



Current Articles 2007 – March

Dealing with Unlicensed Insurers

Since the introduction of the RIBO Act in October 1981, Regulation 991-section 10, of this Act specifies what is required of a broker when using an unlicensed insurer. The term “unlicensed insurer” refers to an insurer who is not licensed under the Ontario Insurance Act but may be licensed in some other jurisdiction in Canada, U.S.A. or otherwise.

This section requires the broker to obtain written consent of the client to proceed with an unlicensed insurer. The broker is required to complete the RIBO Form – Unlicensed Insurer; Client Consent and Acknowledgement of Risk. This form identifies the risks and obligations of obtaining insurance with an unlicensed insurer. In addition, this form also indicates that the broker, in placing insurance with an unlicensed insurer, must collect the Ontario Provincial Premium tax (approximately 3.1%) and applicable retail Sales Tax.

The new form goes further! The broker is now responsible to file with Canada Revenue Agency a form B241 – Excise Tax Return by **March 15** of each year and for each client for whom insurance is placed with an unlicensed insurer. This will indicate to Canada Revenue Agency that coverage has been placed by the broker with an unlicensed insurer. Filing of this return will subsequently produce a form to your client. If a broker fails or refuses to file this form the broker may be subject to a penalty of \$10.00 for **each day of default** or \$50.00, whichever is the less. This is a penalty for each account placed with an unlicensed insurer. This form must indicate the Details of Insurance including the Insured’s name, policy number and policy period, name and address of the broker, description of risk and net premiums in Canadian funds.

Upon filing this form, Canada Revenue Agency will forward to your client form B243 for applicable Excise Tax. This form will require details of policies, name of a Broker, Net Premiums and tax due. The Client Consent form signed by your client will indicate that this form must be filed by your client **no later than April 30 along with the applicable Excise Tax due**. The Excise Tax is calculated at a rate of **10% of the net premium**. Failure to submit the return and tax by your client can result in a penalty and interest charges compounding daily as of May 1st.

Provisions have been made to apply for an exemption from premium taxes imposed under the Excise Tax Act. This will require you to file a form E 638. This may be allowed where, in the opinion of Canada Revenue Agency, that coverage is not available in Canada or where the amount of coverage is not available in Canada. This form will require the broker to list **10 Canadian insurers**, including insurer’s contact names, date of declination and reason for declination.

The above forms can be downloaded from the Revenue Canada Agency website at www.cra-arc.gc.ca/formspubs/topics/excise_tax-e.html.

It is therefore absolutely imperative that a broker placing insurance with an unlicensed insurer for his client, make the client aware of these changes and the possible additional Excise Tax of 10% to be levied by Revenue Canada. Make sure that you obtain the revised RIBO Client Consent and Acknowledgement of Risk forms, which identify the above changes with regard to the procedures and applicable taxes.

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