



BULLETIN FOR:

**Procedure for Placing Insurance
Business with Unregistered Insurers**

**The Financial Services Commission
39-43 Barbados Avenue
Kingston 5, Jamaica W.I.
Telephone: (876) 906-3010**

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Procedure for Placing Insurance Business with Unregistered Insurers

LEGISLATIVE REFERENCE:

Insurance Act, 2001 (the "Act")

Insurance Regulations, 2001 (the "Regulations")

1.0 INTRODUCTION

1.1 Section 20 of the Act allows locally registered insurers and insurance intermediaries to apply to the Financial Services Commission ("FSC") for permission to place insurance business with an insurer not registered under the Act. In determining whether or not such permission may be granted, the Act indicates that the FSC must be satisfied as to the existence of certain specified conditions. These conditions are that:

- It is not possible to obtain similar protection from an insurer registered under the Act, in Jamaica; and
- The applicant must meet the prescribed requirements.

2.0 OBJECTIVES

The objective of this bulletin is to provide general guidance to Facultative Placement Brokers (FPB) on the requirements for placing insurance business with Unregistered Insurers ("UI").

3.0 PROCEDURE FOR PLACING BUSINESS

3.1 Before placing business with an unregistered insurer, a FPB should do the following:

- a) conduct a due diligent search to determine if the full amount or type of insurance can be placed with an insurer or co-insured with another registered in Jamaica to sell that class of business. This requires obtaining documentation (usually in the form of “No Quote Letters”), from all insurers locally, who are registered to transact the class of business in question, indicating the level of risk they are willing to take.
- b) obtaining “No Quote Letters”:
- A “no-quote” should be in writing but may be communicated through electronic mail by the registered insurer (“insurer”) indicating that the insurer is not quoting on the risk. The FSC must, however, be able to ascertain that the electronic mail originated from the insurer and was sent by persons authorized by the company to issue “no-quotes”.
 - Email originating from personal email addresses, for example, addresses ending with “@hotmail.com”/ “@yahoo.com”, etc. are not acceptable.
 - The submission of “no-quotes” from all insurers is waived for those risks which are classified by the FSC as “Special Risks”. The Special Risks are as outlined in Appendix 3. The FPB is still required to apply to the FSC for approval to place insurance business classified as “Special Risks” with an UI. The FPB should also be aware that the Special risks as outlined in Appendix 3 are subject to change.
 - If an insurer does not respond to the FPB’s request for a quote on a risk within seven (7) working days of the initial request, the FSC will deem the insurer’s lack of response to be a “no-quote” on the risk. The FPB, however, must prove that efforts were made to obtain a response from the insurer. The FSC will accept copies/evidence of electronic mail, letters or faxes to the insurer as evidence that efforts were made to obtain a response from the insurer. In addition, the FSC will accept, at minimum, evidence that three (3) attempts were made to obtain a response from insurer.
- c) if they are unable to locate an insurer or co-insurer, determine through proper due diligence, that the selected unregistered insurer meets the FSC’s eligibility requirements as set out in regulations 143, 145 and 146 of the Regulations.

- d) apply to the FSC for permission to place the contract or particular risk with the unregistered insurer, providing evidence of the diligent search referred to in “a” above (also, see 3.2 below), the due diligence conducted on the eligibility requirements and any other documents that would assist the FSC in reaching a decision. Only after being granted approval by the FSC, may the FPB proceed with placing the entire business or that portion of the business for which cover cannot be obtained in Jamaica.

3.2 In order to minimize the turnaround time for granting approvals for the placement of insurance business with UI, the FPB should observe the following:

- 3.2.1 All applications for the approval of facultative insurance placements, must be completed using the form stipulated by the FSC (see website at www.fscjamaica.org - Facultative Placement Approval Application), and must be submitted formally to the FSC at least fourteen (14) clear **working** days before the desired placement date. If the FPB submits five or more applications, the FPB is also required to submit an Excel Spreadsheet (via electronic mail) containing the pertinent details of the applications, at minimum policyholder, type of insurance cover and amount of cover.
- 3.2.2 The FPB is required to conduct its due diligence on the selected UI. Evidence of the due diligence must be submitted to the FSC along with the application for the approval of the placement.
- 3.2.3 Where the FSC is unable to complete the facultative placement approval within fifteen (15) working days, the FSC will communicate the reason for the delay.

Note: The FPB is not required to seek the FSC’s approval to extend an existing insurance policy up a maximum period of one month. **The policy’s terms and conditions, however, must remain unchanged during the extension period.**

4.0 LLOYD’S OF LONDON

- 4.1 Lloyd’s of London (“Lloyd’s”) is an Association of Underwriters which is registered under the Act, to do insurance business in Jamaica. Lloyd’s operates through several insurance companies, referred

to as “syndicates”. Therefore, FPB’s do not need the FSC’s approval to place insurance business with a Lloyd’s syndicate.

- 4.2 In the case of placement of a single risk with several UI’s, approval must be sought from the FSC in respect of each UI. Where a part of the risk is placed with Lloyd’s and the balance with one or more unregistered insurers, approval must be sought and received to place the balance of the risk with each of the UI’s.
- 4.3 Lloyd’s operates through agents, for example, Cover Holders and Brokers, and FPB’s are reminded that they should verify the insurer with which the agents placed the insurance business. Further, FPB’s should be mindful that, although the Cover Holders and Brokers are agents of Lloyd’s they also act as agents for other insurers which are not Lloyd’s syndicates, and are therefore not registered to do business in Jamaica. Under such circumstances, these **placements with unregistered insurers albeit through Lloyd’s Cover Holders and Brokers must be approved by the FSC.**

5.0 ELIGIBILITY REQUIREMENTS

5.1 Facultative Placement Licensee

A FPB shall not place coverage with an unregistered insurer, unless, at the time of placement, that broker has determined that the unregistered insurer provided evidence of meeting the eligibility requirements. These requirements include:

- a) meeting the fit and proper criteria as defined under the Act – section 2(3);
- b) being authorized to do insurance business in its domiciliary jurisdiction;
- c) being authorized to write the class or type of insurance in question in its domiciliary jurisdiction;
- d) meeting the capital and surplus requirement. This requires the company to have capital and surplus or its equivalent under the laws of its domiciliary jurisdiction which equals the greater of:
 - i. the minimum capital and surplus requirement under the Act; and

- ii. the solvency requirements prescribed by regulation 28, in the case of general insurers, or regulation 29 in the case of long-term insurers; and
- e) meeting any other requirement that may be prescribed by the FSC from time to time.

5.2 Withdrawal of Eligibility

The FSC may declare an unregistered insurance company ineligible and notify each FPB, if the FSC believes that the insurer:

- a) is in an unsound financial position;
- b) has acted in an untrustworthy manner;
- c) no longer meets the standards set out in section 73 and 75 of the Act;
- d) has willfully violated the laws of Jamaica; or
- e) does not conduct a proper claims practice.

5.3 Actions against Eligible Unregistered Insurers

An eligible unregistered insurer may be sued upon a cause of action arising in Jamaica under a facultative insurance placements contract made by it or evidence of insurance issued or delivered by the FPB. Policies issued by the eligible unregistered insurer shall contain a provision stating the substance of regulation 148 of the Regulation and shall also designate a person to whom the FSC shall send all correspondence.

6.0 DUTIES OF THE FACULTATIVE PLACEMENT BROKER

6.1 Notification to the Policyholder

No contract of insurance placed by a FPB shall be binding on the policyholder and no premium is due and payable until the FPB has notified the policyholder in writing, in a form acceptable to the FSC, that:

- a) the insurer with which the FPB places the insurance is not registered with the FSC and is not subject to its supervision; and
- b) in the event of insolvency of the insurer, the policyholder may have to pursue recovery of losses in another jurisdiction.

6.2 Certificate, Cover Note, Binder or other Evidence of Insurance

6.2.1 Once the insurance is approved, if the policy is not readily available, the certificate, cover note or binder or other evidence of insurance containing certain information, must be delivered as soon as reasonably possible but in any event within 30 days to policyholder or to the producing broker. This information must include:

- a) for facultative placements – The name of the FPB and the following legend in bold ten-point type: **“This is evidence of insurance procured under section 20 of the Insurance Act, 2001 and Part XIII of the Insurance Regulation, 2001. The insurer(s) is/(are) not regulated by the Commission”**;
- b) the description and location of the plant, equipment or property insured and its location;
- c) general description of the coverage including material limitations, the premium, the rate and the taxes applicable;
- d) name and address of the policyholder, the FPB, the insurers, the proportion of the risk assumed by each insurer and the registration number of the FPB; and
- e) copies of any other agreements, conditions, endorsements, exclusions, clauses or any other material facts that would normally be included in the policy.

6.2.2 Once the policy is available, in addition to the information required for the certificate, cover note or binder, the policy must also designate the person in Jamaica to whom the FSC shall contact.

If after the delivery of any evidence of the insurance there is:

- a change in the identity of the insurer(s), or
- a change in the proportion of risk assumed by the insurer(s); or
- any other material change in coverage; or
- a change in any other material as to the insurance coverage;

then, within seven days of the change, an endorsement to the original document or an appropriate substitute for same showing the current status and insurers, should be delivered to the policyholder or the producing broker.

6.3 Filing Requirements

Within thirty (30) days of placing insurance with an unregistered insurer, a report must be filed with the FSC. This report must include:

- a) the name and address of the policyholder;
- b) the identity of the insurer(s);
- c) the description of the subject and location of the risk;
- d) the amount of premium;
- e) any other pertinent information that the FSC may reasonably require;
- f) an affidavit on a standardized form as to the diligent efforts to place the coverage with registered insurers and the results of those efforts and affirming that the policyholder was expressly advised in writing prior to placement of the insurance; and
- g) the effective date and terms of the insurance contract.

In event that a FPB receives the FSC's approval to make multiple placements of insurance business with UIs during a month, the FPB is allowed to include all the placements on one single monthly report to the FSC.

The affidavit must also be filed at the same time (see prescribed format at Appendix 1).

By the end of the month following the end of each quarter, two (2) copies of a report showing business placed with unregistered insurers in the quarter must be filed with the FSC. This report must contain aggregate gross premiums written, aggregate return premiums and the amount of aggregate taxes remitted to the government.

The FPB is to submit to the FSC, annually, the names and addresses of all UIs with which it conducts insurance business frequently. The FPB should also advise the FSC at the beginning of

each calendar year of the dates of recurring renewals of insurance policies, in order for the FSC to speed up the turnaround time for the approval of applications to place these risks.

6.4 Records

The following records on unregistered insurance placed must be maintained for a minimum of seven (7) years following the **termination** of the contract and be available for examination at all times:

- a) a copy of the notice informing the policyholder that:
 - i. the insurer is not registered with the FSC nor is subjected to its supervision; and
 - ii. in the event of insolvency of that insurer, the policyholder may have to pursue losses in another jurisdiction.

Please be reminded that this notice is required before the contract can be binding upon the policyholder and before any premiums are due and payable (see 6.1 above).

- b) a copy of the quarterly report filed with the FSC.
- c) A complete and true record of the insurance contract which includes a copy of the policy, certificate, cover note, any other evidence of insurance, any correspondence relating to the insurance and the application in accordance with regulation 155(1).

7.0 **GROUP-WIDE INSURANCE PLACEMENT**

7.1 The placement of insurance coverage for risks associated with a group of companies may be exempt from the provisions of section 20 of the Act where:

- a) the placement of insurance cover is for risks in a group of companies which operates internationally and has branches/subsidiaries located in Jamaica;
- b) the placement is on a group-wide basis and made by the head office which is located/domiciled overseas; and
- c) most of the branches/subsidiaries of the group are not located in Jamaica.

7.2 Section 20(2) states: “**any registered insurer or insurance intermediary who desires to enter into an insurance contract with an unregistered insurer...or to cause to be placed such a contract, shall apply to the Commission for permission to do so and the Commission may grant such permission...**”

7.3 In summary therefore, the exemption may be applied in cases where the placement is on a group-wide basis, the insured is located outside of Jamaica, most of the insured risk is located outside of Jamaica and the Jamaican branches, when compared to the total branches/subsidiaries in the group, are a minimal portion of the total risk being insured.

7.4 This exemption does not apply if the insurance cover is being provided for risk located solely in Jamaica on behalf of the Jamaican branches/subsidiaries as the placement would fall under the ambit of section 20(1).

8.0 CAVEAT

It is important to note that the FSC, by granting permission to an entity to place insurance business with an unregistered insurer, does not assume any liability towards the applicant in relation to the insurance contract concerned or its placement [see section 20(3) of the Insurance Act].

This bulletin contains the general provisions for placing business with unregistered insurers. It does not replace the need for a careful review of the applicable provisions in the Act and the Regulations.

All questions regarding this information bulletin on placing business with unregistered insurers should be directed to:

Senior Director, Insurance
Financial Services Commission
39-43 Barbados Avenue
Kingston 5
Telephone: (876) 906-3010-9
Email: insurance@fscjamaica.org

AFFIDAVIT

APPENDIX 1

Pursuant to Regulation 149(f) Insurance Regulations, 2001

RE: Insurance Placement with an Uninsured Unregistered Insurance Company

....., declares that it has employed
(Name of Facultative Placement Broker or Company)

diligent efforts to place the coverage stated in the report, which this affidavit forms a part of, with a company registered in Jamaica but was unsuccessful in part or in whole. Diligent efforts included contacting, in writing, every local insurance company registered to transact the relevant class of business and receiving a written response as to their partial or total inability to do so.

The following companies were contacted and they indicated their inability to provide the required coverage:

NO.	INSURANCE COMPANY	DATE CONTACTED	% ABLE TO COVER	NO.	INSURANCE COMPANY	DATE CONTACTED	% ABLE TO COVER
1				8			
2				9			
3				10			
4				11			
5				12			
6				13			
7				14			

Further, the Client policyholder was informed, in writing, prior to
(name of policyholder)

placement of the insurance that:

1. the facultative placement insurer(s) with whom the insurance was to be placed is not registered in Jamaica and is not subject to supervision by the Financial Services Commission or any other regulatory body in Jamaica; and
2. in the event of the insolvency of the facultative placement insurer(s), claims may have to be pursued in other jurisdictions.

I declare that the information given above is accurate and complete.

(Name of Principal Officer)



Dated the _____ day of _____
(Date) (Month) (Year)

Signed by

)

)

_____)

)

in the presence of:

)

)

)

_____)

Justice of the Peace/

Attorney-at-Law

Signature

Signature and Seal

APPENDIX 2

Name of Intermediary: _____

Period Ending: _____

Date: _____

FACULTATIVE INSURANCE PLACEMENTS

	Facultative Placement Insurer	Type of Policy	Gross Premiums Written	Return Premiums From Facultative Insurer	Return Premiums Paid to Policyholder	Date Remitted to Jamaica
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						
11						
12						
13						
14						
15						
		TOTAL				

To the best of my knowledge the above information represents an accurate account of facultative insurance placement transactions for quarter ending

NAME: _____
(Principal or officer)

SIGNATURE: _____

DATE: _____

APPENDIX 3

Special Risks

- Air and Seaports Liability
- Aircraft Handlers Liability
- Aviation and Aviation related risks
- Crop Insurance
- Cyber Crimes and Liability
- Dams / Reservoirs
- Electrical transmission and distribution
- Film Production cover including Media Liability (i.e., Film & Programme Producer cover)
- International Health
- Medical Malpractice
- Product Recall and Guarantee
- Professional Athletes – Life, Sportsman Liability
- Special Events Cover – Cancellations, Non-Appearance, Pluvius Sports Club Liability for Professional Athletes
- Worldwide Crime and Liability