

CANADIAN BULLETIN

Date 2011-01-27

Recipient Canadian Brokers, Policyholders and Cedants

Reference AD-11-002

Subject LLOYD'S BUSINESS IN CANADA

Attachments OSFI RULING

We wish to notify you of a future change that will occur during 2011 as a result of a continuing discussion with regulators regarding the status of open market and reinsurance business following the implementation of the clarification of Part XIII of the Canadian Insurance Companies Act (Part XIII), and the practical implications for Lloyd's business processes.

Throughout 2009, Lloyd's had a dialogue with OSFI regarding the existing business models for open market and reinsurance business, gaining in principle agreement that these models were such that business written using them could possibly be "insure in Canada a risk". However, further dialogue with OSFI made it clear that going forward amendments needed to be made to our business models to ensure that open market and reinsurance business will be considered "insure in Canada a risk".

Amending our business process is not ideal, however, ensuring we continue to conduct "regulated business" in Canada is important for Lloyd's from both a commercial and regulatory perspective. It will ensure the continuing ability to access markets at both federal and provincial levels.

Lloyd's proposes to establish a business process by which an insurance contract written in London in respect of risks located in Canada or a reinsurance contract in respect of a Canadian cedant will be replaced by a contract made in Canada. This will entail Lloyd's underwriters' attorney and chief agent in Canada (the "AIF"), on behalf of the members of the syndicates writing such risks, endorsing the contract made in London with a statement and to sign that contract in Canada on behalf of the syndicate members. The AIF shall then send the new contract, so endorsed and signed, to the policyholder or his broker.

The intention is that the contract signed by the AIF in Canada will, once communicated by the AIF from Canada to the policyholder or his broker, replace the original contract made in London in accordance with the typical Lloyd's market placement procedures. The AIF signed contract will thus be a contract bound on behalf of underwriters in Canada and will be the governing document.

There will be no gap in coverage arising on the replacement of the original contract made in London with that signed by the AIF in Canada as the terms of the two contracts will be identical.

In the event of a claim, this will be dealt with under whichever is for the time being the governing document. Initially this will be the slip scratched in London but once this is followed by the AIF signed slip, the latter will prevail. This will be the case regardless of whether the loss occurs, or a claim is notified, prior to the making of this subsequent contract

Lloyd's is now working with the Lloyd's Market through a number of working groups to develop the business processes whereby all relevant Canadian open market and reinsurance contracts will be endorsed in the Lloyd's Canada Montreal office with the AIF signature. We anticipate having the new process operational before year end 2011. We will provide you with further details as the launch date approaches.

A copy of the OSFI Ruling regarding the AIF Signing process is attached for your review. Please take note; there are no implications for business written via a Canadian coverholder or a Canadian service company. The nature of the activity undertaken in Canada and on behalf of Lloyd's by Canadian domiciled, coverholders or service companies is such that the business written under their binding agreement(s) is considered by OSFI as 'insure in Canada a risk'.

Until the new AIF Signing is operational, we are pleased to confirm that to minimize market disruption, OSFI has agreed that Canadian cedants whose risks are reinsured prior to the introduction of the new AIF Signing Process may continue to take capital/asset credit for reinsurance purchased from Lloyd's Underwriters given Lloyd's commitment to OSFI to both reflect these risks and their associated liabilities in the Lloyd's Underwriters P&C2 return and vest assets in the Lloyd's Canadian Trust Funds in order to meet any associated liabilities.

Once the AIF signing process is established, Lloyd's underwriters (in accordance with the procedures to be adopted) will direct all relevant new and renewal reinsurance contracts and Open Market policies through the new process.

There should be minimal delay in processing the policy through the AIF Signing process and we are working to ensure the new process will have very little significant impact on our Canadian intermediaries.

We will be in contact with you with further details regarding its implementation, prior to the launch of the new AIF Signing process.

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File #: P2850-148

December 23, 2010

Deborah Moore
President and CEO
Lloyd's Canada
1155 Metcalfe, Suite 2220
Montreal, Quebec
H3B 2V6

Subject: Insuring in Canada a Risk

Dear Mrs. Moore,

This letter is further to your request for a ruling as to whether risks insured by Lloyd's underwriters through its Canadian Open Market and Canada Reinsurance business model (collectively, the "OM&R Model") described below are insured¹ in Canada for purposes of Part XIII of the *Insurance Company Act* (the "ICA").

Background:

The Society of Lloyd's ("Lloyd's") represented that the OM&R Model will typically be as follows:

1. Lloyd's will continue to maintain a specific page on its website about the Lloyd's market and its Canadian operations, and to engage in Canada in various promotional activities, such as: sponsoring conferences and events relating to insurance matters, facilitating the registration or approval of brokers by Lloyd's as an Open Market Correspondent, Reinsurance Correspondent (collectively the "Correspondent") or coverholder, and promoting Lloyd's market products to brokers by way of conferences and meetings.
2. A Correspondent acting as agent of a person wishing to obtain insurance coverage (the "Policyholder"), will receive from the Policyholder's a request to seek terms regarding the proposed insurance coverage. The Policyholder will, normally in conjunction with its Correspondent, specify the risks that are to be insured, the period of cover, the proposed premium and other key requirements of the insurance contract.

¹ For the purpose of the Ruling, "insurance", "insure" and "insurer" and "insuring" include reinsurance, reinsure, reinsurer and a reinsuring respectively.



3. The Correspondent and/or the Lloyd's broker² (hereinafter "the Broker") will prepare a "slip"³ setting out the key terms of the proposed insurance contract. The Broker will ensure that the slip includes the following statement to record the parties' intention to replace the contract to be concluded in London (the "London Contract") with a second contract made in Canada (the "Canadian Contract") through the process outlined at paragraph 7 below:

"Whereas Lloyd's underwriters have been granted an order to insure in Canada risks under the Insurance Companies Act (Canada) and are registered in all provinces and territories in Canada to carry on insurance business under the laws of these jurisdictions or to transact insurance in these jurisdictions.

And whereas applicants for insurance coverage in respect of risks located in Canada and Canadian cedants wish that Lloyd's insurance or reinsurance coverage be provided in a manner that requires Lloyd's underwriters to vest assets in trust in respect of their risks pursuant to the Insurance Companies Act (Canada).

- (a) *this contract shall be in force and shall be the governing contract pending the decision by Lloyd's underwriters' attorney and chief agent in Canada (the "AIF") to confirm coverage in accordance with both the terms and conditions set out in this contract and applicable Canadian law;*
 - (b) *the AIF shall confirm Lloyd's underwriters' coverage by signing in Canada a policy that will contain the terms and conditions set out in this contract (the "Canadian Policy"), and by communicating from Canada the issuance of that policy to the policyholder or his broker;*
 - (c) *this contract shall cease to have effect upon the communication by the AIF from Canada of the Canadian Policy to the policyholder or his broker, and the Canadian Policy will replace and supersede this contract."*
4. The Broker will present the slip to the managing agent or syndicate underwriter of the proposed lead Lloyd's syndicate (the "Lead Underwriter") in London U.K., and negotiate the proposed terms and conditions of the contract, where applicable. The presentation of the slip will constitute an offer on behalf of the Policyholder. If the Lead Underwriter is prepared to enter into the contract of insurance on behalf of the Lloyd's underwriters, he will initial (scratch) the slip and stamp it with the syndicate stamp. This will constitute an acceptance of the Policyholder's offer by each member of the Lloyd's underwriting syndicate to the extent of the Lead Underwriter's subscribed line. If the Lead Underwriter has not underwritten 100% of the risks, the Broker will present the slip to the managing agent or syndicate underwriter of other Lloyd's syndicate. In the event that more than 100% of the risk is underwritten, the

² Lloyd's Broker means a broker approved by Lloyd's who is able to place business directly with any Lloyd's managing agent subject to terms of business agreement.

³ "slip" is the term given to the document which records the essential details of the proposed contract of insurance and is a proposed policyholder's expression of willingness to contract on specified terms.

Broker may reduce the proportion of the risk that each syndicate has agreed to underwrite so that the total risk underwritten does not exceed 100%.

5. Until a further document is produced, the final scratched slip (i.e., the London Contract) will evidence the entire contract of insurance between the Policyholder and the member of each underwriting syndicate, with each member being severally liable for their contractual obligations to the Policyholder (the "Lloyd's Insurance Coverage").
6. The London Contract will be sent electronically to Lloyd's underwriters' attorney and chief agent in Canada (the "AIF"). The Lloyd's managing agent of each syndicate that will underwrite Lloyd's Insurance Coverage on risks located in Canada or to Canadian cedants through the OM&R Model, will authorize the AIF to accept or decline in Canada Lloyd's Insurance Coverage as set out in the London Contract. Thus, the AIF will have the authority to accept or decline in Canada Lloyd's Insurance Coverage.
7. If the AIF is satisfied that a Lloyd's Insurance Coverage should be confirmed, the AIF will sign in Canada the Canadian Contract, which will replicate the terms and conditions as set out in the London Contract and contain the requisite statement set out in section 578(5) of the *ICA*. The AIF will then send the Canadian Contract to the Policyholder or his/her Broker.
8. Upon the communication by the AIF in Canada of the Canadian Contract to the Policyholder or his/her Broker, the London Contract will terminate and cease to have effect with the Canadian Contract replacing and superseding the London Contract.
9. The Correspondent will be expressly authorized by Lloyd's underwriters to receive in Canada, on Lloyd's underwriters' behalf, all payments for Lloyd's Insurance Coverage under Canadian Contracts.

Considerations:

Based on the criteria set out in *Advisory 2007-01-R1 on Insurance in Canada of Risks* (the "Advisory"), it appears that with respect to Canadian Contracts, Lloyd's underwriters will, through the OM&R Model described above, engage in Canada in the activities referred to in the following subparagraphs of the Advisory:

- 2(a) promote in Canada its insurance products (paragraph 1 above);
- 2(c) decide in Canada to bind Lloyd's syndicate members to insurance coverage (paragraph 7 above);
- 2(f) communicate from Canada Lloyd's underwriters' acceptance of requests for insurance coverage to Policyholders (paragraphs 7 and 8 above); and
- 2(h) receive in Canada payments for insurance coverage from Policyholders (paragraph 9 above).

Conclusion:

Based on the criteria and guidance set forth in the Advisory, OSFI is of the view that risks insured by Lloyd's underwriters under Canadian Contracts, through the OM&R Model as described above, will be insured in Canada for purposes of Part XIII of the *ICA*.

Considering that Lloyd's underwriters are also registered in all provinces and territories to carry on insurance business under the laws of these jurisdictions or to transact insurance in these jurisdictions, OSFI has consulted the insurance regulator of all provinces and territories. They have confirmed that by insuring risks located in Canada and Canadian cedants through the OM&R Model as described above, Lloyd's underwriters will be in compliance with their respective laws and regulations and, where applicable, their related licensing requirements.

Should you have any questions or concerns regarding the above, please do not hesitate to contact me at (613) 990-2957 or by email at louis.bourgeois@osfi-bsif.gc.ca.

Yours very truly,

A handwritten signature in blue ink, appearing to read 'Louis Bourgeois', with a long horizontal flourish extending to the left.

Louis Bourgeois
Managing Director
Approval and Precedents
Legislation and Approvals Division