

Registration under the Insurance Companies Act of Canada

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Résumé de l'article

M. Jacques Caya étudie, dans l'article qu'on va lire, les conditions posées aux sociétés étrangères, y compris les britanniques, pour faire des affaires d'assurance au Canada. Il nous fait observer que certaines modifications devront être apportées à son texte au fur et à mesure que le gouvernement fédéral apportera à la Loi les changements qu'il projette. Comme il s'écoulera sans doute un long moment entre le dépôt du projet de Loi et sa signature par le gouverneur général, nous avons pensé que nous pouvions faire paraître son texte, quitte à le modifier dans les numéros à venir, au fur et à mesure que s'appliqueront les exigences nouvelles. A.

Registration under the Insurance Companies Act of Canada

by

JACQUES CAYA⁽¹⁾

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35



British insurance companies are subject to the provisions of the Canadian and British Insurance Companies Act. Non British foreign insurance companies are subject to the provisions of the Foreign Insurance Company Act. However, the rules and procedures applying to British and Foreign companies are identical.

The following is based on the Act as amended on July 14, 1977.

1. Initial Procedure

A Company wishing to obtain a certificate of registry (i.e. become licensed) in Canada should write to the Superintendent of Insurance, Department of Insurance, Ottawa, Ontario, Canada, K1A 0H2, stating its intention and enclosing the following information and documents :

(1) Mr. Caya is Vice President of Insurance Management Company of Canada Inc.

ASSURANCES

36

- a) The classes of insurance for which the Company would like to be registered (if the Company intends to write only reinsurance in Canada for such classes it should be so stated).
- b) A copy of its charter, act of incorporation, articles of association or other instrument of incorporation, together with all amendments thereto to date. If the Company is incorporated by articles of association or by letters patent under a general act, a copy of such general act or of extracts therefrom affecting the insurance powers of the Company should be included. If the insurance powers granted by the instrument of incorporation or organization, in whatever form it may be, are enlarged or abridged by any general act, a copy of such general act or applicable extracts therefrom should also be included.
- c) A copy of the Company's latest annual financial statement rendered to the Government of the state or country in which it is organized, or if no such statement is required to be rendered, a copy of the financial statement submitted to the shareholders or members of the Company at the last preceding annual meeting.

If it seems probable that a certificate of registry can be issued for the classes of insurance desired, a form of application with full instructions will be sent to the Company.

2. Form of application

The following documents are required to be filed together with the form of application :

- a) A copy of the Company's charter, act of incorporation or articles of association certified by the officer in charge of the original (in the United States, this is usually the Secretary of State or the Insurance Commissioner of the State).
- b) A certificate of compliance giving satisfactory evidence that the Company is authorized under the laws of the country in which its Head Office is situated to transact in such country the classes of insurance business for which it desires to be registered in Canada.

ASSURANCES

- c) A copy of the Company's latest (i.e. as at a date not earlier than one year before the date the application is filed) financial statement (as described in paragraph c) of Initial Procedure above) signed by and verified by the oaths of the President and Manager or other proper officers thereof. A certified copy of such a statement is not sufficient.
- d) A Power of Attorney to a Chief Agent in Canada. The Form for this purpose will be supplied by the Department. The Power of Attorney must be in favour of an individual, not a corporation, partnership or firm. The Power of Attorney shall :
- (i) declare at what place in Canada the Chief Agency of the Company is or is to be established ;
 - (ii) expressly authorize such attorney to receive from the Minister of Finance and the Superintendent of Insurance all notices that under the laws of Canada are required to be given or that it is thought advisable to give.

37

The Company is also required to publish a notice of application at least once a week for a period of four consecutive weeks in the Canada Gazette. The nominal cost of this notice is the only expense charged by the Government since no fees are charged by the Department of Insurance for filing documents, nor for the certificate or any renewal of such certificate (to meet the expenses of the Department, an annual assessment is made on all companies registered based on the premium income in Canada of the Companies, the rate being at present approximately one twenty-fifth of one percent). Once the certificate is issued a notice of the issuance is published weekly during four consecutive weeks in the Canada Gazette by the Department of Insurance free of charge. The Company is required to publish a similar notice weekly during four consecutive weeks in a newspaper of the City where the chief agency is established ; the cost of such notice is, of course, borne by the Company.

3. Classes of insurance

The attached statement indicates the initial and minimum deposits required in respect of each of the classes of business. It will be noted that the Act does not apply to Marine business, thus no licence nor deposit (except as explained later for the provincial licence) is required to write this class.

ASSURANCES

To write a complete book of reinsurance business, the Company should be licensed for all the classes indicated. A Company may not wish to write such specific classes as Surety, Hail, etc... but they are sometimes included within the scope of Whole Account treaties even though the premium income from such classes might be marginal ; however, if the Company is not licensed for such classes, this would entail that the Company is not able to participate to the treaties involved or would have to assume on an unlicensed basis the classes for which it is not licensed. In any event, the following classes represent the minimum needed :

38

Automobile :	\$200,000
Liability :	\$200,000
Property :	\$600,000

In order of importance we would suggest that the following classes be considered should it be desired not to have a full licence :

1. Fidelity :	\$100,000
2. Surety :	\$100,000
3. Boiler and Machinery :	\$100,000
4. Hail :	\$200,000
5. Aviation :	\$200,000
6. Accident and Sickness :	\$100,000

4. Minimum assets in Canada

The above-mentioned figures represent the minimum assets which the Company must have in Canada in order that a certificate of registry be issued.

This is what is generally referred to as the initial legal deposit. It must be deposited with the Receiver General of Canada. The additional legal deposit (as defined below) may also be made with the Receiver General of Canada but the list of securities which can be deposited is much more limited than the one applying to a deposit vested in trust as explained below.

The Act provides that the eligible securities for the initial legal deposit are securities of or guaranteed by Canada, or securities of or guaranteed by any province of Canada. If other securities are offered as a deposit, they may be accepted at such valuation and on such conditions as the Treasury Board may direct, (it has in the

ASSURANCES

past accepted such securities as those issued by Canadian municipalities, the International Bank for Reconstruction and Development and Canadian loan corporation, in the latter case subject to a 15% limitation of the total securities deposited).

The value of securities which, previously, was computed at their market value is since January 1, 1978 calculated on the basis of their book values less an investment valuation reserve (this valuation reserve will be determined according to regulations which have not yet been published but we understand that, in the case of fixed income securities, those maturing within five years will be valued on the basis of the amortized value).

39

In respect of each class separately, the total legal deposit must be equal to the higher of the following two amounts : the initial deposit or the liabilities of the Company in Canada for the class. If some of the liabilities cannot be apportioned by class, the relevant amounts are added to the liabilities per class of business to determine the overall deposit required. Thus, if the liabilities exceed the amount of the initial deposits for classes for which the Company is registered, an additional deposit must be made (it will be noted that any excess deposit in respect of a class cannot be used to offset a shortfall for another class). Such adjustment, if needed, is usually effected once a year prior to April 1 on the basis of the yearly statement which must be filed with the Department not later than March 15 in the case of Companies transacting reinsurance only (Companies writing insurance must file their yearly statement not later than February 28).

The liabilities for the purposes of calculating the deposit are computed as follows :

- a) *Unearned premiums* : between 100% and 115% of the pro rata reserve (either on the annual or monthly basis) for each class separately, according to the expected loss ratio of the business in force ; the expected loss ratio must not be lower than the loss ratio of the previous year and to such expected loss ratio 20% is added, the resulting total percentage being used to determine the percentage of the unearned premiums for computing the liabilities subject to a minimum of 100% (if the expected loss ratio is 80% or less) and a maximum of 115% (if the expected loss ratio is 95% or more) ; the expected loss ratio must be certified by

ASSURANCES

an actuary or by a senior officer of the Company having a full knowledge of the Company's underwriting operations.

b) *Outstanding claims (including any IBNR reserves)* : 115%

c) *All other liabilities* : 100%

d) Reinsurance with a reinsurer licensed in Canada must be deducted. Reinsurance with an unlicensed Company must also be deducted but if there is no deposit for unearned premiums and outstanding losses (or if such deposit is not sufficient) the Company must set-up a corresponding reserve which is added to the liabilities of the Company for the purposes of computing the legal deposit. Any deposit set-up by an unlicensed reinsurer must be within the scope of a trust account under the control of the Department of Insurance.

40

There is another deposit which is needed if the minimum deposit required at the end of any year is higher than the amount required at the end of the previous year. The reasoning behind this is to ensure that, should the same growth be realized during the current year, the deposit at the end of the year will be sufficient. Such additional deposit may be effected by monthly pro rata instalments at the beginning of each month.

As mentioned above, the additional legal deposit, that is the amount exceeding the minimum amount applying to the classes for which the Company is licensed, may be vested in trust (the trust deed must be approved by the Minister of Finance). The advantage of having such a deposit in trust is that the list of eligible securities is much longer than the one applying to the deposit with the Receiver General of Canada and therefore gives more flexibility to the investment policy. Subject to the prior approval of the Superintendent of Insurance, the Company may, up to the extent of 15% of the total deposit required, deposit a letter of credit instead of securities provided the letter of credit is drawn on a bank and in terms satisfactory to the Superintendent of Insurance.

5. Records in Canada

The Chief Agent must have an intimate knowledge of all transactions of the Company in Canada and sufficient records and documents for that purpose are required to be maintained at the Chief Agency in Canada. It is not necessary that the business be

ASSURANCES

actually underwritten in Canada but Head Office must ensure that all relevant papers are supplied to the Chief Agency so that underwriting files are maintained in Canada. Treaty wordings may be signed and a copy held by the Chief Agency or they may be signed at Head Office but in the latter case the signature of the Chief Agent or his delegates is also required and a duly executed copy must be held at the Chief Agency.

All original accounts must be verified, recorded and settled by the Chief Agency.

All assets must be under the control of the Chief Agent so that none can be withdrawn from Canada without his consent.

41

6. Provincial licence

Canada has a federal system of government. While the central government and the provincial governments have jurisdiction over the *commerce* of insurance (and thus may charter or license companies, although the licensing of foreign companies is reserved to the central government) only the provincial governments have jurisdiction over *contracts* of insurance. Thus, a Company must be licensed in at least the province in which the Chief Agency is located. For a Company already licensed by the central government, the formalities for securing a provincial licence are currently not too complicated and no deposit (except for Marine business in the Province of Quebec) is required (the only charge being a nominal fee for the licence and its yearly renewal plus an assessment to meet the expenses of the provincial Department of Insurance). A Company must also have a Chief Agent in each of the provinces in which it is licensed. The duties of a provincial Chief Agent in the case of a federally licensed Company are mostly nominal and a lawyer or accountant can fulfil this function for a small fee. Of course, the Company's Chief Agent at the federal level can also act as the Chief Agent for the province in which the Company's Chief Agency is located.

One technicality should be mentioned here. The Insurance Acts of the Provinces apply to Marine business. Thus, a Company should add this class to the list of the classes for which it is licensed by the central government, when requesting a provincial licence (no deposit being currently required by the Provinces except in the case of the Province of Quebec where a \$50,000 deposit is required).