



Ruling

Category: Foreign Insurance Company **NOTICE***

Subject: Insurance in Canada of Risks – Group Policy

No: 2005 – 03 – R1 **Issued:** October 2005
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Issue: The issue was whether a foreign insurer that provides insurance coverage to Canadian employees under group insurance policies (group policies) solicited and issued outside Canada, was insuring, in Canada, risks and therefore would require an order under Part XIII of the *Insurance Companies Act* (ICA).

Background: A foreign insurer is underwriting outside of Canada group life, accident and disability insurance policies. On some occasions, the group policies are issued to an employer (i.e., the group policyholder) that has branches or subsidiaries in Canada, and such policies provide coverage for the Canadian employees.

The foreign insurer has no offices or employees in Canada. Its group policies are negotiated and executed outside Canada. Depending on the group insurance plan selected by the employer, an employee may upgrade the basic coverage or seek additional or voluntary coverage. The employer pays for basic coverage while the employee pays for any supplemental coverage.

Under the group policy, a number of documents flow between the foreign insurer, the employer and the employees, such as administrative information pertaining to the insurance coverage, enrolment forms, certificates of coverage and claims forms. Where the group policy also offers upgrade or voluntary coverage, additional information is provided to the employees, additional enrolment forms are submitted to the foreign insurer, and the employer must put in place a program to collect and forward the premium to the foreign insurer. All payments from Canadian residents for services under the group policies are received by the foreign insurer outside of Canada.

The foreign insurer represented that the employer assumes the responsibility for acting as liaison between the employees (the certificate holders) and the foreign insurer. Depending on the employer's administrative practices and cost structure, the liaison function may be performed directly by the employer, its Canadian operations, or a third party administrator (TPA). None of these parties act as agent of the foreign insurer or have the authority to bind the foreign insurer.



Furthermore, the foreign insurer represented that it carries on outside of Canada all insurance functions pertaining to the group policies, such as the issuance of the group policy and the employees' certificates of coverage, as well as the assessment, adjudication, processing and payment of claims. On some occasions, the foreign insurer appoints a third party administrator, operating only outside Canada, to process and pay claims on its behalf.

Considerations: On the basis of information provided by the foreign insurer, it appears that:

1. the foreign insurer has no offices or employees in Canada;
2. the group policies are solicited, negotiated, issued and executed outside Canada;
3. the foreign insurer performs all insurance functions pertaining to its group policies from its offices located outside of Canada or through a TPA located outside Canada, namely, the underwriting of the group policy, the issuance of the certificate of coverage, and the assessment, adjudication, processing and payment of claims;
4. where activities, with respect to basic and supplemental coverage provided to Canadian employees under the group policy, are performed in Canada, they only consist of the liaison function, i.e., distribution of information to employees in Canada describing the basic and additional coverage available, administration of the exchange of information between the employees in Canada and the foreign insurer, and, collection and transmittal of insurance premiums to the foreign insurer;
5. where the liaison function pertaining to the group policies is performed in Canada, it is provided by the Canadian operations of the employer or a TPA appointed by the employer, and
6. the party performing the liaison function in Canada is not acting as agent of the foreign insurer and has no authority to bind the foreign insurer to provide insurance coverage to Canadian employees.

Conclusion: In these circumstances, OSFI concluded that, for the purpose of the ICA, the foreign insurer does not in Canada insure risks and does not require an order under Part XIII of the ICA to provide coverage to residents in Canada under its group policies.

Legislative References: Subsections 573(1) and (2) of the ICA provide that a foreign insurer shall not in Canada insure a risk unless the Superintendent has, by order, approved the insurance in Canada of risks by the foreign insurer and the risks fall within a class of insurance that is specified in the order.

Table of Concordance: The legislation of other federal financial institutions does not contain similar provisions.

* 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.