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Ruling

Category: **Business and Powers** **NOTICE***

Subject: **Classes of Insurance – Property valuation indemnity insurance**

No: **2003-04**

Issue: A foreign insurance company (FIC) proposed to underwrite property valuation indemnity insurance (PVII) 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 PVII, an insurance product designed to protect lenders against losses on mortgage loans where the value of the underlying real property disclosed to the lender when the mortgage was granted was higher than the market value of the property at that time.

The FIC submitted that its PVII product would have the following differentiating characteristics from conventional mortgage insurance:

- the policy would only be issued in respect of a residential property where the amount of the mortgage loan to be granted, together with the amount then outstanding of any mortgage having an equal or prior claim against the property, would not exceed 75% of the value of the property at the time of the loan;
- the policy would be issued for a fixed term that would be shorter than the period required to pay the loan in full; and
- the insurance coverage would be limited to an amount not greater than the difference between the value of the property disclosed to the lender and the market value of the property at the time of the loan.

Considerations: The class of "mortgage insurance" is defined in the Schedule to the *Insurance Companies Act* (ICA) as "insurance against loss caused by default on the part of the borrower under a loan secured by a mortgage on real property, a hypothec on immovable property or an interest in real or immovable property."

Based on the information provided by the FIC, it appears that PVII would be a type of insurance that would fall within the class of "mortgage insurance." The policyholder (lender) may only make a claim if a default has occurred on the part of the borrower under the terms of a mortgage loan and the loss to the lender would be greater than the amount specified in the PVII policy.

Given that this was the first application by a FIC to underwrite mortgage insurance in Canada, OSFI considered the criteria for federally incorporated insurance companies underwriting mortgage insurance in Canada. Due to the risks inherent to mortgage insurance, OSFI practice has been to impose the following additional standards to federally incorporated insurance companies seeking permission to insure in Canada risks under the class of “mortgage insurance”:

(a) have a minimum regulatory capital of at least $50 million,
(b) maintain reserve requirements for unearned premiums that differ from the 8% margin that is generally applied to all other classes of insurance, and
(c) restrict the insurance business to mortgage insurance.

From a prudential perspective, because of the characteristics inherent to PVII (see “Background” above), a federally incorporated insurance company or a FIC that would limit its mortgage insurance activities to PVII would not be exposed to all of the risks associated with conventional mortgage insurance products.

Conclusion: OSFI concluded that PVII would be a type of insurance that would fall within the class of “mortgage insurance” and that a federally incorporated insurance company or a FIC that limits its mortgage insurance activities to PVII would not be subject to the additional standards referred to in (a) to (c) above.

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:
“mortgage insurance” means insurance against loss caused by default on the part of a borrower under a loan secured by a mortgage on real property, a hypothec on immovable property or an interest in real or immovable property.

Table of Concordance:

Section Description	BA	TLCA	ICA	CCAA
Restriction to specified classes of insurance	N/A	N/A	443(1), 573(2)	N/A

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

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