



Guideline

Subject: Role of the Chief Agent and Record Keeping Requirements

No: E-4A

Date: November 1992

Revised: November 2005

Revised: January 2010

Introduction

Section 573 of the *Insurance Companies Act* (ICA) provides that a foreign entity shall not insure in Canada a risk unless it is authorized by order of the Superintendent to do so and the risk falls within a class of insurance that is specified in the order. Where a foreign entity has been granted such an order, every aspect of the insurance business that it carries on in Canada, including the insurance in Canada of risks, is subject to record keeping, vesting of assets and other requirements imposed by Part XIII of the ICA.

This guideline describes OSFI's expectations with respect to the role of the Chief Agent (CA) of a foreign company¹. The guideline applies to the Canadian insurance branch operations of foreign entities². For the purposes of this guideline, these entities will be referred to collectively as foreign company branches (FCBs). It also discusses OSFI's expectations with respect to records and documents to be maintained at the chief agency. The guideline does not address all legislative and regulatory obligations and requirements; therefore, CAs are expected to refer to relevant provisions in the legislation and regulations. Reference should also be made to a number of other guidelines, advisories and rulings applicable to FCBs.³

As part of its risk-based supervisory framework, OSFI evaluates FCBs against legislative and regulatory requirements as well as the expectations of this guideline and other guidance applicable to FCBs.

¹ Pursuant to subsection 2(1) of the *Insurance Companies Act* (ICA), a foreign company means an entity that is the subject of an order made under subsection 574(1) of the ICA. In respect of an association, the role of the Chief Agent is undertaken by the "Attorney in Fact".

² A foreign entity is defined in the ICA as an entity incorporated or formed by or under the laws of a country other than Canada, and includes an association and an exchange.

³ Refer to OSFI's Internet Web site for guidelines at http://www.osfi-bsif.gc.ca/osfi/index_e.aspx?ArticleID=526, advisories at http://www.osfi-bsif.gc.ca/osfi/index_e.aspx?DetailID=524 and rulings at http://www.osfi-bsif.gc.ca/osfi/index_e.aspx?DetailID=526.



1. Role of the Chief Agent

Foreign companies establishing a branch in Canada are required to appoint a CA⁴. As noted in the [Corporate Governance Guideline](#), OSFI looks to the CA to oversee the management of the FCB, including matters of a corporate governance nature that relate to the branch. As such, OSFI expects that the CA will be accountable for the FCB's operations. However, OSFI recognizes the nature, scope, complexity, and risk profile of FCBs may affect how the CA carries out his or her role with respect to the expectations set out in this guideline.

It is recognized that the CA may delegate various branch responsibilities to branch employees. Alternatively, he/she may enter into arrangements with the home office, another entity within the corporate group, or a third party. OSFI would expect all situations where the CA does not have direct responsibility for a significant function (e.g., servicing of policies booked in the Canadian branch) to be documented either in written mandates/policies or service level agreements of the FCB. Such arrangements made with the home office, another entity within the group, or a third party would be considered outsourcing under OSFI's [Guideline B-10 on Outsourcing of Business Activities, Functions, and Processes](#). OSFI would expect FCBs to consider Guideline B-10 when these activities or functions are outsourced. Guideline B-10 sets out OSFI's expectations for the management of various types of outsourcing arrangements, including the areas to be addressed by a written outsourcing agreement. Guideline B-10 also includes specific expectations for arrangements where the service provider is a related party of an FCB.

While the CA may not conduct all responsibilities or activities directly, OSFI expects the CA to retain his or her overall accountability for the operations of the FCB. Regardless of who conducts the various functions, OSFI expects the CA to:

- ensure that the FCB has clearly articulated business objectives, strategies and that they are available for review by OSFI at the chief agency. Recognizing that FCBs are not legal entities but rather an extension of the home office, the CA is expected to consult with and report to the home office regarding the suitability of planned activities for the FCB;
- be satisfied that appropriate policies and procedures (i.e. control systems) are in place to manage the risks, regardless of where the controls may reside;
- receive sufficiently comprehensive and frequent reports to understand and monitor the business of the FCB; and
- undertake or obtain, periodically, an independent assessment of the adequacy and effectiveness of the controls. Independent assessment may be obtained from individuals or groups designated with that role, such as internal audit or risk management (either at the branch or home office), or qualified third parties.

⁴ Pursuant to section 571 of the ICA, a CA is the natural person appointed pursuant to subsection 579(3) and named as such in the power of attorney referred to in paragraph 579(1)(b). Pursuant to subsection 579(3), the foreign company shall appoint a CA who is ordinarily resident in Canada. Pursuant to paragraph 579(2), the foreign company shall provide the CA with a power of attorney expressly authorizing the CA to receive all notices under the laws of Canada from the Minister or Superintendent.

The CA is expected to ensure that there are robust policies and procedures⁵ to manage the assets and liabilities recorded on the FCB's books and records and related accounts (e.g. deposit, investment, vested in trust, etc.). For example, OSFI would expect the CA to ensure that all policy premiums that have been received in Canada and that are originating from its insurance business in Canada would be deposited directly into a Canadian bank account of the FCB.

The FCB's accounts at banks and/or trust companies should only be accessible with the signature of the CA or his/her formally appointed designate(s) who is a Canadian resident.

The CA should ensure the FCB is in compliance with applicable legislation and regulations, and is conducting its business and affairs in a manner consistent with applicable OSFI guidelines. For example, OSFI would expect the CA to have ultimate responsibility for ensuring the FCB has sufficient assets vested in trust to cover the FCB's liabilities and required margins. Additional information on compliance issues can be found in OSFI's [Guideline E-13: Legislative Compliance Management](#).

While the CA may delegate responsibility for day-to-day management to others, OSFI expects the CA to be in a position to verify the annual return. Therefore, OSFI would expect the CA to have, or to ensure the individuals undertaking activities with respect to the FCB have, a good understanding of applicable legislation, regulations and guidelines, as well as the activities and related records of the FCB, including its assets, liabilities, revenues and expenses.

⁵ It is recognized that the home office may have established some of these policies and procedures. Where this is the case, OSFI would expect the CA to concur with their appropriateness and to recommend amendments where necessary to suit the FCB's activities.

2. Record Keeping Requirements

OSFI's mandate includes the periodic examination of and inquiry into the business and affairs of each FCB⁶. In order to assist this mandate, the ICA requires that FCBs maintain certain records at the chief agency⁷. The Appendix contains additional guidance with respect to the type and form of records OSFI expects FCBs to maintain in Canada.

Where processing of records related to the FCB's business occurs at a location other than the chief agency, it is critical that they are backed up as appropriate and provided to the chief agency to ensure that records maintained in Canada are up to date at the end of each business day.⁸ While OSFI recognizes some accounting records may only be available on a monthly or quarterly accounting cycle, this does not override the foregoing requirement with respect to other records.

OSFI expects records maintained in Canada will be of sufficient detail to:

- i. enable the CA to fulfill his or her accountabilities with respect to the FCB's business;
- ii. enable OSFI to conduct an examination and inquiry into the business and affairs of the FCB; and
- iii. enable OSFI to administer the FCB's business should the Superintendent take control of the FCB's assets.

Where sufficient information is not available, OSFI may request it as necessary⁹.

⁶ Pursuant to section 674 of the ICA.

⁷ Pursuant to subsection 647(3) of the ICA.

⁸ Downloading of records to the Canadian operation is only required when the records have changed from the previous day.

⁹ Pursuant to section 664 of the ICA.

Appendix

Records Maintained by FCBs

i) Type of Records

OSFI expects the records maintained by an FCB in Canada would include a complete set of accounting records, ledgers, journals and trial balances related to the FCB's insurance business in Canada, with sufficient detail to understand and verify the assets, liabilities, revenue and expenditures recorded in the regulatory returns and to enable supervisors to assess the risk profile of the FCB. This would be supported by supervisory access to individuals to whom the CA may have delegated responsibility within the branch or through an arrangement with the home office, another entity within the corporate group, or a third party.

Records in respect of an FCB's business that should be held pursuant to paragraph 647(1)(b) and (c) of the ICA would include:

- complete accounting records;
- policy registers, originals or photocopies of all policies that would cause the FCB to be insuring in Canada risks (including policies that may cover risks located outside of Canada), policy applications, policy change requests; and
- claims registers, complete claims files including notice and proof of claims, date of settlement, claims payment records, details of unpaid claims and recoverable amounts, adjustors' reports, and supporting documents;

In support of the above records, OSFI expects the FCB to maintain the following records:

- details of investments, derivatives, pledged assets, etc;
- working papers, with properly referenced audit trails, to support the financial statements/regulatory returns;
- bank statements, cheque registers, monthly bank reconciliation, vouchers and receipts pertaining to the Canadian operations, and adequate documentation to confirm that amounts due in respect of the insurance business of the FCB flow to the bank account in Canada;
- records supporting amounts due to or from the home office and affiliated entities (if any);
- taxation documentation.
- policy movement reports and reserve amounts;
- premium registers detailing premiums written, earned, and unearned;
- listing of policy loans, amounts on deposit by policy, related interest income or expense, and originals or copies of policy loan applications;

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- complete investment records including investment statements, summary of investment income from insurance and other operations, supporting documentation including securities registers (including information regarding securities held by the FCB outside Canada), mortgage register and mortgage documents;
 - supporting documentation for receivables and payables (due to/from agents, brokers, policyholders, others).
 - reinsurance registers for assumptions and cessions showing details of underwriting information by treaty, premiums, losses, commissions, etc., balances due to/from reinsurance companies, and supporting source documents;
 - analysis of home office account.

Additional records that could enable the CA to fulfill his/her accountabilities and/or to facilitate the supervisory process would include:

- a description of the accounting system;
- copies of all agreements, including outsourcing agreements with home office and affiliates;
- signed copies of all contracts, material to the FCB, that relate to the administrative operation of the FCB¹⁰;
- copies of policies and practices governing the FCB's operations in Canada;
- current organization chart, showing reporting lines within the FCB and to home office and/or other affiliates;
- an evergreen listing of those responsible (including contact information) for core business functions, including where responsibility lies when at a location other than the chief agency.
- human resource and payroll information;
- details of any current litigation matters;
- identification information obtained at the time each individual became a policyholder¹¹ or customer of the FCB and current contact information;
- signed copies of reinsurance agreements and related amendments, facultative reinsurance certificates, group contracts, and agents' agreements¹²;

¹⁰ OSFI expects that these contracts will bear the signature of the CA or another individual formally appointed by the CA. OSFI recognizes that there may be instances where the home office, on behalf of the FCB, enters into such contracts. In such instances, OSFI would expect the CA to be made aware of these arrangements and for the FCB to maintain a copy of the contract at the chief agency in Canada.

¹¹ Policyholder would include direct policyholders and all certificate holders that could have a claim against the foreign company.

¹² OSFI expects that all reinsurance agreements, group contracts and agents' agreements will bear the signature of the CA or his/her formally appointed designate.

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- actuarial reports, including valuation reports, external review reports, experience studies, etc., and supporting documentation; and
 - analyses supporting the adequacy of the margin of assets in Canada over liabilities in Canada relative to the FCB's target level and the supervisory target set out in OSFI Guidelines, including stress and scenario test results.

ii) *Form of Records*

An FCB has the option of preparing and maintaining records in hard copy or electronically, provided that electronic records can be reproduced, "in intelligible written form within a reasonable period of time"¹³. OSFI would expect to be able to obtain such information without incurring additional costs and using readily available commercial applications. For certain types of information, such as reinsurance arrangements or files on more complex activities, reproduced electronic records may not be sufficient for OSFI's review. OSFI may request that the hard copy, original information be available at the branch in Canada, as needed. The FCB's information systems should be capable of providing appropriate reports having adequate, relevant information for management decision-making and to provide and maintain an audit trail to verify regulatory returns.

¹³ Paragraph 266(1)(b) of the ICA (applicable to foreign companies through section 649 of the ICA).