

## INSURANCE COUNCIL OF BRITISH COLUMBIA

### PUBLICATION OF COUNCIL RULE 7(11.1) USE OF AN UNAUTHORIZED INSURER

In accordance with section 7(1) of the Insurance Council Rule-making Procedure Regulation, this Notice is the Insurance Council of British Columbia's ("Council") official publication of Council Rule 7(11.1) – Use of an Unauthorized Insurer. Council Rule ("Rule") 7(11.1) will come into effect on February 28, 2011. See Appendix 1 for a copy of Rule 7(11.1).

Rule 7(11.1) establishes procedures licensed agents must follow when conducting an insurance transaction pursuant to the exemption contained in section 76 of the *Financial Institutions Act* (the "Act"). Section 76(1)(c) of the Act provides a limited exemption from the restriction in section 75 of the Act that prohibits placing insurance with an unauthorized insurer.

Rule 7(11.1) addresses two issues:

- 1) a requirement that licensees notify Council, in writing, prior to conducting any insurance transaction(s) in accordance with section 76(1)(c) of the Act; and
- 2) a licensee's responsibilities when conducting an insurance transaction in accordance with section 76(1)(c) of the Act.

#### COUNCIL NOTIFICATION

One of the primary purposes of Rule 7(11.1) is to allow Council the ability to monitor insurance transactions conducted pursuant to section 76 of the Act. The **one time** notification requirement will assist Council in monitoring this type of insurance activity.

Rule 7(11.1) requires that a licensee provide Council with written notification of the intent to rely on section 76(1)(c) of the Act as part of an insurance transaction. *Written notification by a licensee must be provided only once to Council.* Once written notification has been provided to Council, a licensee may conduct insurance transactions with an unauthorized insurer with no further disclosure to Council necessary.

Rule 7(11.1) identifies the form and content of the disclosure to be made to Council. Such disclosure must provide the following information (*See Appendix 2 for an example of the form of disclosure required.*):

- the name of the individual agent or agency;
- in the case of an agency, the primary agent responsible for this area of business ("Lead Licensee");
- a brief description of the qualifications of the agent or, in the case of an agency, the Lead Licensee; and
- confirmation the agent understands the disclosure and trust requirements contained in Council Rule 7(11.1).

January 28, 2011

ICN #11-002

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Once the one time written notification is provided to Council, a licensee may proceed with conducting insurance transactions under section 76(1)(c) of the Act. Notification can be provided to Council via mail or fax and can be made any time prior to completion of the first insurance transaction under section 76(1)(c) of the Act.

The purpose of Council notification is to identify who is engaged in insurance transactions with unauthorized insurers. Council will track licensees engaged in insurance transactions with unauthorized insurers; monitor activities; and may conduct audits of licensees to ensure compliance with Rule 7(11.1).

## **DUTIES AND OBLIGATIONS OF A LICENSEE**

Rule 7(11.1) also addresses the duties and obligations of a licensee when placing coverage pursuant to section 76(1)(c) of the Act. The purpose of the section 76 exemption is to allow insurance to be placed with an unauthorized insurer when the necessary coverage cannot be obtained from an authorized insurer. When a licensee determines a client's insurance needs can only be met with the use of an unauthorized insurer, Council Rule 7(11.1) sets out the obligations and responsibilities of the licensee in these circumstances.

*Note: The recent amendment to section 11 of the Insurer Exemption Regulation to provide a limited exemption from regulation for extra-provincial insurance corporations in respect of commercial marine insurance of risk located in B.C. does not in any way change a licensee's obligations under Rule 7(11.1).*

Once it is determined a client's insurance needs require the use of an unauthorized insurer, a licensee must first discuss with and obtain the client's written consent to seek the necessary coverage from an unauthorized insurer. A licensee has an obligation to ensure the client understands the risks associated with doing business with an unauthorized insurer before the client makes this decision.

Once it has been determined that an unauthorized insurer must be used, the licensee must demonstrate the coverage sought was either unavailable or, if coverage was available from an authorized insurer, that it did not meet the client's specific insurance needs. A licensee must be able to demonstrate how the client's insurance requirements could not be met by an authorized insurer.

Upon identifying an unauthorized insurer, a licensee has an obligation, prior to completing the insurance transaction, to provide the client with complete written disclosure about the risks associated in dealing with the unauthorized insurer.

This disclosure should include, but is not limited to:

- details on the financial strength and credit worthiness of the unauthorized insurer;
- the course of action available, or the consequences to the client, if a claim is made but not paid by the unauthorized insurer;
- the consequences if the unauthorized insurer ceases to do business; and
- the client's obligation to pay the insurance premium tax owed to the provincial government.

Where a licensee conducts a transaction with an unauthorized insurer, the licensee will be 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, this trust account can be used for these transactions.

## **OTHER**

When a licensee conducts an insurance transaction pursuant to section 76(1)(c) of the Act, there is a requirement under the Insurer Exemption Regulation to provide the Superintendent of Financial Institutions the following information within 30 days of the end of each quarter:

- 1) names of the insureds;
- 2) the particulars of the insurance;
- 3) the names of the insurers; and
- 4) the amount of insurance placed with each insurer referred to and the rate and amount of premiums paid.

If you have any questions regarding this Notice, please contact Regulatory Services by calling Council's main number and at the prompt press "2".

January 28, 2011  
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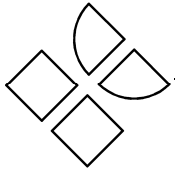
**RULE 7 (11.1)**

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**Rule 7 Licence Conditions**

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- (11.1) A licensee that intends to conduct insurance transactions with an unauthorized insurer pursuant to section 76(1)(c) of the Act:
- (a) must, in advance of conducting any transaction, provide Council written notification in the form approved by Council;
  - (b) that is acting as an authorized representative of an insurance agency that has already met the requirement outlined in subsection (a) is exempt from subsection (a);
  - (c) must for each transaction conducted:
    - (i) take all reasonable steps to ensure that the insurance coverage is not available from an authorized insurer;
    - (ii) obtain written consent of the client, prior to the insurance transaction, to negotiate or procure insurance coverage with an unauthorized insurer;
    - (iii) prior to completing the insurance transaction, provide written disclosure to the client of the responsibilities and risks involved in dealing with an unauthorized insurer, including but not limited to:
      - (A) the financial strength or creditworthiness of the unauthorized insurer;
      - (B) course of action available or consequences to the client if a claim is not paid or the unauthorized insurer ceases to do business;
      - (C) that the client must pay the insurance premium tax; and
    - (iv) hold all premiums collected in a trust account established with a Canadian financial institution.



NOTIFICATION PURSUANT TO COUNCIL RULE 7(11.1)

In accordance with Council Rule 7(11.1)(a), this is notice that the Licensee named below intends to conduct insurance business pursuant to section 76 of the Financial Institutions Act (the "Act").

Full Legal Name: \_\_\_\_\_

Licence Number: \_\_\_\_\_

Where the Licensee is a corporation or partnership ("Agency"), provide the name of the individual licensee responsible for insurance business written pursuant to section 76 of the Act ("Lead Licensee"):

Lead Licensee Full Name: \_\_\_\_\_

Licence Number: \_\_\_\_\_

Provide a brief description of the Licensee or Lead Licensee's background: (If the Licensee has a background in this area, please include, otherwise provide a brief description of his/her management and/or insurance background.)

Four horizontal lines for providing background information.

ACKNOWLEDGEMENT:

By submitting this notification to the Insurance Council of British Columbia, the undersigned acknowledges his/her responsibilities and understanding under Council Rule 7(11.1) as well as the reporting requirement to the Financial Institutions Commission as required by section 9 of the Insurer Exemption Regulation. In the case of the Lead Licensee, the undersigned acknowledges that these responsibilities extend to all business written on behalf of the Agency.

Table with 3 columns: Signature, Print Name and Title, DD MMM YYYY

If a corporation or partnership, must be signed by Nominee, Officer, Director or Partner

By Fax: 604-662-7767