



Reference: Foreign Insurance Companies

Our File: P2873-6-9

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To: Foreign life insurance companies (including foreign fraternal benefit societies)  
Foreign property and casualty companies

**Subject: Revised Advisory - Insurance in Canada of Risks**

In late 2008, OSFI began the process of revising Advisory 2007-01 - Insurance in Canada of Risks (the “Initial Advisory”) largely as a result of requests from stakeholders to make it easier to use and to provide more certainty around OSFI’s interpretation and application of the concept “insuring in Canada a risk”. This process has led to the posting today of Advisory 2007-01-R1 - Insurance in Canada of Risks (the “Revised Advisory”).

The core principles underlying the Initial Advisory remain unchanged. It must be noted, however, that in providing greater certainty about OSFI’s views, the Revised Advisory is also balanced with slightly more cautious positions compared to the Initial Advisory. Attached to this letter is a summary of the key revisions contained in the Revised Advisory.

I also wish to take this opportunity to thank all stakeholders who provided comments and feedback leading to the Revised Advisory. I believe that this document will provide greater clarity and certainty for all stakeholders.

For additional information or if you have any questions related to the contents of this letter, please contact Stéphane Fournier, Manager, Precedents by phone at (613) 991-0813 or by email at [stephane.fournier@osfi-bsif.gc.ca](mailto:stephane.fournier@osfi-bsif.gc.ca).

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Attachment



## Summary of Key Revisions Contained in Revised Advisory

<b><i>Revisions Contained in Revised Advisory</i></b>	<b>Explanations</b>
Introduction	Addition of a paragraph clarifying that the Advisory may also be used to determine whether a foreign insurer is “issuing annuities in Canada” and/or “issuing policies of endowment insurance in Canada”.
Definition of “agent” deleted	The definition of “agent” has been deleted to avoid confusion with an “insurance agent” under provincial laws, as the two may not have the same legal status in regards to a foreign insurer. For certainty, however, the principles of agency remain applicable in determining whether a foreign insurer insures in Canada a risk (see Preamble to Paragraph 2 below).
Definition of “policy” deleted	The definition of “policy” has been deleted to alleviate the text. The term “insurance coverage” is used mostly instead.
Paragraph 1	Revised to emphasize the ties of “insuring in Canada a risk” to the concept of “carrying on business in Canada” and to emphasize the importance of the location of the foreign insurer’s operations in determining whether it is “insuring in Canada a risk”.
Paragraph 2 Generally	In response to requests for more clarity and certainty around OSFI’s interpretation and applications of the concept “insuring in Canada a risk”, the indicia to determine whether a risk has been insured in Canada have been revised to focus on the location of the foreign insurer’s operations. Also, all the indicia are now contained in one paragraph, rather than four subparagraphs as was the case in the Initial Advisory.
Preamble in Paragraph 2	Revised to recognize the fact that a foreign insurer only acts through persons, including agents. The footnote to the text notes that to determine whether someone acts as agent for purposes of “insuring in Canada a risk”, reference should be made to the Canadian common law principles of agency, and where applicable, the <i>Civil Code of Québec</i> .
Subparagraph 2(a) (promotes in Canada)	Activity referred to in subparagraph 2(d) of the Initial Advisory.
Subparagraph 2(b) (solicits in Canada)	Activity referred to in clause 2(a)(i) of the Initial Advisory.
Subparagraph 2(c) (receives in Canada requests)	Activity referred to in clause 2(a)(ii) of the Initial Advisory. Revised to make the indicia more clearly applicable in the reinsurance context.

<b><i>Revisions Contained in Revised Advisory</i></b>	<b><i>Explanations</i></b>
Subparagraph 2(d) (negotiates in Canada)	Activity referred to in clause 2(a)(iii) of the Initial Advisory.
Subparagraph 2(e) (decides in Canada to bind)	Activity referred to in clause 2(c)(iii) of the Initial Advisory. This activity is a key indicia of where operations are carried on, but the rest of subparagraph 2(c) of the Initial Advisory, which focused on the jurisdiction with which a policy is most closely connected (i.e., indicia to determine the law applicable to the policy in the absence of a governing law provision), has been deleted since it has little or no correlation with the location of a foreign insurer's operations.
Subparagraph 2(f) (communicates from Canada an offer or acceptance)	Activity referred to in clause 2(a)(iv) of the Initial Advisory.
Subparagraph 2(g) (receives in Canada an acceptance)	Activity referred to in clause 2(a)(v) of the Initial Advisory.
Subparagraph 2(h) (receives in Canada premiums)	<p>One of the activities referred to in clause 2(b)(i) of the Initial Advisory. Since the reception of premiums (including the related maintenance of a bank account) is a key operational activity, and in some cases, may be necessary for the coverage to take effect and/or to remain in effect, this indicia has been given more weight than in the Initial Advisory.</p> <p>The <i>representations</i> regarding where a foreign insurer will receive the premiums contained in the Initial Advisory have been deleted. As an indication of the location where operational activities are carried on, the focus has instead been shifted to the location where premiums <i>are</i> received.</p>
Subparagraph 2(i) (services in Canada the policy)	Remainder of the activities referred to in clause 2(b)(i) of the Initial Advisory. Since it references activities occurring always after a risk has been insured, has less weight than the reception in Canada of premiums.

<b><i>Revisions Contained in Revised Advisory</i></b>	<b><i>Explanations</i></b>
Location where policy is received is deleted	Clause 2(a)(vi) of the Initial Advisory has been deleted since it has little or no correlation with the location of a foreign insurer's operations.
Paragraph 3	Revised to make the paragraph more concise. Subparagraph 3(a) continues to remind that since the concept "insuring in Canada a risk" is a question of fact and law, indicia other than those listed in paragraph 2 may be relevant to the analysis. Subparagraph 3(d) of the Initial Advisory is now Scenario 3 in paragraph 4 of the Revised Advisory.
Paragraphs 4 & 5	Revised to provide firm (rather than general) views in regards to the application of the indicia to factual situations. It is likely that these scenarios address the vast majority of possible factual situations.
Other Guidance	Revised to provide greater transparency in regards to the clarified scope of Part XIII of the <i>Insurance Companies Act</i> , and to provide additional guidance relating to federal, provincial and territorial insurance legislation.