyd’s to gather information from the underwriters in the UK, from the brokers involved in the transaction – and these could include brokers not only in the UK and Canada, but also elsewhere such as the US – and from policyholders, as well as from its central systems. Bearing in mind that such a review would inevitably be looking at business written over a period of some years, Lloyd’s has determined that it is practical and appropriate to undertake such a review at business model level, and that this is consistent with OSFI’s intentions.
- 15.6 Lloyd’s has set out to OSFI that the conclusions of its review that sufficient activity will have taken place in Canada and the instructions published by OSFI mean that it is entirely appropriate to presume – in accordance with Lloyd’s understanding of OSFI’s publications – that its open market business conducted via Canadian brokers and written prior to the Agreement meets sufficient of the indicia set out in the Advisory so as to constitute business insured in Canada. As a consequence Lloyd’s intends to leave this business on its books as at 1 January 2010. Lloyd’s has not received a formal response from OSFI on this approach.

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

Telephone: 020 7327 6677

Email: LITA@Lloyds.com

www.lloyds.com/crystal