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# Ruling

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**Category:** Business and Powers

**NOTICE\***

**Subject:** Classes of Insurance – Aquaculture insurance

**No:** 2005 - 02

**Issue:** A foreign insurance company (FIC) proposed to insure in Canada risks covered by aquaculture insurance policies. The issue was whether risks in respect of aquaculture insurance fall within the class of “marine insurance” or “property insurance” as those classes are defined in the Schedule to the *Insurance Companies Act* (the ICA).

**Background:** The FIC is registered in certain provinces as a marine insurer and wishes to write aquaculture insurance policies under that marine insurer licence.

Aquaculture is the business of cultivating salt or freshwater fish or shellfish, as well as plants or other foods under controlled conditions. It involves the physical installation and operation of aquatic farming equipment.

The FIC submitted that its aquaculture insurance policies insured both the stock in the nets and the structures (e.g., pens, nets buoys, cable and anchors) that are put in place for the purpose of containing the developing fish against perils of the sea (e.g., action of the waves and tides). Given that these insured properties were exposed to perils of the sea, the FIC considered that the assured had embarked upon a “marine adventure”.

If risks in respect of aquaculture insurance fall within the class of “marine insurance” rather than “property insurance”, a foreign insurance company would not require an order under the ICA to insure in Canada those risks.

**Considerations:** The key elements in the definition of “marine insurance”, as set out in the Schedule to the ICA, are that the liability, loss or damage must occur during a voyage or marine adventure or during delay, or transit, incident to such voyage or marine adventure. While the business of aquaculture is clearly not related to a voyage, a determination had to be made on whether that business is related to a marine adventure.

The term “marine adventure” is not defined in the ICA, but it is defined in subsection 2(1) of the *Marine Insurance Act* (MIA) as any situation where insurable property is exposed to maritime perils, which is also defined in that Act as perils consequent on or incidental to navigation.

Following consultations with officials at Transport Canada, who are responsible for administering the MIA, OSFI determined that a combined reading of the definitions of “marine adventure” and “maritime perils” leads to the conclusion that a “marine adventure” entails perils that are consequent on or incidental to navigation. The main purpose of an aquaculture operation is clearly farming and not navigation. Although there may be some navigation involved in the aquatic farming operation, the navigation is incidental to the farming “adventure” and not the other way around.

OSFI understands that the risks insured by aquaculture insurance policies would be related to fish or plants raised, equipment used to carry out that business that may be both on-shore or off-shore and may include nets, cages, holding tanks and boats. These risks are not consequent on or incidental to navigation; certain aquaculture businesses do not entail any navigation. These risks fall within the class of “property insurance”.

OSFI has discussed this matter with certain insurance companies and foreign insurance regulators to ascertain their views and practices with respect to aquaculture insurance. They advised OSFI that aquaculture policies are underwritten under the class of “property insurance”.

**Conclusion:** OSFI concluded that risks covered by an aquaculture insurance policy are risks that fall within the class of “property insurance” and not “marine insurance” as defined in the Schedule to the ICA. Accordingly, if the FIC wishes to pursue its plan to insure aquaculture business in Canada, it would require an order from the Superintendent to insure in Canada these risks.

**Legislative References:** Subsection 573(1) of the ICA states that a foreign company shall not in Canada insure a risk unless the Superintendent has, by order, approved the insurance in Canada of risks by the foreign company.

Paragraph 572(1)(a) of the ICA states that Part XIII – Foreign Companies does not apply in respect of the insurance of risks falling within the class of marine insurance.

The Schedule to the ICA defines “marine insurance” and “property insurance” as follows:

- “marine insurance” means insurance against
  - (a) liability arising out of
    - (i) bodily injury to, or death of, a person, or
    - (ii) the loss of, or damage to, property, or
  - (b) the loss of, or damage to, property,occurring during a voyage or marine adventure at sea or on an inland waterway or during delay incident thereto or during transit, otherwise than by water, incident to such a voyage or marine adventure.
- “property insurance” means insurance against the loss of, or damage to, property and includes insurance coming within the class of forgery insurance but does not include insurance coming within the class of aircraft insurance, automobile insurance or hail insurance.

Subsection 2(1) of the MIA defines “marine adventure” and “maritime perils” as follows:

- “marine adventure” means any situation where insurable property is exposed to maritime perils, and includes any situation where
  - (a) the earning or acquisition of any freight, commission, profit or other pecuniary benefit, or the security for any advance, loan or disbursement, is endangered by the exposure of insurable property to maritime perils, and
  - (b) any liability to a third party may be incurred by the owner of, or other person interested in or responsible for, insurable property, by reason of maritime perils;
- “maritime perils” means the perils consequent on or incidental to navigation, including perils of the seas, fire, war perils, acts of pirates or thieves, captures, seizures, restraints, detainments of princes and peoples, jettisons, barratry and all other perils of a like kind and, in respect to a marine policy, any peril designated by the policy.

**Table of Concordance:**

Section Description	BA	TLCA	ICA	CCAA
Exceptions for marine insurance	N/A	N/A	52(6), 572(1)(a)	N/A

The table of concordance makes cross-references to similar provisions of other federal financial institutions legislation that may be of relevance to the reader.

\* Rulings describe how OSFI has applied or interpreted provisions of the federal financial institutions legislation, regulations or guidelines to specific circumstances. They do not negate the need to obtain any necessary approval of the transaction under the relevant federal financial institutions legislation. Rulings are not necessarily binding on OSFI’s consideration of subsequent transactions as these transactions may raise additional or different considerations. Legislative references in a Ruling are not meant to substitute provisions of the law; readers should refer to the relevant provisions of the legislation, regulation or guideline, including any amendments that came into effect subsequent to the Ruling’s publication.