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Second Session, 22nd Legislature, 39 Elizabeth II

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

# BILL 19

FINANCIAL CONSUMERS ACT

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THE MINISTER OF CONSUMER AND CORPORATE AFFAIRS

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First Reading .....

Second Reading .....

Committee of the Whole .....

Third Reading .....

Royal Assent .....

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# BILL 19

1990

## FINANCIAL CONSUMERS ACT

(Assented to , 1990)

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

**PART 1  
PURPOSE, APPLICATION AND EXEMPTIONS**

**Purpose statement**

- 1 (1) The purpose of this Act is
- (a) to require suppliers, agents and financial planners to disclose to consumers important information about named financial products described in section 2(i),
  - (b) to inform consumers that they have responsibilities as well as rights when they invest in named financial products,
  - (c) to set standards for persons who call themselves financial planners,

- (d) to make a variety of remedies available so that disputes about named financial products can be resolved efficiently and effectively, and
  - (e) to encourage the use of readily understandable language in the financial marketplace.
- (2) The purpose statement is to be used to help interpret this Act and to guide those who make decisions under it.

## Definitions

2 In this Act,

- (a) “Act” includes regulations made under this Act;
- (b) “agent” means a person who sells or offers to sell to consumers named financial products not of that person’s own issue;
- (c) “commission” means compensation, reward or benefit, but does not include salary;
- (d) “consumer” means an individual;
- (e) “Director” means the individual appointed as the Director for this Act;
- (f) “financial planner” means a person referred to in section 21;
- (g) “financial planning” means reviewing, analyzing or organizing personal financial information for the purpose of preparing a plan to manage a consumer’s financial affairs;
- (h) “Minister” means the member of the Executive Council charged by the Lieutenant Governor in Council with the administration of this Act;
- (i) “named financial product” means any of the following:
  - (i) life insurance as defined in the *Insurance Act*;
  - (ii) an account on which interest is payable by a bank, treasury branch, credit union, trust company or securities dealer or by any other person listed in regulations;
  - (iii) a mutual fund unit which is a security that entitles the holder to receive, on demand or within a specified

period after demand, an amount computed by reference to the value of a proportionate interest in the whole or in a part of the net assets, including a separate fund or trust account, of the issuer of the securities;

- (iv) an investment on which a specified rate of interest is paid or guaranteed, commonly known as an “investment certificate”, “guaranteed investment certificate” or “term deposit”, but does not include government or corporate bonds, treasury bills or shares;
- (v) an investment described in regulations;
- (j) “supplier” means a person who sells or offers to sell to consumers named financial products of that person’s own issue, and includes the employees of a supplier.

### **Application**

- 3 (1) This Act applies
  - (a) when a supplier, agent or financial planner is a resident of Alberta regardless of the residence of the consumer,
  - (b) when advice is given, or business is solicited or transacted, in Alberta relating to a named financial product, regardless of the residence of the parties to the advice, solicitation or transaction, and
  - (c) to advice given and investments made on or after the date this Act comes into force.
- (2) If a supplier, agent or financial planner acts in more than one of those capacities, the provisions of this Act relevant to each of those capacities apply to that person.

### **Exemptions**

- 4 The Lieutenant Governor in Council may, by regulation, exempt from the application of all or any provision of this Act
  - (a) a supplier, agent or financial planner, or
  - (b) a named financial product or any class or type of named financial product.

## **PART 2**

### **RESPONSIBILITIES OF CONSUMERS AND DUTIES OF SUPPLIERS, AGENTS AND FINANCIAL PLANNERS**

#### **Division 1 Responsibilities of Consumers**

##### **Consumers' responsibilities before investing**

- 5** (1) A consumer must provide information that the consumer knows or should know is relevant to or would have a significant effect on advice provided to the consumer by a supplier, agent or financial planner about named financial products.
- (2) Before investing in a named financial product, a consumer is responsible
- (a) for becoming reasonably well informed about it,
  - (b) for obtaining and reviewing information about it, and
  - (c) for making a sensible decision about investing in it.

##### **Consumers' responsibilities after investing**

- 6** After investing in a named financial product, a consumer who becomes aware of a contravention of this Act by a supplier, agent or financial planner that causes a loss to the consumer
- (a) must try to minimize the loss, and
  - (b) must promptly try to resolve the matter with the supplier, agent or financial planner who the consumer thinks is responsible for the loss.

##### **Effect of consumers' failure to fulfil responsibilities**

- 7** Failure by a consumer to fulfil the responsibilities referred to in this Division is to be taken into account in assessing or apportioning damages in claims for loss under this Act.

**Division 2**  
**Duties of Suppliers, Agents and Financial Planners**

**Duty to provide appropriate advice or product**

- 8** A supplier, agent or financial planner must give appropriate advice or provide an appropriate named financial product to a consumer when the consumer tells the supplier, agent or financial planner
- (a) why the consumer needs the advice, or
  - (b) what purpose the consumer intends to achieve by investing in a named financial product.

**Duty of financial planner**

- 9** (1) Before a financial planner does financial planning for a consumer, the financial planner must tell the consumer
- (a) the cost of the financial planner's services, and
  - (b) any other information that the financial planner is required by regulation to tell the consumer.
- (2) Before a financial planner gives advice to a consumer, the financial planner must tell the consumer
- (a) whether the financial planner receives a commission for giving advice about, or as a result of an investment by the consumer in, named financial products or any other financial products,
  - (b) if there is anything in the relationship the financial planner has with a supplier, an agent or another financial planner that could cause the financial planner to be in a conflict of interest in his dealings with the consumer, and
  - (c) any other information that the financial planner is required by regulation to tell the consumer.

**Duty to provide information about named financial products**

- 10** (1) Before investing in a named financial product, a consumer must be told the following information:
- (a) the supplier's name and, on request, the supplier's business address,



- (b) the names and business addresses of the agent or financial planner, or both, where the consumer is dealing with one or both of them,
  - (c) if there is an existing plan under which the consumer can be compensated for a loss relating to a named financial product, how the consumer can obtain information about the plan,
  - (d) if there is a right to cancel an agreement about an investment in a named financial product, how and when the right can be exercised,
  - (e) if the named financial product can be redeemed or surrendered before the end of its term, the cost and procedure for doing so,
  - (f) that the individual with whom the consumer is dealing receives a commission, if that individual does receive a commission,
  - (g) if the named financial product is life insurance, the premium payable,
  - (h) if the named financial product is a mutual fund, the cost of purchase, the dollar amount of the commission and any other fees that are payable by the consumer,
  - (i) any other information that a supplier, agent or financial planner is required by regulation to tell a consumer, and
  - (j) that the consumer has the right to receive in writing any of the information disclosed according to this section.
- (2) If the consumer requests that the information be in writing, it must be provided within a reasonable time.
- (3) The information must be given to the consumer
- (a) by the agent if the consumer is dealing with an agent or by the financial planner if the consumer is dealing with a financial planner, or
  - (b) by the supplier if the consumer is not dealing with an agent or financial planner.

### **Duty to provide information about registered plans**

- 11** (1) The Lieutenant Governor in Council may make regulations respecting information that must be given to consumers about the following plans:
- (a) a registered retirement savings plan;
  - (b) a registered education savings plan;
  - (c) a registered retirement income fund;
  - (d) any other plan described in regulations.
- (2) The regulations can describe how the information must be given and the persons who are responsible for giving the information.

### **Duty to provide financial statements**

- 12** (1) If financial statements are required by law, a supplier must provide to the consumer, on request and free of charge,
- (a) the most recent audited financial statement of the supplier with the auditor's report about it, and
  - (b) the most recent quarterly or half-yearly financial statement of the supplier.
- (2) A credit union that receives a request for an audited financial statement may give to the consumer the most recent financial statement referred to in section 82(1)(b) of the *Credit Union Act*.

### **Duty to use plain language**

- 13** (1) The following documents must be in readily understandable language and form:
- (a) application forms for consumers who wish to invest in named financial products;
  - (b) agreements setting out the terms and conditions of named financial products;
  - (c) any information provided to a consumer under section 10(2) or 11(1);
  - (d) any other documents described in regulations.

- (2) Subsection (1) does not apply to words or forms of documents that are required by law.
- (3) Proof that reasonable efforts have been made to comply and maintain compliance with subsection (1) is a complete defence
  - (a) in a prosecution under subsection (1), or
  - (b) in a dispute about whether subsection (1) has been complied with.

#### **Duty to provide copies of documents**

- 14 (1) When a consumer signs a document at the request of a supplier, agent or financial planner, the consumer must be told that he can receive a copy.
- (2) If a consumer requests a copy, the person asking the consumer to sign the document must provide the copy.

#### **Terminology**

- 15 The Lieutenant Governor in Council may make regulations
  - (a) defining words that can be used by suppliers, agents and financial planners in relation to financial planning or named financial products;
  - (b) placing restrictions on the use of those words when they relate to financial planning or named financial products.

#### **Prohibited business practices**

- 16 Suppliers, agents and financial planners must not
  - (a) put undue pressure on consumers to invest in named financial products,
  - (b) take unfair advantage of consumers,
  - (c) make representations or conduct themselves in a way that could mislead or deceive consumers, or
  - (d) withhold information about named financial products or about a supplier, agent or financial planner if they know or should know that consumers might be misled by not having the information.

### **Payment for named financial products**

- 17 (1) An agent must not accept payment from a consumer for a named financial product unless it is a cheque, money order or other negotiable instrument payable to the supplier.
- (2) Subsection (1) does not apply to an agent or class of agents described in regulations.

### **Use of personal financial information**

- 18 (1) Personal financial information given by a consumer to a supplier, agent or financial planner for the purpose of obtaining advice about or investing in named financial products can only be used for the purpose for which it is given unless the consumer specifically consents to another use.
- (2) The consumer's consent to another use must
- (a) be written,
  - (b) be clearly identifiable by the consumer, and
  - (c) specifically state the information to be released, the purpose of the release and the person to whom the information is to be released.
- (3) This section does not apply if the personal financial information is given
- (a) to a credit grantor as defined in the *Consumer Credit Transactions Act* to determine the credit worthiness of that consumer,
  - (b) to a credit bureau or similar office to determine the credit worthiness of that consumer, or
  - (c) to another person as required by law.
- (4) An application by a consumer for an investment in a named financial product must not be refused because the consumer refuses to provide a consent under subsection (2).

### **Right to cancel some named financial products**

- 19 The Lieutenant Governor in Council may make regulations
- (a) listing named financial products that may be cancelled;

- (b) respecting the particular circumstances that would allow a named financial product to be cancelled;
- (c) describing the conditions under which a named financial product may be cancelled.

**Effect of failure by supplier, agent or financial planner to carry out duties**

- 20** Failure by a supplier, agent or financial planner to carry out the duties described in this Act
- (a) is to be taken into account in assessing or apportioning damages in claims for loss under this Act, and
  - (b) may be the subject of proceedings under Parts 4 and 5.

**PART 3**

**FINANCIAL PLANNERS**

**Licensing of financial planners**

- 21** A financial planner is a person who is licensed to do financial planning under regulations made under the *Licensing of Trades and Businesses Act*.

**PART 4**

**DISPUTE RESOLUTION**

**Division 1**

**Arbitration and Court Proceedings**

**Requirement for arbitration clause**

- 22** (1) Every agreement between
- (a) consumers and suppliers about named financial products,
  - (b) consumers and agents about named financial products, and
  - (c) consumers and financial planners about advice about named financial products or any other financial products

must include a provision stating that after a dispute arises, unless the parties agree in writing to start court proceedings instead of arbitration proceedings, the parties must arbitrate a dispute about a loss resulting because this Act was not complied with, and that the *Arbitration Act* will apply.

- (2) If an agreement referred to in subsection (1) does not include an arbitration clause, the model arbitration clause set out in the Schedule that is in force at the time a notice to arbitrate is served is part of the agreement.

### **Appointment of arbitrator**

- 23 (1) If the Director receives a notice to appoint an arbitrator under the model arbitration clause or an arbitration clause referred to in section 22(1), the Director must appoint an arbitrator and notify the parties of the name of the arbitrator within 14 days of receiving the notice.
- (2) The Director can enter into an agreement regarding the appointment of arbitrators and the administration of arbitration clauses.

### **Arbitration award**

- 24 (1) As soon as possible after making an award, an arbitrator appointed under this Act must file a copy of the award with the Director.
- (2) An award can be inspected by the public at reasonable times unless both parties to the arbitration request the Director to keep it confidential, in which case the Director must decide whether to make all or part of the award public.

### **Starting court proceedings**

- 25 (1) After a dispute arises about a loss resulting because this Act was not complied with, the parties may agree in writing to start court proceedings instead of arbitration proceedings.
- (2) If court proceedings are started, a claim can be filed
  - (a) in The Civil Division of The Provincial Court of Alberta, if the amount claimed does not exceed the limit set by section 36 of the *Provincial Court Act*, or
  - (b) in the Court of Queen's Bench.

- (3) A copy of the claim must be served on the Director before any further step is taken.

#### **Matters that the courts and arbitrators must consider**

- 26 (1) A court or an arbitrator must consider
  - (a) whether each party to the dispute has complied with this Act and, if not, why not,
  - (b) the degree to which each party has failed to comply with this Act,
  - (c) the ability of each party to eliminate or minimize the loss, and
  - (d) any other factors that the court or the arbitrator considers appropriate.
- (2) Based on the factors described in subsection (1), the court or an arbitrator can make a decision and can, if appropriate, apportion the damages and any costs awarded.

#### **Court proceedings by a consumer organization**

- 27 (1) In this section, “consumer organization” means a corporation that has as its primary objective the protection or advancement of the interests of consumers and that is not incorporated for the purpose of acquiring financial gain for its members.
- (2) A consumer organization can start proceedings in the Court of Queen’s Bench against a supplier, agent or financial planner in respect of an activity that the consumer organization alleges contravenes this Act.
- (3) A consumer organization does not need to have an interest in or be affected by the subject matter of the proceedings in order to start proceedings under subsection (2).
- (4) When proceedings are started under this section, the court may order a consumer organization to give security for the costs of the proceedings in an amount the court considers proper.
- (5) If a consumer organization is successful in its claim, the court may do any or all of the following:
  - (a) declare that the supplier, agent or financial planner has contravened this Act;

- (b) grant an injunction restraining the supplier, agent or financial planner from engaging in the activity or a similar activity that would or could contravene this Act;
- (c) award costs.

## **Division 2 Proceedings Initiated by the Director**

### **Investigative powers of the Director**

- 28** (1) If the Director has reason to believe that this Act is not being complied with, the Director must carry out an inquiry or investigation to determine whether this Act has been contravened.
- (2) In the course of an inquiry or investigation, the Director can require a person
- (a) to give written replies to questions, and
  - (b) to give the Director any information that the Director considers necessary for the inquiry or investigation.

### **Order to enter and search**

- 29** (1) If the Director has reason to believe that this Act is not being complied with, the Director can apply to the Provincial Court for an order authorizing the Director to enter and search anywhere for evidence that this Act has been contravened or of the extent of the contravention.
- (2) The application can be made without notice to any person.
- (3) The court may make any order it considers appropriate, with or without conditions.

### **Effect of an entry and search order**

- 30** (1) If an entry and search order is made, the Director can look at, take away, take extracts from or copy anything relevant to the search.
- (2) The Director must give to the person who is in control of the premises that have been entered and searched a receipt for anything taken away after a search and must return the original as soon as possible after it is removed.



- (3) If the Director keeps the original of anything, the Director must allow the owner of the thing to have reasonable access to it.

### **Appeal of entry and search order**

- 31 (1) A person can apply to the Court of Queen's Bench
  - (a) to have the order changed or cancelled, or
  - (b) for an order declaring that the entry and search order was improperly made.
- (2) The court may make any order it considers appropriate, with or without conditions.

### **Undertakings**

- 32 (1) In this section, "undertaking" means a binding written commitment to the Director by a supplier, agent or financial planner.
- (2) When the Director is of the opinion that a supplier, agent or financial planner is not complying with this Act, the supplier, agent or financial planner, as the case may be, can enter into an undertaking with the Director.
- (3) An undertaking can include any of the following agreements:
  - (a) to stop engaging in the practice described in the undertaking or to change the practice;
  - (b) to provide compensation to consumers who have incurred a loss;
  - (c) to publicize the undertaking or the action being taken to stop or change a former practice;
  - (d) to pay the costs of the Director's investigation and any costs associated with the undertaking;or any other provision that the Director and the supplier, agent or financial planner, as the case may be, agree on.
- (4) The content and form of an undertaking must be satisfactory to the Director.
- (5) The Director must keep a public record of undertakings given under this section.

### **Director's order**

- 33** (1) If the Director has reason to believe that this Act is not being complied with, the Director can make an order directing a supplier, agent or financial planner to stop engaging in the practice described in the order or to change the practice.
- (2) Information about the right to appeal a Director's order must be included in the order.
- (3) The Director must serve a copy of an order made under this section on the person who is the subject of the order.

### **Appeal of Director's order**

- 34** (1) A person who is affected by an order of the Director made under section 33 can appeal the order to the Court of Queen's Bench within 30 days of service of the order on that person.
- (2) The court may confirm, change or cancel the order on any terms or conditions it considers appropriate.
- (3) The court may, on application, suspend all or part of the operation of the order on any condition it considers appropriate, pending the outcome of an appeal under this section.

### **Court proceedings started by the Director**

- 35** (1) The Director can start legal proceedings in the Court of Queen's Bench against a supplier, agent or financial planner if the Director has reason to believe that the supplier, agent or financial planner has not complied with this Act, an undertaking given under section 32 or a Director's order made under section 33.
- (2) In proceedings under this section, the court may make any order it considers appropriate taking into consideration
- (a) the purposes of this Act,
  - (b) the responsibilities and rights of persons under this Act,
  - (c) the need to protect the public against unfair business practices, and
  - (d) when appropriate, the need to award punitive damages.

### **Court order protecting funds**

- 36 (1)** If a supplier or agent has been paid money by a consumer for a named financial product or if a financial planner has been paid money by a consumer for financial planning and
- (a)** the supplier, agent or financial planner has absconded from Alberta, or
  - (b)** the Director has reason to believe that the supplier, agent or financial planner
    - (i)** is about to abscond from Alberta,
    - (ii)** has attempted to remove any property from Alberta in order to avoid legal liabilities,
    - (iii)** has attempted to sell or dispose of property in order to avoid legal liabilities, or
    - (iv)** is misusing money or other assets paid or delivered to him by a consumer,

the Director can, whether or not any other action has been taken under this Act, apply to the Court of Queen's Bench for an order under subsection (2), without notice to the person affected by the order.

- (2)** The court may make one or more of the following orders:
- (a)** an order prohibiting any person who has on deposit or under control or for safekeeping any money, property or other assets on behalf of the supplier, agent or financial planner from dispersing or otherwise dealing with the money, property or other assets, except as approved by the court;
  - (b)** an order appointing a trustee or receiver, or both, to hold or take possession of the money, property or other assets of the supplier, agent or financial planner on any terms and conditions the court approves;
  - (c)** an order directing the supplier, agent or financial planner not to disperse any money or deal with any property or assets, except as approved by the court or as directed by the trustee or receiver.
- (3)** The court may make an order under this section on any terms and conditions the court considers appropriate.

- (4) Any person who is affected by an order made under this section can, on notice to the Director, apply to the court to have the order changed or cancelled.
- (5) The court may refuse the application or may change or cancel the order on any terms and conditions it considers appropriate.
- (6) In this section, “supplier” does not include
  - (a) a trust company as defined in the *Trust Companies Act*,
  - (b) a credit union as defined in the *Credit Union Act*,
  - (c) a treasury branch, or
  - (d) a bank as defined in the *Bank Act (Canada)*.

## **PART 5**

### **PREVENTING AVOIDANCE AND OFFENCES AND PENALTIES**

#### **Division 1 Preventing Avoidance**

##### **Avoiding this Act**

- 37 (1) No person can release or waive a right, benefit or requirement of this Act.
- (2) Any attempt to release or waive a right, benefit or requirement of this Act is invalid.

##### **Failure does not permit avoidance**

- 38 The failure of one person to comply with this Act does not relieve any other person from complying with this Act.

##### **Effect of this Act**

- 39 (1) This Act does not affect other legal rights or obligations.
- (2) A failure to comply with this Act does not, by itself, invalidate an agreement about a named financial product.

**Division 2  
Offences and Penalties**

**Offences**

- 40** (1) A person is guilty of an offence who
- (a) contravenes section 9, 10, 12, 13, 17 or 18,
  - (b) contravenes a regulation made under section 11 or 15(b),
  - (c) interferes with an inquiry or investigation under section 28,
  - (d) fails to comply with an undertaking given under section 32, or
  - (e) fails to comply with a Director's order made under section 33.
- (2) A prosecution under subsection (1) can be commenced not more than 2 years after the commission of the offence.

**Penalty for individuals**

- 41** An individual who is guilty of an offence is liable to a fine not exceeding
- (a) \$10 000, or
  - (b) 3 times the loss incurred by a consumer as a result of the contravention,
- whichever is greater, and in default of payment to imprisonment for not more than 12 months.

**Penalty for corporations**

- 42** (1) A corporation that is guilty of an offence is liable to a fine not exceeding
- (a) \$100 000, or
  - (b) 3 times the loss incurred by a consumer as a result of the contravention,
- whichever is greater.

- (2) If a corporation has failed to comply with this Act, every officer, director, employee or other person who directed, authorized, assented to, knowingly acquiesced in or knowingly participated in the failure is also guilty of an offence and is liable to a fine not exceeding
- (a) \$10 000, or
  - (b) 3 times the loss incurred by a consumer as a result of the contravention,
- whichever is greater, whether or not the corporation has been prosecuted or convicted for the failure.

## **PART 6**

### **REGULATORY BOARDS**

#### **Regulatory boards**

- 43** (1) The Lieutenant Governor in Council may establish regulatory boards consisting of the members appointed by the Lieutenant Governor in Council.
- (2) The Lieutenant Governor in Council may provide for the number of members of a regulatory board, the method of appointment of the members, the terms of office of the members and the filling of vacancies.
- (3) A regulatory board established under this section is a corporation.
- (4) A regulatory board must exercise the powers, duties and functions delegated to it under section 46.

#### **By-laws of regulatory board**

- 44** (1) A regulatory board can make by-laws respecting
- (a) the conduct of the business and affairs of the board;
  - (b) the calling of meetings of the members and conduct of business at those meetings;
  - (c) the appointment, removal, functions, powers, duties, remuneration and benefits of members, officers and employees of the board;

- (d) the delegation to officers of the board or any committee of it any powers of the board required to manage the business and affairs of the board, except the power to make by-laws;
  - (e) the establishment, membership, duties and functions of special, standing and other committees.
- (2) A by-law made by a regulatory board is not effective until it is approved by the Director.
  - (3) The *Regulations Act* does not apply to a by-law of a board.

### **Report**

- 45 A regulatory board must provide the Minister with any reports required by regulation.

## **PART 7**

### **ADMINISTRATIVE MATTERS**

#### **Delegation of Director's duties**

- 46 (1) The Minister may, in writing and with or without conditions,
  - (a) delegate to an individual or a regulatory board under this Act or any other Act or regulation any power, duty or function of the Director under this Act, and
  - (b) amend or revoke a delegation under this subsection.
- (2) With the approval of the Minister, the Director can, in writing and with or without conditions,
  - (a) delegate to a regulatory board under this Act or any other Act or regulation any or all of his powers, duties or functions under this Act, and
  - (b) amend or revoke a delegation under this subsection.

#### **Evidence**

- 47 Copies of anything taken under an entry and search order under this Act that are certified by the Director as true copies can be admitted in any court or arbitration proceedings as sufficient proof of the original without proof of the signature or appointment of the Director.

## **Regulations**

- 48** The Lieutenant Governor in Council may make regulations
- (a) listing persons who issue accounts on which interest is payable for the purpose of section 2(i)(ii);
  - (b) describing investments that are named financial products;
  - (c) respecting information that a financial planner must tell a consumer under section 9;
  - (d) respecting information that a supplier, agent or financial planner must tell a consumer under section 10(1);
  - (e) describing documents that must be in readily understandable language and form;
  - (f) describing “readily understandable language and form”;
  - (g) describing an agent or class of agents for the purpose of section 17(2);
  - (h) respecting the reports that a regulatory board must provide;
  - (i) defining any word or phrase used in this Act that is not defined in this Act;
  - (j) amending the Schedule.

## **Coming into force**

- 49** *This Act comes into force on Proclamation.*



## SCHEDULE

### Model Arbitration Clause

#### Dispute to be resolved by the parties if possible

- 1 If a dispute arises about whether loss has resulted to one of us because the other did not follow the *Financial Consumers Act* (Alberta) or the regulations made under it, we agree to try to resolve the dispute ourselves.

#### Notice to arbitrate

- 2 (a) If we cannot resolve the dispute, either of us can serve on the other a written notice to arbitrate.  
(b) A notice to arbitrate must
  - (i) describe what the claim is about and the remedy sought, and
  - (ii) give the name of the person proposed as a single arbitrator or state that the Director must appoint the arbitrator, in which case a copy of the notice to arbitrate must be sent to the Director.

#### Reply to the notice to arbitrate

- 3 Whoever receives the notice to arbitrate must notify the other, within 7 days of receiving the notice,
  - (a) that the proposed arbitrator is acceptable, or
  - (b) that the proposed arbitrator is not acceptable, in which case a copy of the notice to arbitrate and the reply must be sent to the Director.

#### Jurisdiction of arbitrator

- 4 (a) The arbitrator has jurisdiction as soon as the appointment is accepted.  
(b) The arbitrator must inquire into the claim and any matters relating to it.  
(c) The award is binding on us and the arbitrator need not give reasons for the award.

- (d) The *Arbitration Act* (Alberta) and Alberta law apply to arbitrations under this model arbitration clause, except as modified by the *Financial Consumers Act* (Alberta) and this model arbitration clause.

#### **Agreement that model clause does not apply**

- 5 This model arbitration clause does not apply if, after a dispute arises, we agree in writing that the dispute is not to be resolved by arbitration proceedings under this model arbitration clause.

#### **Definitions**

- 6 (a) In this model arbitration clause,
  - (i) “Director” means the Director under the *Financial Consumers Act* (Alberta);
  - (ii) “we” and “us” mean the parties to whom this clause applies under section 22(2) of the *Financial Consumers Act* (Alberta).
- (b) References to the *Financial Consumers Act* (Alberta) and to regulations under that Act are to that Act and the regulations as amended from time to time.