

Regulatory Reporting for Federally Regulated Insurers Relaxed

Bernice Karn

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On April 16, 2020, the Office of the Superintendent of Financial Institutions (OSFI) released a number of questions and answers on regulatory reporting requirements for Federally Regulated Insurers (FRIs). The update was published in connection with a series of regulatory adjustments that OSFI announced on April 9, 2020, which were implemented to address issues stemming from the recent COVID-19 pandemic. These recent measures are aimed at providing FRIs with flexibility in order to meet upcoming filing deadlines for various regulatory returns. In its questions and answers, OSFI provided further clarity on the relaxed reporting requirements for FRIs including the use of electronic signatures when filing regulatory returns.

FAQs on Regulatory Reporting for FRIs

As we previously reported, OSFI advised that it is prepared to offer flexibility and is allowing FRIs to request extensions to the scheduled filing dates of their regulatory returns, including any recurring regulatory information provided directly to OSFI, as a result of extraordinary operational or technical challenges ensuing from the current pandemic environment. In its FAQs, OSFI clarified that it will not be providing blanket extensions and expects all OSFI regulatory returns to be filed, as scheduled, unless an extension has been granted. Where an extension is granted, the length of the extension will reflect each FRI's unique circumstances. When requesting an extension from their lead supervisor, the FRI should specify the regulatory return(s) for which it is seeking an extension, including the rationale necessitating the request and the proposed length of the extension. A request must be submitted for all subsequent regulatory return deadlines, regardless of whether such return was previously granted an extension by OSFI.

Regulatory Returns using Electronic Signature

Section 1046 of the *Insurance Companies Act* (Canada), permits OSFI to establish the requirements for the form of notices and documents that may be sent in electronic form including the requirements associated with the use of electronic signature. In its FAQs, OSFI noted that, where applicable, FRIs can submit documents with electronic signatures. FRIs can submit unstructured regulatory returns (i.e., regulatory returns that require a signature) with an electronic signature via the Regulatory Reporting System. If the regulatory return contains an affidavit, an electronic signature in the regulatory return is acceptable provided it complies with the applicable laws and standards of the jurisdiction governing the affidavit process. OSFI

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advised that for any technical assistance in submitting electronic signatures, FRIs should contact [ReturnsAdmin@osfi-bsif.gc.ca](mailto>ReturnsAdmin@osfi-bsif.gc.ca).

Provincial legislation that governs electronic signatures typically does not set out specific technical requirements for valid electronic signatures. At the federal level, the *Personal Information Protection and Electronic Documents Act* (PIPEDA) provides that a "secure electronic signature" must have the following characteristics to satisfy the legal requirement for a signature: (i) the electronic signature resulting from the use by a person of the technology or process is unique to the person; (ii) the use of the technology or process by a person to incorporate, attach or associate the person's electronic signature to an electronic document is under the sole control of the person; (iii) the technology or process can be used to identify the person using the technology or process; and (iv) the electronic signature can be linked with an electronic document in such a way that it can be used to determine whether the electronic document has been changed since the electronic signature was incorporated in, attached to or associated with the electronic document. However, the application of the electronic document and signature provisions of PIPEDA are fairly narrow because, since its enactment, Parliament has chosen to amend various federal statutes to provide for electronic documentation frameworks rather than expanding the list of statutes in Schedules 2 and 3 of PIPEDA naming those federal statutes to which PIPEDA applies.

Due to the lack of guidance provided by OSFI in respect of the use of electronic signatures, it is recommended that FRIs follow and comply with PIPEDA and the *Secure Electronic Signature Regulations* SOR/2005-30 as a best practice (the SES Regulations) to satisfy OSFI requirements. The SES Regulations contain a detailed list of what will qualify as a "secure electronic signature."

Virtual Commission of Affidavits

In a recent announcement, the Law Society of Ontario (LSO) advised that it has temporarily relaxed its interpretation of section 9 of the *Commissioners for Taking Affidavits Act* (the Act). The LSO will now interpret the requirement in section 9 of the Act that "every oath and declaration shall be taken by the deponent in the presence of the commissioner or notary public" as not requiring the lawyer or paralegal to be in the physical presence of the individual. As a result, affidavits may now be commissioned through alternative means such as video conferencing. It is important to note, however, that not all jurisdictions have adopted the same relaxed interpretation for taking affidavits.

Summary

FRIs concerned with their ability to comply with their filing or other regulatory obligations during this unprecedented time may: 1) receive flexibility and accommodation from OSFI provided they are experiencing extraordinary operational or technical challenges resulting from the current environment; and

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2) use electronic signatures, where applicable, when submitting regulatory returns, provided the regulatory return contains an affidavit and complies with the applicable laws in that jurisdiction. The above accommodations illustrate OSFI's continued commitment to assist FRIs in navigating these uncertain times.

It is likely that the permitted use of electronic signatures will be an issue for many other types of documents. Services such as DocuSign are now being commonly used in order to provide electronic signatures for documents such as directors resolutions and Agreements.

It is our view that it is likely that some of the new flexibility for regulatory filings with respect to things such as electronic signatures will survive past the COVID-19 pandemic as insurers as well as regulators get used to the convenience and efficiency that they provide.

This publication is a general summary of the law. It does not replace legal advice tailored to your specific circumstances.