

**CIRCULATED TO ALL MEMBERS, BROKERS AND DIRECTORS  
ATTENTION INSURANCE DEPARTMENT**

**1 JULY 2008  
SSR/DHU**

## **AMENDMENTS TO THE CANADIAN INSURANCE COMPANIES ACT (ICA)**

The International Group of P&I Clubs is aware of the recent changes that have been made to the Canadian Insurance Companies Act, in particular the changes that, subject to the implementing Regulations, will remove the current exemption for marine insurance and require insurers, including foreign insurers, such as the member Associations of the International Group of P&I Clubs (the IG) to be licensed by the Office of the Superintendent of Financial Institutions (OSFI), and approved by each province and territory in which business is conducted. The amended ICA will take effect from 1st January 2010.

The ICA provides for federal regulation of insurance companies and imposes on insurers licensing, reporting and record keeping requirements, levels of reserves to be maintained in Canada and other measures. Marine insurance has, historically, had special treatment under the ICA and benefited from an exemption contained therein from federal regulatory oversight for Marine Insurance.

However, the removal of the exemption for marine insurance will have a significant impact on those member Associations of the IG that provide P&I cover to owners and charterers registered and/or based and/or insuring risks in Canada. The removal of the exemption will also affect hull and property underwriters and brokers since the existing exemption is not sector specific but applies to the whole insurance market. Members may therefore also wish to discuss the implications of the removal of the exemption with their broker, where relevant.

In the event that the ICA does enter into force, foreign insurers writing Canadian business from abroad will not be permitted to underwrite in Canada, either direct or through a broker, without being licensed, although this will be dependant on whether or not an insurer's activities are deemed to constitute "insuring in Canada a risk". The ICA does not provide guidance on how to interpret this phrase. However the OSFI has drafted rather complicated Guidelines in the form of an Advisory which are intended to aid in determining whether a foreign insurer's activities constitute "insuring in Canada a risk". The determining factors are not confined to the location of the insured, the broker or the insured property or risk but encompass the location of a large number of other subsidiary activities relating to the insurance e.g. where the business of insurance is being conducted, where it was solicited, where the policy was negotiated and where decisions were made regarding the issuance of the policy.

## **CIRCULAR**

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The application process at both the federal and provincial levels is a rigorous one and will require a great deal of information to be submitted for both application processes. The regulators are likely to look closely at the applicants' business plans, the financial integrity of the applicants and other matters with a view to ensuring that the applicants will be stable and long-term participants in the Canadian insurance business. Where a foreign insurer has been granted a license, every aspect of the insurance business that it carries on in Canada, including the insurance in Canada of risks, is then subject to record keeping, vesting of assets and other requirements imposed by the ICA.

There are also potential tax implications to consider since the removal of the exemption in the ICA could have the consequence of marine insurance falling within the scope of the Excise Tax Act and possibly lead to the provinces imposing premium taxes.

Clearly, the key is whether or not the activities of the member Associations of the IG and other marine insurers are deemed to constitute "insuring a risk in Canada".

The IG's Regulatory Affairs sub-committee is considering the implications of the amendments and has retained and instructed lawyers in Canada to act for and on behalf of the IG in order to carry out a full investigation of the implications of the amendments to the ICA and to consider the most appropriate means by, and channels through, which the IG can limit the impact of the amendments. With this in mind, contact has already been made with a number of domestic and international shipping and marine insurance organisations that share the IG's concerns. This is to ensure that a co-ordinated industry-wide strategy is adopted in discussions with the Canadian government and authorities, rather than individual organisations making independent representations. It is intended that a joint meeting of such interested parties will be held in the near future followed by representation to, and meeting with, the OSFI and the Minister for Finance in order to highlight industry's concerns and to discuss the possibility initially of withholding the removal of the exemption for marine insurance from the ICA and ultimately of reinstating the licensing exemption.

If Members or their brokers have any suggestions or questions arising out of the amendments to the ICA or this letter they are invited to contact the Club

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