



Ruling

Category: Business and Powers

[NOTICE*](#)

Subject: Promotion of a “Comprehensive Credit Insurance” Policy by a Bank

No: 2016 – 01

Issue: The issue is whether a bank may, under the *Insurance Business (Banks and Bank Holding Companies) Regulations* (the Regulations), promote within its Canadian branches a policy of “comprehensive credit insurance” (CCI). Such a policy provides insurance to a seller of goods or services against a loss incurred due to the non-payment for goods or services sold to a purchaser located in or outside Canada. For more clarity, the seller of the goods or services may be, but is not necessarily, an exporter of those goods or services.

Background: Section 416 of the *Bank Act* and the Regulations set out rules governing the promotion, by banks, of insurance. Paragraph 7(1)(a) of the Regulations provides that a bank shall not, in relation to its business in Canada, promote an insurance policy unless the policy is of an “authorized type of insurance”, as defined in the Regulations. The only authorized type of insurance relevant in the circumstances is “export credit insurance” (ECI), which the Regulations define as follows in section 2:

export credit insurance means a policy of an insurance company that provides insurance to an exporter of goods or services against a loss incurred by the exporter due to a non-payment for exported goods or services.

assurance crédit des exportateurs Police établie par une société d’assurances qui accorde à l’exportateur de biens ou services une assurance contre la perte résultant du défaut de paiement des biens ou services exportés.

Therefore, the issue involves determining whether CCI constitutes ECI.

Considerations:

Applicable Principles of Statutory Interpretation

The Supreme Court of Canada has adopted and applied the “Driedger approach” to guide statutory interpretation in Canada:

Today there is only one principle or approach; namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.¹

¹ *Rizzo and Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, at p. 41, citing Elmer A. Driedger, *Construction of Statutes*, 2nd ed. (Toronto: Butterworths, 1983) at p. 87. See also *Bell ExpressVu Limited Partnership v. Rex*, [2002] 2 S.C.R. 559 at p. 580.



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Since the English and French versions of the Regulations are equally authoritative,² both versions must be considered when applying the Driedger approach.

Furthermore, a tenet of statutory interpretation provides that exceptions to general prohibitions, such as the one found in paragraph 7(1)(a), are to be strictly construed.³

Application of Principles of Statutory Interpretation

Consistent with the Driedger approach, OSFI understands the intention behind the Regulations as “ensur[ing] that, on the whole, insurance continues to be sold by qualified, licensed insurance brokers and agents working independently of any deposit-taking institution.”⁴ This intention, together with the tenet of statutory interpretation that exceptions to general prohibitions are to be strictly construed, suggest that CCI must clearly constitute ECI for a bank to be allowed to promote a CCI policy within its Canadian branches.

Having regard to this intention and tenet of statutory interpretation, together with a grammatical and ordinary reading of the English and French versions of ECI and the other elements of the Driedger approach applied in the circumstances, OSFI is of the view that ECI is strictly confined to the coverage of losses incurred by exporters due to a non-payment for exported goods or services. Given that CCI would not be confined to such losses, OSFI is of the view that CCI does not constitute ECI.

Conclusion:

OSFI concludes that a bank may not promote a CCI policy within its Canadian branches.

Legislative References:

Subsection 416(1) of the *Bank Act* provides that a bank shall not undertake the business of insurance except to the extent permitted by the *Bank Act* or the Regulations.

Section 2 of the Regulations defines an “authorized type of insurance” as including ECI.

Paragraph 7(1)(a) of the Regulations provides that a bank shall not, in relation to its business in Canada, promote an insurance policy of an insurance company, agent or broker, or a service in respect of such a policy, unless the policy is of an authorized type of insurance or the service is in respect of such a policy.

² See section 18 of the *Canadian Charter of Rights and Freedoms*.

³ Ruth Sullivan, *Sullivan on the Construction of Statutes*, 5th ed. (Markham: LexisNexis Canada Inc., 2008) at p. 483.

⁴ Department of Finance Canada, *Reform of Federal Financial Institutions Legislation: Overview of Legislative Proposals*, Fall 1990, at p. 5.

Table of Concordance:

Section Description	<i>Insurance Business (Banks and Bank Holding Companies) Regulations</i>	<i>Insurance Business (Authorized Foreign Banks) Regulations</i>	<i>Insurance Business (Trust and Loan Companies) Regulations</i>	<i>Credit Information (Insurance Companies) Regulations</i>	<i>Insurance Business (Cooperative Credit Associations) Regulations</i>
Definitions – “export credit insurance”	2	1	2	2	1
Promotion	7(1)(a)	5(1)(a)	7(1)(a)	4(1)(a)	5(a)

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

* 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.