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# Ruling

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**Category:** Business and Powers

**NOTICE\***

**Subject:** Classes of Insurance – Vehicle title insurance

**No:** 2003-03

**Issue:** A foreign insurance company (FIC) proposed to underwrite vehicle title insurance (VTI) in Canada. The issue was the class of insurance under which this type of insurance product could be underwritten.

**Background:** The FIC proposed to offer VTI, insurance against loss or damage caused by a defect in the title to a motor vehicle.

The definition of “title insurance” as set out in the Schedule to the *Insurance Companies Act* (ICA) refers to insurance against loss or damage caused by matters affecting the title to real property. Given that this class refers only to real property, the FIC would not have the power to underwrite VTI under that class. However, the FIC submitted that VTI could be written under the class of “property insurance” because a defect in the title may lead to a loss of money (thus property) to policyholders.

Provincial and federal government representatives are currently working on a joint project to harmonize and simplify the present system of classes of insurance. It has been proposed that the definition of the class of “title insurance” be changed to include risks related to all types of properties. Some provincial jurisdictions already include personal property in their definition of “title insurance”.

**Considerations:** Based on the information provided by the FIC, OSFI had no prudential concerns with respect to the FIC’s plan to underwrite VTI. With respect to the class of insurance under which VTI could be written, OSFI considered that the class of “property insurance”, which is defined as “insurance against the loss of, or damage to, property ...” would provide a reasonable fit pending the revision of the definition of the class of “title insurance”. OSFI determined that the reserve requirement for risks insured under the class of “title insurance” should apply to VTI policies.

**Conclusion:** OSFI concluded that, pending the promulgation of the new definition of the class “title insurance”, VTI would be a type of insurance that would fall within the class of “property insurance”.

Once the new harmonized classes of insurance come into effect, OSFI will require that VTI and other insurance against loss or damage caused by matters affecting the title to personal properties be written under the class of “title insurance”. Accordingly, OSFI recommends that FICs and federally regulated property and casualty insurance companies that are currently authorized to insure risks under the class of “property insurance” contact OSFI prior to writing VTI or insuring risks against loss or damage caused by matters affecting the title to personal properties. By doing so, companies would avoid the risk of having to cease offering such insurance products should the Superintendent’s approval not be forthcoming to vary its order to add the class of “title insurance”.

OSFI determined that the reserve and asset maintenance requirements for VTI, although classified as “property insurance”, would be equivalent to those required for risks insured under the class of “title insurance”.

**Legislative References:**

Subsection 573(2) of the ICA states that a foreign company shall not in Canada insure a risk unless the risk falls within a class of insurance that is specified in the order of the Superintendent approving the insuring in Canada of risks by the foreign company.

Schedule to the ICA:

“title insurance” means insurance against loss and damage caused by

- (a) a defect in the title to real property,
- (b) the existence of a lien, encumbrance or servitude on real property,
- (c) a defect in the execution of a mortgage, hypothec or deed of trust in respect of real property, or
- (d) any other matter affecting the title to real property or the right to the use and enjoyment of real property.

“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.

**Table of Concordance:**

Section Description	BA	TLCA	ICA	CCAA
Rrestriction to specified classes of insurance	NA	NA	443(1), 573(2)	NA

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

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