Insurance Council
BRITISH COLUMBIA

NOTICE

ICN 21-001 | Use of Unauthorized Insurer

V.2.0 December 21, 2023

This notice is intended to clarify licensees' requirements when placing insurance with an unauthorized insurer.

Licensees may be asked to place a client's insurance business with an insurer who is not authorized to conduct business in British Columbia when the necessary coverage is not available from an authorized insurance company or if coverage from an authorized insurer did not meet the client's specific insurance needs. However, before conducting business with an unauthorized insurer, licensees have specific requirements under Insurance Council Rules, the *Financial Institutions Act* (the "*Act*") and the Insurer Exemption Regulation.

Background

The Insurance Council previously issued guidance in 2011 and 2021 regarding the use of unauthorized insurers in notices ICN 11-002 when it implemented Council Rule 7(11.1) and ICN 21-001 to clarify its expectations under sections a) and b) of the Rule. This updated version of notice ICN 21-001 incorporates recent changes to premium tax filing reporting requirements.

Licensee requirements

Once a licensee determines the use of an unauthorized insurer is required to meet a client's specific insurance needs, and before engaging in negotiations with an unauthorized insurer on a client's behalf, the licensee must be satisfied the client understands and accepts the risks and responsibilities associated with insurance transactions involving unauthorized insurers.

Licensees must not directly or indirectly solicit the client for the contract of insurance with an unauthorized insurer. The client must specifically direct a licensee to seek placement of the client's insurance with an unauthorized insurer.

In carrying out regulatory oversight, the Insurance Council may audit a licensee's records of

transactions with unauthorized insurers. Licensees are required to keep the records necessary to demonstrate compliance with the requirements set out in Rule 7(11.1) for each transaction with an unauthorized insurer (see Rule 7(9)).

Disclosure to the client

The licensee must disclose to the client in writing:

- why the necessary coverage cannot be obtained through an authorized insurer;
- the risks involved with dealing with unauthorized insurers, including but not limited to risks associated with an unauthorized insurer's financial condition or credit worthiness;
- the consequences to the client if:
    (i) a claim is not paid by an unauthorized insurer; or,
    (ii) the unauthorized insurer ceases to do business;
    (iii) the courses of action available to the client if an unauthorized insurer does not pay a claim or ceases to do business;
- the responsibilities of the client arising from a transaction with an unauthorized insurer, including but not limited to the responsibility to pay the insurance premium tax to the provincial government; and,
- any other information that may impact the client's decision to purchase insurance with an unauthorized insurer.

Client's informed written consent

In addition to explaining the rights and responsibilities associated with unauthorized insurers, licensees must obtain written consent from a client before negotiating with or procuring insurance from an unauthorized insurer.

Regulatory requirements for licensees placing business with an unauthorized insurer

Council Rule 7(11.1) sets out licensees' notification requirements when placing business with an unauthorized insurer, as well as a licensee's responsibilities under section 76(1) of the *Act*.

Rule 7(11.1) requires that, for each transaction with an unauthorized insurer, licensees:

- take reasonable steps to ensure insurance coverage is not available from an authorized insurer;

- provide full, written disclosure to the client about the responsibilities and risks associated with unauthorized insurers before negotiating with or procuring insurance from an unauthorized insurer;
- obtain written consent from the client before negotiating with or procuring insurance from an unauthorized insurer;
- notify the Insurance Council in writing of the insurance transaction before the insurance transaction is conducted; and
- hold all premiums collected in a trust account established with a Canadian financial institution.

Section 76(1) of the *Act* allows a licensee to place insurance with an unauthorized insurer when the necessary coverage cannot be obtained from an insurer authorized to conduct business in British Columbia under section 75 of the *Act*. Licensees who procure or negotiate a contract of insurance with an unauthorized insurer must keep a record showing the particulars of the contract and must provide the record to the Commissioner of Income Tax or BC Financial Services Authority (BCFSA) as requested.

Section 9 of the Insurer Exemption Regulation sets out the conditions for placing insurance with an unauthorized insurer:

> *It is a condition of section 76 (1) (c) of the Act that the insurance agent referred to in that section*
>
> *(a) does not directly or indirectly solicit the resident for the contract of insurance, and*
>
> *(b) files with the superintendent, within 30 days of the end of each quarter, the following information with respect to the contracts of insurance referred to in that section that are entered into by the agent:*
>
> (i) *the names of the insureds;*
>
> (ii) *the particulars of the insurance;*
>
> (iii) *the names of the insurers;*
>
> (iv) *the amount of insurance placed with each insurer referred to in subparagraph (iii) and the rate and the amount of premiums paid.*

Notifying the Insurance Council

Licensees are required to notify the Insurance Council in writing that they intend to rely on section 76(1)(c) of the *Act* as part of an insurance transaction prior to conducting a transaction with an unauthorized insurer.

Notification must be made to the Insurance Council for each transaction from either the insurance agency or the individual licensee authorized to represent the insurance agency for each transaction with an unauthorized insurer prior to conducting the transaction.

Notice to the Insurance Council must include the following:

- the name of the individual licensee responsible for insurance business written pursuant to section 76 of the *Act* ("Lead Licensee");
- the licensee's name and licence number;
- confirmation the licensee has made reasonable efforts to place the insurance with an authorized insurer;
- confirmation the licensee has fully disclosed the risks and responsibilities associated with unauthorized insurers to the client;
- confirmation the client has provided consent for the insurance transaction;
- confirmation the licensee understands and will comply with the trust requirements set out in Rule 7(11.1); and
- confirmation the licensee understands the requirements set out in section 9 of the Insurer Exemption Regulation.

Notifying BCFSA

Licensees who are involved with the placement of insurance with unauthorized insurers are required to file with BCFSA a Placement of Insurance with Unauthorized Insurers Return ("BCFSA Return") within 30 days of the end of each quarter. The BCFSA Return must include the following information regarding the contracts of insurance that are entered into by the agent licensee:

- the names of the insured(s);
- the particulars of the insurance;
- the names of the insurer(s); and
- the amount of insurance placed with each insurer referred to in subparagraph (3), the rate and the amount of premiums paid.

Insurance premium tax

An insured who takes out a contract of insurance with an unauthorized insurer is required under the *Insurance Premium Tax Act* to pay the insurance premium tax on that contract and make the required filings with the British Columbia Ministry of Finance Income Taxation Branch.

Effective January 1, 2024, filings and payments must be submitted online through eTaxBC. More information about the tax filing and payment requirements is available on the Income Taxation Branch website.

Federal taxes may also be payable. For more information, contact the Commissioner of Income Tax.

Place premiums in a trust

Licensees who place business with an unauthorized insurer are required to place all premiums collected in a trust account established with a Canadian financial institution. If the licensee already has a trust account for premium monies, the existing trust account can be used for transactions with unauthorized insurers.

Additional resources

BCFSA, which regulates private sector insurers operating in British Columbia, has published information and forms regarding the use of unauthorized insurers on its website at www.bcfsa.ca.

If you have any questions about this notice, please contact our Practice and Quality Assurance Team at practice@insurancecouncilofbc.com or phone 604-695-2008 or toll-free at 1-877-688-0321 ext. 3.