



**BY EMAIL**

September 27, 2017

Director  
Financial Institutions Division  
Financial Sector Policy Branch  
Department of Finance Canada  
James Michael Flaherty Building  
90 Elgin Street  
Ottawa, ON K1A 0G5

Dear Sirs and Mesdames:

**Re: Second Consultation Paper – Potential Policy Measures to Support a Strong and Growing Economy: Positioning Canada's Financial Sector for the Future**

We are writing on behalf of our members and on behalf of Nuclear Risk Insurers Limited ("NRI") with respect to the proposal contained in the Annex to the *Second Consultation Paper* to repeal the nuclear exemption contained in Part XIII of the *Insurance Companies Act* (the "Act").

The Nuclear Insurance Association of Canada ("NIAC") is a voluntary, non-profit, unincorporated association. Our members are all insurers licensed in Canada under the Act. We operate two nuclear insurance pools – a nuclear liability insurance and a nuclear property insurance pool.<sup>1</sup> These two pools only insure Canadian nuclear risks. These include large nuclear power generating stations, research reactors, and suppliers and transporters involved in supporting the foregoing.

NRI operates similar nuclear insurance pools. Its members are all licensed in the UK by the Prudential Regulation Authority (part of the Bank of England). Its pools insure nuclear risks located in the United Kingdom and in many other countries, including Canada. Commencing in 2017, NRI's nuclear liability pool began insuring Canadian nuclear liability risks through foreign insurers that are licensed under Part XIII of the Act.<sup>2</sup> NRI's nuclear property pool

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<sup>1</sup> An insurance pool consists of a group of insurers that agree to collectively insure particular types of risks. Each insurer in a pool agrees to insure a percentage of these risks.

<sup>2</sup> Previously, NRI's nuclear liability pool insured Canadian nuclear liability risks through foreign insurers that were not licensed under the Act.

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insures Canadian nuclear property risk through insurers that are not licensed under Part XIII of the Act.

NRI was established in 1956. NIAC was established in 1958. Similar nuclear insurance pools have been established in most other countries that host nuclear power reactors. Together, these nuclear pools make up the Worldwide Nuclear Pooling System. This pooling system was established to ensure that the risk of an insured nuclear loss is spread amongst a large enough group of insurers to provide financially secure and sustainable insurance to the operators of large nuclear installations.

The nuclear insurance pools around the world work cooperatively to provide the large amount of insurance capacity required to insure such large installations. The various national nuclear insurance pools are also able to share valuable technical and engineering expertise and information with respect to nuclear risks with each other. The ability to access this expertise and information is extremely valuable to NIAC and to its members. It also benefits the operators of Canadian nuclear reactors by providing them with valuable insights into risk management.

The Worldwide Nuclear Pooling System works in the following manner. In each country with a national nuclear insurance pool, that national nuclear insurance pool takes the lead in dealing with nuclear insureds and their insurance brokers to provide them with the nuclear insurance they require. Where the national nuclear insurance pool is unable to provide sufficient nuclear insurance, it makes arrangements with national nuclear insurance pools in other countries to provide the necessary capacity. Canada is a case in point. The Canadian property and casualty insurance industry has historically been unable to provide sufficient capacity to insure the large Canadian nuclear power stations. For over fifty years, NIAC has played a vital leadership role as the Canadian arm of the Worldwide Nuclear Pooling System. NIAC's role includes making arrangements, if there is insufficient Canadian capacity to write Canadian nuclear risks, with the other national nuclear insurance pools to accept the shortfall. NIAC, and therefore the members of the Canadian property and casualty insurance industry that are members of NIAC, perform this leadership role voluntarily and without any compensation.

In the Annex to the Second Consultation Paper, you state that:

...the regime has been modernized to regulate only foreign insurers that carry on business (i.e., insure risks) in Canada and allow foreign insurers to insure risks in Canada. This makes the specific exemption for nuclear insurance unnecessary.

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We understand the reference above to the specific exemption for nuclear insurance to be to section 572.1 of the Act which provides that.

572.1. Despite section 572, this Part [i.e. Part XIII] does not apply in respect of the insurance against injury to persons or loss of or damage to property, or liability for such injury, loss or damage, caused by nuclear energy, including ionizing radiation and contamination by radioactive substances, to the extent that, in the opinion of the Superintendent, that insurance is not available within Canada.

This provision predates the Act and was introduced into the *Foreign Insurance Companies Act 1960*, shortly after NIAC was established. The wording in section 62(aa) of the Foreign Insurance Companies Act is almost identical to the wording of section 572.1 (and its predecessor, section 572(1)(b)).

The then Superintendent of Insurance, Mr. MacGregor, explained the purpose of this provision to the Senate Committee on Banking and Commerce Committee as follows:

"In practice the Canadian pool would make the arrangement to get the excess coverage desired in the United Kingdom or the United States pool, as the case may be. The advantage of the new paragraph (aa) in section 149 of the Act is the effect of exempting any British or foreign company from the requirements of the act, if it does nothing more in Canada than provide this excess coverage for the owner of a nuclear installation." [Emphasis added]<sup>3</sup>

NIAC has for many years obtained an order from the Superintendent of Financial Institutions pursuant to section 572.1 of the Act (and its predecessor section 572(1)(b)) on behalf of NRI confirming that NRI is permitted to insure Canadian nuclear risks on the basis that there is not sufficient insurance in Canada available to insure such risks. This order has permitted NRI to insure Canadian nuclear risks without its member insurers being registered under Part XIII of the Act. Prior to 2017, the order applied to both nuclear liability insurance and nuclear property insurance. This order now only applies to nuclear property insurance, because there is no longer any shortage of nuclear liability insurance in Canada. However, there is still a substantial shortage of nuclear property insurance in Canada. Insurers licensed in Canada currently provide less than 5% of the amount of nuclear property capacity required by the operators of Canadian nuclear power stations. Almost all of this shortfall is insured by NRI's members. Not only does the order permit NRI to insure this large shortfall, it also

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<sup>3</sup> The Proceedings of the Senate Standing Committee on Banking and Commerce, Wednesday, February 8, 1961, at p. 52. The reference above to section 149 is to the *Canadian and British Insurance Companies Act*. The Committee considered an identical amendment to the *Foreign Insurance Companies Act* at the same time. The section in the *Foreign Insurance Companies Act* that was amended to deal with nuclear insurance was section 62.

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permits NIAC and NRI to cooperate in the manner described above to collectively provide sufficient insurance capacity to insure large Canadian nuclear risks.

We understand that the reference in Annex A to a regime that allows foreign insurers to insure risks in Canada is a reference to Advisory No. 2007-01-R1- Insurance in Canada of Risks (the "Advisory") issued by the Office of the Superintendent of Financial Institutions ("OSFI").<sup>4</sup>

We had extensive discussions with OSFI prior to 2007 with respect to the 2007 version of the Advisory. These discussions were in the context that the Government at that time also proposed to repeal section 572(1)(b) of the Act, but that NRI would be able to continue to insure Canadian nuclear risks in the same cooperative manner with NIAC because of the Advisory. After much discussion with OSFI, we concluded that the 2007 version of the Advisory would not permit NRI and NIAC to cooperate effectively to provide the necessary capacity to insure the large Canadian nuclear risks. In particular, NIAC would not be able to continue to play the same leadership role as the Canadian arm of the Worldwide Nuclear Pooling System. As a result, NIAC requested that the exception provided by section 572(1)(b) be retained in the revised Act. This request was accepted, and the exception in section 572(1)(b) was retained in the Act, but under a different section number (i.e. section 572.1).

As noted above, the Advisory was amended in 2009. We have reviewed this version of the Advisory and have concluded that it would also not permit NRI and NIAC to continue to insure Canadian nuclear risks in the same cooperative manner that they have used to successfully provide the large amount of insurance capacity required to insure the large Canadian nuclear risks for over fifty years.

Accordingly, for the reasons expressed above, we respectfully request that section 572.1 of the Act not be repealed.

We consent to the disclosure of this letter.

Yours very truly,

Colleen DeMerchant, General Manager  
Nuclear Insurance Association of Canada

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<sup>4</sup> Issued: September 2007. Revised: May 2009.

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